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SEVENTH EDITION

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TO THE HONOURABLE THE SPEAKER AND
MEMBERS OF THE HOUSE OF REPRESENTATIVES

Preface

When the sixth edition of *House of Representatives Practice* was published in 2012, it captured a number of significant developments that resulted from the first minority government since 1940. Of course the minority government continued until the middle of 2013 and there were more developments that were not captured in the previous edition which are now referred to in this edition.

However, if we believed that a reversion to majority government in the House would see procedural developments slow down we would have been mistaken. This Parliament, the 45th Parliament, with the very narrow majority enjoyed by the Government has brought a number of more unusual procedural occurrences which are recorded in this edition. It also has seen the issues emerge about the eligibility of parliamentarians under section 44(i) of the Constitution, with a number of Senators and a Member of the House being disqualified by the High Court of Australia sitting as the Court of Disputed Returns. The issue of the dual citizenship of parliamentarians continues to play out as this edition draws to its conclusion with developments up until 10 May 2018.

House of Representatives Practice is relied on by all those who participate in, and follow, the work of the House as the authoritative source of the practice of the House. Its words are poured over in great detail and are recited with great authority. It is therefore incumbent on us to ensure that *House of Representatives Practice* reflects the best and most current thinking on key issues of practice. It is very interesting to see the subtle shifts that have occurred as the procedure and practice of the House changes in response to the dynamic circumstances that face the House. This becomes most evident if one compares this edition with the first edition edited by one of my predecessors as Clerk, Mr John Pettifer C.B.E., who unfortunately passed away in 2014. I am of course grateful to all my predecessors as Clerks who have left their own imprint on *House of Representatives Practice*.

Some of the more notable and obvious changes in this edition include a more accurate rebadging of the chapter on 'Disagreements between the Houses' as 'Double dissolutions and joint sittings'; the division of the increasingly large chapter on 'Parliamentary committees' into two chapters; and the addition of a chapter dedicated to the 'Federation Chamber' now that the second chamber has been in existence for more than 20 years.

Many staff of the Department have made a contribution to this new edition of *House of Representatives Practice* and I thank them all for their efforts. I particularly thank my senior colleagues in the Department and make special note of Claressa Surtees, the Deputy Clerk, and Catherine Cornish, the Clerk Assistant (Procedure). As with all editions of *House of Representatives Practice* since the 2nd edition, Peter Fowler has coordinated this edition and has contributed much of the new content and seen it through to final publication. I and the Department owe a particular debt to Peter for the way in which he has carried the primary responsibility for the production of the Department's central publication.

I hope that Members, staff and others continue to find this new edition of *House of Representatives Practice* as helpful as earlier editions have been and that it brings new insights into the latest developments in the House's practice and procedures.

David Elder
Clerk of the House
May 2018

Contents

Appendixes

Illustrations

Chapter summaries

1 The Parliament and the role of the House—*continued*

3 Elections and the electoral system—*continued*

6 The Speaker, Deputy Speakers and officers—*continued*

9 Motions—*continued*

10 Legislation—*continued*

16 Non-government business—*continued*

17 Documents—*continued*

18 Parliamentary committees—*continued*

20 Privilege—*continued*

Reference guide

ALJ
Australian Law Journal.

ALJR
Australian Law Journal Reports.

CJ
Journals of the United Kingdom House of Commons. References are to session and page, e.g. CJ (1857–58) 247–8.

CLR
Commonwealth Law Reports.

Constitution
Commonwealth of Australia Constitution Act (63 and 64 Victoria, Ch. 12), an Act of the United Kingdom Parliament assented to on 9 July 1900, and commencing to operate on 1 January 1901. The text of this Act and the Constitution, section 9 of the Act, is attached.

Gazette
Commonwealth Government Notices Gazette, previously *Commonwealth of Australia Gazette* and *Australian Government Gazette*. References are to number/date/page (if any), e.g. Gazette S64 (4.3.88) 4.

HC
UK House of Commons Paper. References are to number/session/page, e.g. HC 34 (1967–68) 4.

H.C. Deb.
UK House of Commons Debates. References are to date and page, e.g. H.C. Deb. (31.10.80) 916.

H.R. Deb.
Parliamentary Debates (Hansard—House of Representatives). From 1901 until March 1953 House of Representatives and Senate debates were bound together as 'Parliamentary Debates' volumes I to CII and 103 to 221. From September 1953 separate volumes were published for each House. References are to date and page, e.g. H.R. Deb. (24.11.2003) 22458. Page numbers are those of final volumes; pagination of the daily proof issue differs.

J
Journals of the Senate. References are to sessional volume/page/date, e.g. J 1974–75/1031 (11.11.1975).

May
Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, first published in 1844, is commonly referred to as *May's Parliamentary Practice* and is the standard reference text on the procedure and practice of Parliament in the United Kingdom. The edition current in 2018 is the 24th edition published by LexisNexis in 2011. Also of relevance, by virtue of s. 49 of the Constitution, are the 10th (1893) and 11th (1906) editions.

NP

House of Representatives Notice Paper. Bound in sessional volumes 1901–1977. Bound in annual volumes after 1978. References are to Notice Paper number/date/page, e.g. NP 31 (26.8.1910) 163.

Odgers

Odgers' Australian Senate Practice. The edition current in 2018 is the 14th edition published by the Department of the Senate in 2016.

PP

Parliamentary Paper. Parliamentary papers are those papers which have been presented to either House of the Parliament and which have been ordered to be printed or to be made a Parliamentary Paper. Until 1967 Parliamentary papers were numbered and bound according to sessions. References are to number/session/page (of paper, not volume), e.g. PP 32 (1964–66) 27. Since 1967 papers have been numbered consecutively for each year and references are to number/year/page.

Prior to 1963 certain papers relating solely to either the House or Senate were designated H of R or S and (prior to 1961) were published only in the Votes and Proceedings or Journals volumes respectively, e.g. H of R 1 (1962–63) 43 and S 2 (1954–55) 24.

Quick and Garran

J. Quick and R. R. Garran, *The Annotated Constitution of the Australian Commonwealth*, Angus and Robertson, Sydney, 1901. The classic contemporary reference text on the origins and meaning of the sections of the Constitution.

S. Deb.

Parliamentary Debates (Hansard)—Senate. References are to date and page, e.g. S. Deb. (11.5.1989) 2385. Page numbers are of final volumes; pagination of the daily proof issue differs.

SNP

Senate Notice Paper. References are to Notice Paper number/date/page, e.g. SNP 153 (10.5.1989) 5909.

Senate S.O.

Senate standing order.

S.O.

Standing order. The House of Representatives standing orders as at 13 September 2016.

VP

Votes and Proceedings of the House of Representatives from 1901 to present. References are to sessional volume/page/date, e.g. VP 2013–16/1 (12.11.2013).

1
The Parliament and the role of the House

COMPOSITION

The Commonwealth Parliament is composed of three distinct elements, the Queen,[1] the Senate and the House of Representatives.[2] These three elements together characterise the nation as being a constitutional monarchy, a parliamentary democracy and a federation. The Constitution vests in the Parliament the legislative power of the Commonwealth. The legislature is bicameral, which is the term commonly used to indicate a Parliament of two Houses.

THE QUEEN

Although the Queen is nominally a constituent part of the Parliament, the Constitution immediately provides that she appoint a Governor-General to be her representative in the Commonwealth.[3] The Queen's role is little more than titular, as the legislative and executive powers and functions of the Head of State are vested in the Governor-General by virtue of the Constitution.[4] However, while in Australia, the Sovereign has performed duties of the Governor-General in person,[5] and in the event of the Queen being present to open Parliament, references to the Governor-General in the relevant standing orders[6] are read as references to the Queen.[7]

The Royal Style and Titles Act provides that the Queen shall be known in Australia and its Territories as:

> Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.[8]

GOVERNOR-GENERAL

The Governor-General is covered in this chapter as a constituent part of the Parliament. However, it is a feature of the Westminster system of government that the Head of State is part of both the Executive Government and the legislature. The relationship between these two bodies and the role of Governor-General as the Head of the Executive Government are discussed in the Chapter on 'House, Government and

1 The Commonwealth of Australia Constitution Act extends the provisions of the Constitution to the Queen's (Queen Victoria's) heirs and successors, s. 2.
2 Constitution, s. 1.
3 Constitution, s. 2.
4 Constitution, s. 2 with s. 61; with certain exceptions relating to disallowance of laws and matters of assent (ss. 58, 59, 60, 74) still nevertheless formal in essence (*see* Ch. on 'Legislation') by virtue of the *Statute of Westminster Adoption Act 1942*.
5 *See Royal Powers Act 1953*.
6 S.O.s 4–8.
7 S.O. 9(a).
8 *Royal Style and Titles Act 1973*, Schedule.

Opposition'. The Governor-General's official title is Governor-General of the Commonwealth of Australia.[9] Governors-General since 1901 are listed in Appendix 1.

Appointment

The Governor-General is appointed by the Crown, in practice on the advice of Australian Ministers of the Crown.[10] The Governor-General holds office during the Crown's pleasure, appointments normally being for five years, but some Governors-General have had extended terms of office, and others have resigned or have been recalled.

The Governor-General is appointed pursuant to Letters Patent issued by Her Majesty Queen Elizabeth as Queen of Australia, which deal with the appointment of a person to the office of Governor-General, the appointment of a person as Administrator of the Commonwealth, and the appointment of a person as a Deputy of the Governor-General.[11]

The Letters Patent provide that the appointment of a person as Governor-General shall be by Commission which must be published in the official gazette of the Commonwealth.[12] They also provide that a person appointed to be Governor-General shall take the oath or affirmation of allegiance and the oath or affirmation of office. These acts are to be performed by the Chief Justice or another justice of the High Court. The ceremonial swearing-in of a new Governor-General has traditionally taken place in the Senate Chamber.

Historical

The method of appointment of the Governor-General was changed as a result of the 1926 and 1930 Imperial Conferences.[13] Appointments prior to 1924 were made by the Crown on the advice of the Crown's Ministers in the United Kingdom (the Governor-General then being also the representative or agent of the British Government[14]) in consultation with Australian Ministers. The Balfour Report stated that the Governor-General should be the representative of the Crown only, holding the same position in the administration of public affairs in Australia as the Crown did in the United Kingdom. The 1930 report laid down certain criteria for the future appointments of Governors-General. Since then Governors-General have been appointed by the Crown after informal consultation with and on the formal advice of Australian Ministers.

Administrator and Deputies

The Letters Patent relating to the office and the Constitution[15] make provision for the appointment of an Administrator to administer the Government of the Commonwealth 'in the event of the absence out of Australia, or the death, incapacity or removal of the

9 Constitution, s. 68. Originally the additional title of Commander-in-Chief of the Defence Force was also used. This was not included in the 1984 Letters Patent, as it was considered that the command in chief of the naval and military forces vested in the Governor-General by the Constitution was not a separate office but a function held ex officio, *see* S. Deb. (8.3.1989) 655, 697.

10 *See also* H.R. Deb. (28.11.1946) 742–3; H.R. Deb. (19.2.1947) 19–20; H.R. Deb. (7.5.1947) 2051.

11 *Letters Patent relating to the Office of Governor-General of the Commonwealth of Australia*, 21 August 2008, in Gazette S179 (9.9.2008). These revoked and replaced, with minor amendment and in gender-neutral language, the Letters Patent of 21 August 1984, in Gazette S334 (24.8.1984). For the original Letters Patent *see Constitution of Office of Governor-General*, Letters Patent, 29 October 1900, in *Commonwealth Statutory Rules* 1901–1956, V, p. 5301.

12 E.g. Gazette S181 (10.9.2008). The Gazette also included copies of the oath of allegiance and oath of office and the new Governor-General's proclamation that she had assumed the office.

13 'Imperial Conference 1926', *Summary of proceedings*, PP 99 (1926–28) (*see* Balfour Report, pp. 10–12); 'Imperial Conference 1930', *Summary of proceedings*, PP 293 (1929–31) 17.

14 L. F. Crisp, *Australian national government*, 5th edn, Longman Cheshire, Melbourne, 1983, p. 398.

15 Constitution, s. 4.

Governor-General for the time being, or in the event of the Governor-General having absented himself or herself temporarily from office for any reason'. An Administrator is in effect an Acting Governor-General. As with the Governor-General, the Administrator is required to take the oath or affirmation of allegiance and the oath or affirmation of office before the commission takes effect. The Crown's commission is known as a dormant commission, being invoked only when necessary, and more than one commission may exist at any one time.[16] Pursuant to the Letters Patent an Administrator's commission is activated, depending on the circumstances, by the request of the Governor-General, Prime Minister, Deputy Prime Minister or most senior available Minister.[17]

An Administrator is not entitled to receive any salary from the Commonwealth in respect of any other office during the period of administration.[18] The Administrator may perform all the duties of the Governor-General under the Letters Patent and the Constitution during the Governor-General's absence.[19] A reference to the Governor-General in the standing orders includes an Administrator of the Commonwealth.[20] There is a precedent for an Administrator calling Parliament together for a new session: Administrator Brooks did so in respect of the Third Session of the 23rd Parliament on 7 March 1961.[21]

The Constitution empowers the Crown to authorise the Governor-General to appoint Deputies to exercise, during the Governor-General's pleasure, such powers and functions as the Governor-General thinks fit.[22] The Letters Patent give this authority and specify the manner of appointment and powers of Deputies. State Governors considered to be more readily available in cases of urgency have been appointed as Deputies of the Governor-General with authority to exercise a wide range of powers and functions, including the making of recommendations with respect to the appropriation of revenues or moneys, the giving of assent to proposed laws and the making, signing or issuing of proclamations, orders, etc. on the advice of the Federal Executive Council.[23] These arrangements ensure that urgent matters can be attended to in situations where, even though the Governor-General is in Australia, he or she is unavailable. The Governor-General also normally appoints the Vice-President of the Executive Council to be the Governor-General's Deputy to summon meetings of the Executive Council and, in the Governor-General's absence, to preside over meetings.[24]

The Governor-General traditionally appoints a Deputy (usually the Chief Justice) to declare open a new Parliament. The same judge is also authorised to administer the oath or affirmation of allegiance to Members.[25] Sometimes, when there are Senators to be sworn in as well, two judges may be commissioned with the authority to administer the oath or affirmation to Members and Senators.[26] The Governor-General issues to a

16 In practice State Governors are commissioned—for example, *see* Gazette S205 (17.6.2003) for commissions appointing five Governors dated 20 May, the other Governor having been commissioned on 11 May, Gazette S152 (15.5.2003).

17 The Administrator issues a proclamation citing the dormant commission and announcing that he or she has assumed the administration of the Government, e.g. Gazette S44 (18.3.2009); Gazette S137 (19.7.2010).

18 Constitution, s. 4.

19 E.g. *see* VP 1974–75/510 (27.2.1975) (presentation of new Speaker), 532 (5.3.1975) (recommending amendment to bill); Gazette S139 (20.7.2010) (issue of election writs).

20 S.O. 2.

21 VP 1961/1–2 (7.3.1961).

22 Constitution, s. 126.

23 E.g. *see* instruments appointing the Governors of New South Wales and Victoria as Deputies, Gazette S180 (10.9.2008).

24 Or in the Vice-President's absence, the Deputy Vice-President or most senior Minister present, e.g. Gazette S195 (2.10.2008).

25 E.g. VP 2008–10/1–2 (12.2.2008).

26 E.g. VP 1987–90/3 (14.9.1987); VP 2016–18/2 (30.8.2016).

Speaker, once elected, a commission to administer the oath or affirmation of allegiance to Members during the course of a Parliament.[27]

Official Secretary

In 1984 the Governor-General Act was amended to provide for the establishment of the statutory office of Official Secretary to the Governor-General.[28] The Official Secretary and his or her staff provide administrative support to the Governor-General and administer the Australian honours and awards system. Annual reports of the Official Secretary have been presented to both Houses since 1985.[29]

POWERS AND FUNCTIONS OF THE GOVERNOR-GENERAL

Bagehot described the Crown's role in England in the following classic statement:

> To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights—the right to be consulted, the right to encourage, the right to warn.[30]

In Australia, for all practical purposes, it is the Constitution which determines the nature and the exercise of the Governor-General's powers and functions. In essence these powers can be divided into three groups—prerogative, legislative and executive.

Prerogative powers

Although since Federation it has been an established principle that the Governor-General in exercising the powers and functions of the office should only do so with the advice of his or her Ministers of State, the principle has not always been followed. This principle of responsible government is discussed further in the Chapter on 'House, Government and Opposition'. The Constitution provides definite and limited powers, although in some cases the ways in which these powers may be exercised are not specified. The identification and range of prerogative powers are somewhat uncertain and have on occasions resulted in varying degrees of political and public controversy.

Quick and Garran defines prerogative powers as:

> . . . matters connected with the Royal prerogative (that body of powers, rights, and privileges, belonging to the Crown at common law, such as the prerogative of mercy), or to authority vested in the Crown by Imperial statute law, other than the law creating the Constitution of the Commonwealth. Some of these powers and functions are of a formal character; some of them are purely ceremonial; others import the exercise of sovereign authority in matters of Imperial interests.[31]

To some extent this definition may be regarded as redundant or superfluous in modern times. However, the fact that the Constitution states, in some of its provisions, that the Governor-General may perform certain acts without any explicit qualification, while other provisions state that the Governor-General shall act 'in Council', suggests an element of discretion in exercising certain functions—that is, those in the first category. *Quick and Garran* states:

> The first group includes powers which properly or historically belong to the prerogatives of the Crown, and survive as parts of the prerogative; hence they are vested in the Governor-General, as the Queen's representative. The second group includes powers either of purely statutory origin or which have, by statute or custom, been detached from the prerogative; and they can, therefore, without any constitutional impropriety, be declared to be vested in the Governor-General in Council. But all those

27 E.g. VP 2013–16/7 (12.11.2013).
28 *Public Service Reform Act 1984*, s. 141.
29 E.g. VP 2013–16/72 (13.11.2013).
30 Walter Bagehot, *The English Constitution*, 4th edn, Fontana, London, 1965, p. 111.
31 *Quick and Garran*, p. 390.

> powers which involve the performance of executive acts, whether parts of the prerogative or the creatures of statute, will, in accordance with constitutional practice, as developed by the system known as responsible government, be performed by the Governor-General, by and with the advice of the Federal Executive Council . . . parliamentary government has well established the principle that the Crown can perform no executive act, except on the advice of some minister responsible to Parliament. Hence the power nominally placed in the hands of the Governor-General is really granted to the people through their representatives in Parliament. Whilst, therefore, in this Constitution some executive powers are, in technical phraseology, and in accordance with venerable customs, vested in the Governor-General, and others in the Governor-General in Council, they are all substantially in *pari materia*, on the same footing, and, in the ultimate resort, can only be exercised according to the will of the people.[32]

Modern references relating to the prerogative or discretionary powers of the Governor-General clarify this view in the interests of perspective. Sir Paul Hasluck made the following observations in a lecture given during his term as Governor-General:

> The duties of the Governor-General are of various kinds. Some are laid on him by the Constitution, some by the Letters Patent and his Commission. Others are placed on him by Acts of the Commonwealth Parliament. Others come to him by conventions established in past centuries in Great Britain or by practices and customs that have developed in Australia.[33]
>
> All of these duties have a common characteristic. The Governor-General is not placed in a position where he can run the Parliament, run the Courts or run any of the instrumentalities of government; but he occupies a position where he can help ensure that those who conduct the affairs of the nation do so strictly in accordance with the Constitution and the laws of the Commonwealth and with due regard to the public interest. So long as the Crown has the powers which our Constitution now gives to it, and so long as the Governor-General exercises them, Parliament will work in the way the Constitution requires, the Executive will remain responsible to Parliament, the Courts will be independent, the public service will serve the nation within the limits of the law and the armed services will be subject to civil authority.[34]
>
> The dissolution of Parliament is an example of one of the matters in which the Constitution requires the Governor-General to act on his own. In most matters, the power is exercised by the Governor-General-in-Council, that is with the advice of the Federal Executive Council (in everyday language, with the advice of the Ministers meeting in Council).[35]
>
> The Governor-General acts on advice, whether he is acting in his own name or as Governor-General-in-Council. He has the responsibility to weigh and evaluate the advice and has the opportunity of discussion with his advisers. It would be precipitate and probably out of keeping with the nature of his office for him to reject advice outright but he is under no compulsion to accept it unquestioningly. He has a responsibility for seeing that the system works as required by the law and conventions of the Constitution but he does not try to do the work of Ministers. For him to take part in political argument would both be overstepping the boundaries of his office and lessening his own influence.[36]

On 12 November 1975, following the dismissal of Prime Minister Whitlam, Speaker Scholes wrote to the Queen asking her to intervene and restore Mr Whitlam to office as Prime Minister in accordance with the expressed resolution of the House the previous day.[37] On 17 November, the Queen's Private Secretary, at the command of Her Majesty, replied, in part:

> The Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.[38]

32 *Quick and Garran*, p. 406.
33 Sir Paul Hasluck, *The Office of Governor-General*, Melbourne University Press, Carlton, 1979, p. 10.
34 *ibid.,* p. 12.
35 *ibid.,* p. 16.
36 *ibid.,* p. 20.
37 VP 1974–75/1125–7 (11.11.1975).
38 H.R. Deb. (17.2.1976) 6.

Other than by recording the foregoing statements and discussing the question of dissolution (*see below*), it is not the intention of this text to detail the various constitutional interpretations as to the Governor-General's discretionary powers. Based on informed opinion, the exercise of discretionary power by the Governor-General can be interpreted and regarded as conditional upon the following principal factors:

- the maintenance of the independent and impartial nature of the office is paramount;
- in the view of *Quick and Garran* the provisions of the Constitution vesting powers in the Governor-General are best read as being exercised 'in Council';
- the provisions of sections 61 and 62 of the Constitution (Federal Executive Council to advise the Governor-General in the government of the Commonwealth) are of significance and are interpreted to circumscribe discretions available to the Governor-General;
- the Statute of Westminster diminished to some extent the prerogative powers of the Crown in Australia;
- the reality that so many areas of power are directly or indirectly provided for in the Constitution;
- where discretions are available they are generally governed by constitutional conventions established over time as to how they may be exercised; and
- it is either a constitutional fact or an established constitutional convention that the Governor-General acts on the advice of Ministers in all but exceptional circumstances.

Dissolution

The act of dissolution puts to an end at the same time the duration of the House of Representatives and ipso facto the term of the Parliament.[39] This alone means that the question of dissolution and how the power of dissolution is exercised is of considerable parliamentary importance because of the degree of uncertainty as to when and on what grounds dissolution may occur.[40]

The critical provision of the Constitution, in so far as its intention is concerned, is found in the words of section 28 'Every House of Representatives shall continue for three years from the first meeting of the House, and no longer'[41] to which is added the proviso 'but may be sooner dissolved by the Governor-General'. The actual source of the Governor-General's power to dissolve is found in section 5, the effect and relevant words of which are that 'The Governor-General may . . . by Proclamation or otherwise . . . dissolve the House of Representatives'.

While the Constitution vests in the Governor-General the power to dissolve the House, the criteria for taking this action are not prescribed and, therefore, they are matters generally governed by constitutional convention. In a real sense the exercise of the Crown's power of dissolution is central to an understanding of prerogative powers and the nature of constitutional conventions.

39 *See also* Ch. on 'The parliamentary calendar'.

40 There is considerable divergence of opinion among constitutional authorities on the true nature and exercise of the power. This is well illustrated by the analysis in H. V. Evatt, *The King and his dominion governors: A study of the reserve powers of the Crown in Great Britain and the dominions*, 2nd edn, Cheshire, Melbourne, 1967, and E. A. Forsey, *The royal power of dissolution of Parliament in the British Commonwealth*, Oxford University Press, Toronto, 1968.

41 Section 28 was considered by the High Court in 1975. It was held that an ordinary general election means an election held at or towards the end of the period of three years: *Attorney-General (ex rel. McKinlay) v. Commonwealth* (1975) 135 CLR 1. *Per Barwick CJ*; section 28 contemplates that the ordinary general election will take place in each three years: *ibid.,* p. 29.

As described earlier in this chapter, while it is the prerogative of the Crown to dissolve the House of Representatives, the exercise of the power is subject to the constitutional convention that it does so only on the advice and approval of a Minister of State, in practice the Prime Minister, directly responsible to the House of Representatives. The granting of dissolution is an executive act, the ministerial responsibility for which can be easily established.[42]

The nature of the power to dissolve and some of the historical principles, according to which the discretion is exercised, are illustrated by the following authoritative statements:

> Of the legal power of the Crown in this matter there is of course no question. Throughout the Commonwealth . . . the King or his representative may, in law, grant, refuse or force dissolution of the Lower House of the Legislature . . . In legal theory the discretion of the Crown is absolute (though of course any action requires the consent of some Minister), but the actual exercise of the power is everywhere regulated by conventions.[43]

> If a situation arises, however, in which it is proposed that the House be dissolved sooner than the end of its three-year term, the Governor-General has to reassure himself on other matters. This is an area for argument among constitutional lawyers and political historians and is a matter where the conventions and not the text of the Constitution are the chief guide. It is the function of the Prime Minister to advise that the House be dissolved. The most recent practices in Australia support the convention that he will make his proposal formally in writing supported by a written case in favour of the dissolution. It is open to the Governor-General to obtain advice on the constitutional question from other quarters—perhaps from the Chief Justice, the Attorney-General or eminent counsel—and then . . . a solemn responsibility rests on [the Governor-General] to make a judgment on whether a dissolution is needed to serve the purposes of good government by giving to the electorate the duty of resolving a situation which Parliament cannot resolve for itself.[44]

> The right to dissolve the House of Representatives is reserved to the Crown. This is one of the few prerogatives which may be exercised by the Queen's representative, according to his discretion as a constitutional ruler, and if necessary, a dissolution may be refused to responsible ministers for the time being.[45]

It is clear that it is incumbent on the Prime Minister to establish sufficient grounds for the need for dissolution, particularly when the House is not near the end of its three year term. The Governor-General makes a judgment on the sufficiency of the grounds. It is in this situation where it is generally recognised that the Governor-General may exercise a discretion not to accept the advice given.[46]

The grounds on which the Governor-General has accepted advice to dissolve the House of Representatives have not always been made public. It is reasonable to presume that no special reasons may be given to the Governor-General, or indeed are necessary, for a dissolution of the House if the House is near the end of its three year term.[47]

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42 *Quick and Garran*, p. 407.

43 E. A. Forsey, *The royal power of dissolution of Parliament in the British Commonwealth*, Oxford University Press, Toronto, 1968, p. 3.

44 Sir Paul Hasluck, *The Office of Governor-General*, Melbourne University Press, Carlton, 1979, p. 15.

45 *Quick and Garran*, p. 464.

46 It is relevant to any discussion of this discretion to consider the comment (albeit in connection with a very specific set of circumstances) 'It is one thing to decline to act in accordance with the advice of your Ministers and Law Officers. It is quite another to act positively contrary to that advice, and it is yet another to decline even to seek that advice' in Colin Howard, 'A further comment on the dissolution of the Australian Parliament on 11 November 1975', *The Parliamentarian*, LVII, 4, 1976, pp. 240–1.

47 Professor Sawer has commented 'I would have thought that the precedents raise no doubt at all about the ability of a government to call for a general election at any time during the last six months of its normal existence, and probably earlier' in Geoffrey Sawer, 'Dissolution of Parliament in mid-term', *Canberra Times*, 6 July 1977.

TABLE 1.1 EARLY DISSOLUTIONS OF THE HOUSE OF REPRESENTATIVES

Dissolution date (a)	*Parliament: length*	*Reason (b)*
26 March 1917	6th: 2 years 5 months 19 days	To synchronise election of the House with election for half the Senate and to gain a mandate from the people prior to the forthcoming Imperial War Conference (H.R. Deb. (6.3.1917) 10,993–11,000).
3 November 1919	7th: 2 years 4 months 21 days	Not given to House.
16 September 1929	11th: 7 months 11 days	The House amended the Maritime Industries Bill against the wishes of the Government. The effect of the amendment was that the bill should not be brought into operation until submitted to a referendum or an election. Prime Minister Bruce based his advice on the following: 'The Constitution makes no provision for a referendum of this description, and the Commonwealth Parliament has no power to pass effective legislation for the holding of such a referendum. The Government is, however, prepared to accept the other alternative—namely a general election' (H.R. Deb. (12.9.1929) 873–4; correspondence read to House).
27 November 1931	12th: 2 years 8 days	The Government was defeated on a formal motion for the adjournment of the House. The Governor-General took into consideration 'the strength and relation of various parties in the House of Representatives and the probability in any case of an early election being necessary' (H.R. Deb. (26.11.1931) 1926–7; correspondence read to House).
7 August 1934	13th: 2 years 5 months 22 days	Not given to House.
4 November 1955	21st: 1 year 3 months 1 day	To synchronise elections of the House with elections for half the Senate; the need to avoid conflict with State election campaigns mid-way through the ensuing year; the impracticability of elections in January or February; authority (mandate) to deal with economic problems (H.R. Deb. (26.10.1955) 1895–6; Sir John Kerr, *Matters for Judgment*, pp. 153, 412).

Dissolution date	*Parliament: length*	*Reason (b)*
1 November 1963	24th: 1 year 8 months 13 days	Prime Minister Menzies referred to the fact that the Government had gone close to defeat on five occasions; the need to obtain a mandate on policies concerning North West Cape radio station, the defence of Malaysia and the proposed southern hemisphere nuclear free zone (H.R. Deb. (15.10.1963) 1790–5).
10 November 1977	30th: 1 year 8 months 25 days	To synchronise House election with election for half the Senate; to provide an opportunity to end election speculation and the resulting uncertainty and to enable the Government to seek from the people an expression of their will; to conform with the pattern of elections taking place in the latter months of a calendar year (H.R. Deb. (27.10.1977) 2476–7; Kerr, pp. 403–15; *Dissolution of the House of Representatives by His Excellency the Governor-General on 10 November 1977*, PP 16 (1979)).
26 October 1984	33rd: 1 year 6 months 6 days	To synchronise elections for the House with election for half the Senate; claimed business community concerns that if there were to be an election in the spring it should be held as early as possible ending electioneering atmosphere etc., and to avoid two of seven Senators to be elected (because of the enlargement of Parliament) being elected without knowledge of when they might take their seats (as the two additional Senators for each State would not take their seats until the new and enlarged House had been elected and met) (H.R. Deb. (8.10.1984) 1818–1820; correspondence tabled VP 1983–84/954 (9.10.1984).
31 August 1998	38th: 2 years 4 months 1 day	Not given to House.
19 July 2010	42nd: 2 years 5 months 7 days	Not given to House.

(*a*) A dissolution of the House of Representatives is counted here as 'early' if the dissolution occurs six months or more before the date the House of Representatives is scheduled to expire by effluxion of time. The table does not include simultaneous dissolutions of both Houses granted by the Governor-General under s. 57 of the Constitution (*see* Ch. on 'Double dissolutions and joint sittings').

(*b*) The reasons stated in the table may not be the only reasons advised or upon which dissolution was exclusively granted. On four occasions reasons, if any, were not given to the House—for example, the House may not have been sitting at the time.

As far as is known, the majority of dissolutions have taken place in circumstances which presented no special features. Where necessary, it is a normal feature for the Governor-General to grant a dissolution on the condition and assurance that adequate provision, that is, parliamentary appropriation, is made for the Administration in all its branches to be carried on until the new Parliament meets.[48]

The precedents in Table 1.1 represent those 'early' dissolutions where the grounds, available from the public record, were sufficient for the Governor-General to grant a request for a dissolution. A feature of the precedents is that in 1917, 1955, 1977 and 1984 the grounds given included a perceived need to synchronise the election of the House of Representatives with a periodic election for half the Senate.

New Government commissioned without dissolution

ADVICE TO DISSOLVE NOT ACCEPTED

The Governor-General is known to have refused to accept advice to grant a dissolution on three occasions:[49]

- *August 1904*.[50] The 2nd Parliament had been in existence for less than six months. On 12 August 1904 the Watson Government was defeated on an important vote in the House.[51] On the sitting day following the defeat, Mr Watson informed the House that following the vote he had offered the Governor-General 'certain advice' which was not accepted. He had thereupon tendered the resignation of himself and his colleagues which the Governor-General accepted.[52] Mr Reid was commissioned by the Governor-General to form a new Government.
- *July 1905*. The 2nd Parliament had been in existence for less than 16 months. On 30 June 1905 the Reid Government was defeated on an amendment to the Address in Reply.[53] At the next sitting Mr Reid informed the House that he had requested the Governor-General to dissolve the House. The advice was not accepted and the Government resigned.[54] Mr Deakin was commissioned by the Governor-General to form a new Government.
- *June 1909*. The 3rd Parliament had been in existence for over two years and three months. On 27 May 1909 the Fisher Government was defeated on a motion to adjourn debate on the Address in Reply.[55] Mr Fisher subsequently informed the House that he had advised the Governor-General to dissolve the House and the Governor-General on 1 June refused the advice and accepted Mr Fisher's resignation.[56] Mr Deakin was commissioned by the Governor-General to form a new Government. In 1914 Mr Fisher, as Prime Minister, tabled the reasons for his 1909 application for a dissolution.

The advice of Prime Minister Fisher in the 1909 case consisted of a lengthy Cabinet minute which contained the following summary of reasons:

48 H.R. Deb. (18.9.1925) 2576; *see also* correspondence between the Prime Minister and the Governor-General in relation to the simultaneous dissolution of 11 November 1975, PP 15 (1979) 5–6 and the dissolution of 30 November 1977, PP 16 (1979) 4.

49 For comment on these precedents *see* H. V. Evatt, *The King and his dominion governors: A study of the reserve powers of the Crown in Great Britain and the dominions*, 2nd edn, Cheshire, Melbourne, 1967, pp. 50–4.

50 No documents in relation to the refusal were made public.

51 VP 1904/147 (12.8.1904); *see also* 'Motions of no confidence or censure' in Ch. on 'Motions'.

52 H.R. Deb. (17.8.1904) 4265.

53 VP 1905/7 (30.6.1905); *see also* 'Motions of no confidence or censure' in Ch. on 'Motions'.

54 H.R. Deb. (5.7.1905) 134–5.

55 VP 1909/7 (27.5.1909); *see also* 'Motions of no confidence or censure' in Ch. on 'Motions'.

56 H.R. Deb. (1.6.1909) 227.

> Your Advisers venture to submit, after careful perusal of the principles laid down by Todd and other writers on Constitutional Law, and by leading British statesmen, and the precedents established in the British Parliament and followed throughout the self-governing Dominions and States, that a dissolution may properly be had recourse to under any of the following circumstances:
>
> (1) When a vote of 'no confidence', or what amounts to such, is carried against a Government which has not already appealed to the country.
>
> (2) When there is reasonable ground to believe that an adverse vote against the Government does not represent the opinions and wishes of the country, and would be reversed by a new Parliament.
>
> (3) When the existing Parliament was elected under the auspices of the opponents of the Government.
>
> (4) When the majority against a Government is so small as to make it improbable that a strong Government can be formed from the Opposition.
>
> (5) When the majority against the Government is composed of members elected to oppose each other on measures of first importance, and in particular upon those submitted by the Government.
>
> (6) When the elements composing the majority are so incongruous as to make it improbable that their fusion will be permanent.
>
> (7) When there is good reason to believe that the people earnestly desire that the policy of the Government shall be given effect to.[57]

The advice went on to state that 'All these conditions, any one of which is held to justify a dissolution, unite in the present instance.' According to Crisp 'The Governor-General was unmoved by considerations beyond "the parliamentary situation" '.[58] Evatt offers the view that 'certainly the action of the Governor-General proceeded upon a principle which was not out of accord with what had until then been accepted as Australian practice, although the discretion may not have been wisely exercised'.[59]

NO ADVICE TO DISSOLVE

On 10 January 1918, following the defeat of a national referendum relating to compulsory military service overseas, Prime Minister Hughes informed the House that the Government had considered it its duty to resign unconditionally and to offer no advice to the Governor-General. A memorandum from the Governor-General setting out his views was tabled in the House:

> On the 8th of January the Prime Minister waited on the Governor-General and tendered to him his resignation. In doing so Mr. Hughes offered no advice as to who should be asked to form an Administration. The Governor-General considered that it was his paramount duty (a) to make provision for carrying on the business of the country in accordance with the principles of parliamentary government, (b) to avoid a situation arising which must lead to a further appeal to the country within twelve months of an election resulting in the return of two Houses of similar political complexion, which are still working in unison. The Governor-General was also of the opinion that in granting a commission for the formation of a new Administration his choice must be determined solely by the parliamentary situation. Any other course would be a departure from constitutional practice, and an infringement of the rights of Parliament. In the absence of such parliamentary indications as are given by a defeat of the Government in Parliament, the Governor-General endeavoured to ascertain what the situation was by seeking information from representatives of all sections of the House with a view to determining where the majority lay, and what prospects there were of forming an alternative Government.
>
> As a result of these interviews, in which the knowledge and views of all those he consulted were most freely and generously placed at his service, the Governor-General was of the opinion that the majority of the National Party was likely to retain its cohesion, and that therefore a Government having the promise of stability could only be formed from that section of the House. Investigations failed to elicit proof of sufficient strength in any other quarter. It also became clear to him that the leader in the National Party, who had the best prospect of securing unity among his followers and of therefore

57 'Ministerial crisis 1909', *Cabinet minute in connection with the application of the Hon. Andrew Fisher for a dissolution*, PP 5 (1914–17) 13.

58 L. F. Crisp, *Australian national government*, 5th edn, Longman Cheshire, Melbourne, 1983, p. 402.

59 H. V. Evatt, *The King and his dominion governors: A study of the reserve powers of the Crown in Great Britain and the dominions*, 2nd edn, Cheshire, Melbourne, 1967, p. 54.

being able to form a Government having those elements of permanence so essential to the conduct of affairs during war, was the Right Honourable W. M. Hughes, whom the Governor-General therefore commissioned to form an Administration.[60]

A further case which requires brief mention is that of Prime Minister Fadden who resigned following a defeat in the House on 3 October 1941. According to Crisp the Prime Minister 'apparently relieved the Governor-General from determining the issue involved in the request of a defeated Prime Minister by advising him, not a dissolution, but sending for the Leader of the Opposition, Curtin'.[61]

Simultaneous dissolution of both Houses

In specific circumstances set out in section 57 of the Constitution, following continued disagreement between the Senate and the House of Representatives over legislation, the Governor-General may dissolve both Houses simultaneously. This subject is covered in detail in the Chapter on 'Double dissolutions and joint sittings'.

Functions in relation to the Parliament

The functions of the Governor-General in relation to the legislature are discussed in more detail elsewhere in the appropriate parts of the text. In summary the Governor-General's constitutional duties (excluding functions of purely Senate application) are:

- appointing the times for the holding of sessions of Parliament (s. 5);
- proroguing and dissolving Parliament (s. 5);
- issuing writs for general elections of the House (in terms of the Constitution, exercised 'in Council') (s. 32);
- issuing writs for by-elections in the absence of the Speaker (in terms of the Constitution, exercised 'in Council') (s. 33);
- recommending the appropriation of revenue or money (s. 56);
- dissolving both Houses simultaneously (s. 57);
- convening a joint sitting of both Houses (s. 57);
- assenting to bills, withholding assent or reserving bills for the Queen's assent (s. 58);
- recommending to the originating House amendments in proposed laws (s. 58); and
- submitting to electors proposed laws to alter the Constitution in cases where the two Houses cannot agree (s. 128).

The Crown in its relations with the legislature is characterised by formality, ceremony and tradition. For example, tradition dictates that the Sovereign should not enter the House of Representatives. Traditionally the Mace is not taken into the presence of the Crown.

It is the practice of the House to agree to a condolence motion on the death of a former Governor-General,[62] but on recent occasions the House has not usually followed the former practice of suspending the sitting until a later hour as a mark of respect.[63] In the case of the death of a Governor-General in office the sitting of the House has been adjourned as a mark of respect.[64] An Address to the Queen has been agreed to on the

60 H.R. Deb. (10.1.1918) 2895–6; see also H. V. Evatt, *The King and his dominion governors: A study of the reserve powers of the Crown in Great Britain and the dominions*, 2nd edn, Cheshire, Melbourne, 1967, pp. 153–6.
61 L. F. Crisp, *Australian national government*, 5th edn, Longman Cheshire, Melbourne, 1983, pp. 403–4.
62 VP 1990–93/605 (9.4.1991).
63 E.g. VP 1976–77/253–4 (17.8.1976); VP 1990–93/605 (9.4.1991).
64 VP 1961/6 (7.3.1961).

death of a former Governor-General who was a member of the Royal Family,[65] and references have been made to the death of a Governor-General's close relative.[66]

During debate in the House no Member may use the name of the Queen, the Governor-General (or a State Governor) disrespectfully, or for the purpose of influencing the House in its deliberations.[67] The practice of the House is that, unless the discussion is based upon a substantive motion which admits of a distinct vote of the House, reflections (opprobrious references) must not be cast in debate concerning the conduct of the Sovereign or the Governor-General, including a Governor-General designate. It is acceptable for a Minister to be questioned, without criticism or reflection on conduct, regarding matters relating to the public duties for which the Governor-General is responsible. (For more detail and related rulings *see* Chapters on 'Control and conduct of debate' and 'Questions'.)

Functions in relation to the Executive Government

The executive power of the Commonwealth is vested in the Queen, and is exercisable by the Governor-General as the Queen's representative,[68] the Queen's role being essentially one of name only. Section 61 of the Constitution states two principal elements of executive power which the Governor-General exercises, namely, the execution and maintenance of the Constitution, and the execution and maintenance of the laws passed (by the Parliament) in accordance with the Constitution.

The Constitution, however, immediately provides that in the government of the Commonwealth, the Governor-General is advised by a Federal Executive Council,[69] effecting the concept of responsible government. The Governor-General therefore does not perform executive acts alone but 'in Council', that is, acting with the advice of the Federal Executive Council.[70] The practical effect of this is, as stated in *Quick and Garran*:

> . . . that the Executive power is placed in the hands of a Parliamentary Committee, called the Cabinet, and the real head of the Executive is not the Queen but the Chairman of the Cabinet, or in other words the Prime Minister.[71]

Where the Constitution prescribes that the Governor-General (without reference to 'in Council') may perform certain acts, it can be said that these acts are also performed in practice with the advice of the Federal Executive Council in all but exceptional circumstances.

As Head of the Executive Government,[72] in pursuance of the broad scope of power contained in section 61, the constitutional functions of the Governor-General, excluding those of historical interest, are summarised as follows:

- choosing, summoning and dismissing Members of the Federal Executive Council (s. 62);

65 VP 1974–75/9 (9.7.1974).
66 VP 1974–75/153 (17.9.1974).
67 S.O. 88.
68 Constitution, ss. 2, 61.
69 Constitution, s. 62.
70 Constitution, s. 63.
71 *Quick and Garran*, p. 703.
72 For further discussion on the Executive Government (i.e. the Ministry) *see* Ch. on 'House, Government and Opposition'.

- establishing Departments of State and appointing (or dismissing) officers to administer Departments of State (these officers are Members of the Federal Executive Council and are known as Ministers of State) (s. 64);
- directing, in the absence of parliamentary provision, what offices shall be held by Ministers of State (s. 65);
- appointing and removing other officers of the Executive Government (other than Ministers of State or as otherwise provided by delegation or as prescribed by legislation) (s. 67); and
- acting as Commander-in-Chief of the naval and military forces (s. 68).

Functions in relation to the Judiciary

The judicial power of the Commonwealth is vested in the High Court of Australia, and such other federal courts that the Parliament creates or other courts it invests with federal jurisdiction.[73]

The judiciary is the third element of government in the tripartite division of Commonwealth powers. The Governor-General is specifically included as a constituent part of the legislative and executive organs of power but is not part of the judiciary. While the legislature and the Executive Government have common elements which tend to fuse their respective roles, the judiciary is essentially independent. Nevertheless in terms of its composition it has a relationship to the executive branch (the Governor-General in Council) and is answerable in certain circumstances to the Parliament. The Governor-General in Council appoints justices of the High Court, and of other federal courts created by Parliament. Justices may only be removed by the Governor-General in Council on an address from both Houses praying for such removal on the ground of proved misbehaviour or incapacity.[74]

See also 'The Courts and Parliament' at page 18.

POWERS AND JURISDICTION OF THE HOUSES

While the Constitution states that the legislative power of the Commonwealth is vested in the Queen, a Senate and a House of Representatives[75] and, subject to the Constitution, that the Parliament shall make laws for the 'peace, order, and good government of the Commonwealth',[76] the Parliament has powers and functions other than legislative. The legislative function is paramount but the exercise of Parliament's other powers, which are of historical origin, are important to the understanding and essential to the working of Parliament.

Non-legislative powers

Section 49

Section 49 of the Constitution states:

> The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until

73 Constitution, s. 71.
74 Constitution, s. 72.
75 Constitution, s. 1.
76 Constitution, ss. 51, 52.

declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

In 1987 the Parliament enacted comprehensive legislation under the head of power constituted by section 49. The *Parliamentary Privileges Act 1987* provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the Members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of the Act, continue in force. The provisions of the Act are described in detail in the Chapter on 'Parliamentary privilege'. In addition, the Parliament has enacted a number of other laws in connection with specific aspects of its operation, for example, the Parliamentary Precincts Act, the Parliamentary Papers Act, the Parliamentary Service Act and the Parliamentary Proceedings Broadcasting Act.

The significance of these provisions is that they give to both Houses considerable authority in addition to the powers which are expressly stated in the Constitution. The effect on the Parliament is principally in relation to its claim to the 'ancient and undoubted privileges and immunities' which are necessary for the exercise of its constitutional powers and functions.[77]

It is important to note that in 1704 it was established that the House of Commons (by itself) could not create any new privilege;[78] but it could expound the law of Parliament and vindicate its existing privileges. Likewise neither House of the Commonwealth Parliament could create any new privilege for itself, although the Parliament could enact legislation to such an end. The principal powers, privileges and immunities of the House of Commons at the time of Federation (thus applying in respect of the Commonwealth Parliament until the Parliament 'otherwise provided') are summarised in *Quick and Garran*.

It should be noted that some of the traditional rights and immunities enjoyed by virtue of s. 49 have been modified since 1901—for instance, warrants for the committal of persons must specify the particulars determined by the House to constitute an offence, neither House may expel its members, and the duration of the immunity from arrest in civil causes has been reduced.[79]

Section 50

Section 50 of the Constitution provides that:

Each House of the Parliament may make rules and orders with respect to:

(i.) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

The first part of this section enables each House to deal with procedural matters relating to its powers and privileges and, accordingly, the House has adopted a number of standing orders relating to the way in which its powers, privileges and immunities are to be exercised and upheld. These cover such matters as the:

- procedure in matters of privilege (S.O.s 51–53);
- power to order attendance or arrest (S.O.s 93, 96);
- power to appoint committees (S.O.s 214–224);

77 *See* Ch. on 'Parliamentary privilege' for a detailed discussion of the application of privilege.

78 *May*, 2th edn, p. 218.

79 *See* especially the *Parliamentary Privileges Act 1987* and Ch. on 'Parliamentary privilege'.

- power of summons (S.O.s 236, 249, 254);
- issues to do with evidence (S.O.s 236, 237, 242, 255); and
- protection of witnesses (S.O. 256).

The second part enables each House to make rules and orders regulating the conduct of its business. A comprehensive set of standing orders has been adopted by the House and these orders may be supplemented from time to time by way of sessional orders and special resolutions.

Section 50 confers on each House the absolute right to determine its own procedures and to exercise control over its own internal proceedings. The House has in various areas imposed limits on itself—for example, by the restrictions placed on Members in its rules of debate. Legislation has been enacted to remove the power of the House to expel a Member.[80]

Legislative power

The legislative function of the Parliament is its most important and time-consuming. The principal legislative powers of the Commonwealth exercised by the Parliament are set out in sections 51 and 52 of the Constitution. However, the legislative powers of these sections cannot be regarded in isolation as other constitutional provisions extend, limit, restrict or qualify their provisions.

The distinction between the sections is that section 52 determines areas within the exclusive jurisdiction of the Parliament, while the effect of section 51 is that the itemised grant of powers includes a mixture of exclusive powers and powers exercised concurrently with the States. For example, some of the powers enumerated in section 51:

- did not belong to the States prior to 1901 (for example, fisheries in Australian waters beyond territorial limits) and for all intents and purposes may be regarded as exclusive to the Federal Parliament;
- were State powers wholly vested in the Federal Parliament (for example, bounties on the production or export of goods); or
- are concurrently exercised by the Federal Parliament and the State Parliaments (for example, taxation, except customs and excise).

In keeping with the federal nature of the Constitution, powers in areas of government activity not covered by section 51, or elsewhere by the Constitution, have been regarded as remaining within the jurisdiction of the States, and have been known as the 'residual powers' of the States.

It is not the purpose of this text to detail the complicated nature of the federal legislative power under the Constitution.[81] However, the following points are useful for an understanding of the legislative role of the Parliament:

- as a general rule, unless a grant of power is expressly exclusive under the Constitution, the powers of the Commonwealth are concurrent with the continuing powers of the States over the same matters;

80 *Parliamentary Privileges Act 1987*, s. 8.

81 Detailed discussion can be found, for example, in *Quick and Garran*, pp. 508–662; G. Moens and J. Trone, *Lumb, Moens and Trone, The Constitution of Australia annotated*, 9th edn, LexisNexis Butterworths, Sydney, 2016, pp. 118–238; W. Anstey Wynes, *Legislative, executive and judicial powers in Australia*, 5th edn, Law Book Co., Sydney, 1976, Chs. 6 & 7; and P. Hanks, *Hanks Australian constitutional law: materials and commentary*, 9th edn, LexisNexis Butterworths, 2013.

- sections, other than sections 51 and 52, grant exclusive power to the Commonwealth—for example, section 86 (customs and excise duties);
- section 51 operates 'subject to' the Constitution—for example, section 51(i) (Trade and Commerce) is subject to the provisions of section 92 (Trade within the Commonwealth to be free);
- section 51 must be read in conjunction with sections 106, 107, 108 and 109—for example, section 109 prescribes that in the case of any inconsistency between a State law and a Commonwealth law, the Commonwealth law shall prevail to the extent of the inconsistency;
- the Commonwealth has increasingly extended its legislative competence by means of section 96 (Financial assistance to States)—for example, in areas such as education, health and transport. This action has been a continuing point of contention and has led to changing concepts of federalism;
- section 51(xxxvi) recognises Commonwealth jurisdiction over 22 sections of the Constitution which include the provision 'until the Parliament otherwise provides'—for example, section 29 (Electoral divisions). Generally they are provisions relating to the parliamentary and executive structure and, in most cases, the Parliament has taken action to alter these provisions;[82]
- section 51(xxxix) provides power to the Parliament to make laws on matters incidental to matters prescribed by the Constitution. This power, frequently and necessarily exercised, has been put to some significant uses—for example, jurisdictional powers and procedure of the High Court, and legislation concerning the operation of the Parliament;[83]
- section 51(xxix) the 'external affairs power' has been relied on effectively to extend the reach of the Commonwealth Parliament's legislative power into areas previously regarded as within the responsibility of the States (in the *Tasmanian Dams Case* (1983) the High Court upheld a Commonwealth law enacted to give effect to obligations arising from a treaty entered into by the Federal Government);[84] similarly section 51(xx) the 'corporations power' has been relied on in relation to federal legislation on workplace relations;
- section 51 itself has been altered on two occasions, namely, in 1946 when paragraph (xxiiiA) was inserted and in 1967 when paragraph (xxvi) was altered;[85]
- the Commonwealth has been granted exclusive (as against the States) legislative power in relation to any Territory by section 122, read in conjunction with section 52;
- the Federal Parliament on the other hand is specifically prohibited from making laws in respect of certain matters—for example, in respect of religion by section 116;
- in practice Parliament delegates much of its legislative power to the Executive Government. Acts of Parliament frequently delegate to the Governor-General (that is, the Executive Government) a regulation making power for administrative purposes. However, regulations and other legislative instruments must be laid before

82 *Quick and Garran*, pp. 647–8.
83 *Quick and Garran*, pp. 651–5.
84 *Commonwealth v. Tasmania* (1983) 158 CLR 1.
85 *Constitution Alteration (Social Services) 1946*; *Constitution Alteration (Aboriginals) 1967*.

Parliament, which exercises ultimate control by means of its power of disallowance;[86]

- it is not possible for a Parliament to bind successor Parliaments, for example by enacting legislation in certain terms, as whatever provisions may be provided for in an Act may be repealed or amended by another Parliament.[87]

THE COURTS AND PARLIAMENT

The Constitution deliberately confers great independence on the federal courts of Australia. At the same time the Parliament plays a considerable role in the creation of courts, investing other courts with federal jurisdiction, prescribing the number of justices to be appointed to a particular court, and so on. In the scheme of the Constitution, the courts and the Parliament provide checks and balances on each other.

Constitutional provisions

With the exception of the High Court which is established by the Constitution, federal courts depend on Parliament for their creation.[88] The Parliament may provide for the appointment of justices to the High Court additional to the minimum of a Chief Justice and two other justices.[89] As prescribed by Parliament, the High Court now consists of a Chief Justice and six other justices.[90]

The appointment of justices of the High Court and of other courts created by the Parliament is made by the Governor-General in Council. Justices of the High Court may remain in office until they attain the age of 70 years. The maximum age for justices of any court created by the Parliament is also 70 years, although the Parliament may legislate to reduce this maximum.[91] Justices may be removed from office by the Governor-General in Council following addresses by both Houses of the Parliament[92] (*see* page 19).

The appellate jurisdiction (i.e. the hearing and determining of appeals) of the High Court is laid down by the Constitution but is subject to such exceptions and regulations as the Parliament prescribes,[93] providing that:

> . . . no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.[94]

The Constitution empowers the Parliament to make laws limiting the matters in which leave of appeal to Her Majesty in Council (the Privy Council) may be asked.[95] Laws have been enacted to limit appeals to the Privy Council from the High Court[96] and to exclude appeals from other federal courts and the Supreme Courts of Territories.[97] Special leave of appeal to the Privy Council from a decision of the High Court may not be asked in any

86 *See* 'Delegated legislation' in Ch. on 'Legislation'.
87 *Kartinyeri v. Commonwealth* [1998] HCA 22, paras 13–16; *and see*, for example, H.R. Deb. (30.5.2006) 17–18.
88 E.g. Federal Court of Australia, Family Court of Australia, Federal Circuit Court (formerly Federal Magistrates Court).
89 Constitution, s. 71.
90 *Judiciary Act 1903*, s. 4.
91 Constitution, s. 72. Constitution alteration in 1977, *Constitution Alteration (Retirement of Judges) Act 1977*.
92 Constitution, s. 72.
93 E.g. *Commonwealth Places (Application of Laws) Act 1970*, s. 16; *Judiciary Act 1903*, s. 35.
94 Constitution, s. 73.
95 Constitution, s. 74.
96 *Privy Council (Limitation of Appeals) Act 1968*, s. 3; *Privy Council (Appeals from the High Court) Act 1975*, s. 3.
97 *Privy Council (Limitation of Appeals) Act 1968*, s. 4.

matter except where the decision of the High Court was given in a proceeding that was commenced in a court before the date of commencement of the Privy Council (Appeals from the High Court) Act on 8 July 1975, other than an inter se matter (as provided by section 74). Such an appeal has been described as 'effectively impossible'.[98] Section 11 of the *Australia Act 1986* provided for the termination of appeals to the Privy Council from all 'Australian courts' defined as any court other than the High Court.

The Constitution confers original jurisdiction on the High Court in respect of certain matters[99] with which the Parliament may not interfere other than by definition of jurisdiction.[100] The Parliament may confer additional original jurisdiction on the High Court[101] and has done so in respect of 'all matters arising under the Constitution or involving its interpretation' and 'trials of indictable offences against the laws of the Commonwealth'.[102]

Sections 77–80 of the Constitution provide Parliament with power to:

- define the jurisdiction of the federal courts (other than the High Court);
- define the extent to which the jurisdiction of any federal court (including the High Court) shall be exclusive of the jurisdiction of State courts;
- invest any State court with federal jurisdiction;
- make laws conferring rights to proceed against the Commonwealth or a State;
- prescribe the number of judges to exercise the federal jurisdiction of any court; and
- prescribe the place of any trial against any law of the Commonwealth where the offence was not committed within a State.

Removal of justices from office

Section 72 of the Constitution provides that justices may only be removed from office by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity.[103] A joint address under this section may originate in either House although *Quick and Garran* suggests that it would be desirable for the House of Representatives to take the initiative.[104] There is no provision for appeal against removal.[105] There has been no case in the Commonwealth Parliament of an attempt to remove a justice of the High Court or other federal court. However, the conduct of a judge has been investigated by Senate committees and a Parliamentary Commission of Inquiry. It may be said that, in such matters, as in cases of an alleged breach of parliamentary privilege or contempt, the Parliament may engage in a type of judicial procedure.

98 P. Hanks, *Hanks Australian constitutional law: materials and commentary*, 9th edn, LexisNexis Butterworths, 2013, p. 50, *see also* pp. 38–9.
99 Constitution, s. 75.
100 Constitution, s. 77; e.g. *Extradition (Foreign States) Act 1966*, s. 25.
101 Constitution, s. 76.
102 *Judiciary Act 1903*, s. 30.
103 *See also Odgers,* 14th edn, pp. 677–710.
104 *Quick and Garran*, p. 731.
105 *Quick and Garran*, p. 730.

Parliamentary Commission of Inquiry

In May 1986 the Parliament established, by legislation, a Parliamentary Commission of Inquiry[106] to inquire and advise the Parliament whether any conduct of the Honourable Lionel Keith Murphy (a High Court judge) had been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution.

The Act provided for the commission to consist of three members, including a Presiding Member, each to be a serving or former judge, to be appointed by resolutions of the House and the Senate.[107] Staff were appointed under the authority of the Presiding Officers.

In August 1986, following a special report to the Presiding Officers relating to the terminal illness of the judge,[108] the inquiry was discontinued and the Act establishing the Commission repealed. The repealing Act also contained detailed provisions for the custody of documents in the possession of the commission immediately before the commencement of the repeal Act.[109]

The meaning of 'misbehaviour' and 'incapacity'

Prior to the matters arising in 1984–86, little had been written about the meaning of section 72. *Quick and Garran* had stated:

> Misbehaviour includes, firstly, the improper exercise of judicial functions; secondly, wilful neglect of duty, or non-attendance; and thirdly, a conviction for any infamous offence, by which, although it be not connected with the duties of his office, the offender is rendered unfit to exercise any office or public franchise. (Todd, Parl. Gov. in Eng., ii. 857, and authorities cited.)
>
> 'Incapacity' extends to incapacity from mental or bodily infirmity, which has always been held to justify the termination of an office held during good behaviour . . . The addition of the word does not therefore alter the nature of the tenure of good behaviour, but merely defines it more accurately.
>
> No mode is prescribed for the proof of misbehaviour or incapacity, and the Parliament is therefore free to prescribe its own procedure. Seeing, however, that proof of definite legal breaches of the conditions of tenure is required, and that the enquiry is therefore in its nature more strictly judicial than in England,[110] it is conceived that the procedure ought to partake as far as possible of the formal nature of a criminal trial; that the charges should be definitely formulated, the accused allowed full opportunities of defence, and the proof established by evidence taken at the Bar of each House.[111]

In an opinion published with the report of the Senate Select Committee on the Conduct of a Judge, the Commonwealth Solicitor-General stated, inter alia:

> Misbehaviour is limited in meaning in section 72 of the Constitution to matters pertaining to—
>
> (1) judicial office, including non-attendance, neglect of or refusal to perform duties; and
>
> (2) the commission of an offence against the general law of such a quality as to indicate that the incumbent is unfit to exercise the office.
>
> Misbehaviour is defined as breach of condition to hold office during good behaviour. It is not limited to conviction in a court of law. A matter pertaining to office or a breach of the general law of the requisite seriousness in a matter not pertaining to office may be found by proof, in appropriate

106 *Parliamentary Commission of Inquiry Act 1986*. Accounts of the 1984 Senate committee inquiries leading to the establishment of the Commission, and of the operation of the Commission and the course of its inquiry are given at pp. 21–26 of the second edition.

107 VP 1985–87/950 (20.5.1986); J 1985–87/1009–10 (27.5.1986).

108 Parliamentary Commission of Inquiry, *Special report, 5 August 1986*, PP 443 (1986).

109 The records were placed into the custody of the Presiding Officers. In December 2016 the Presiding Officers announced that they had authorised the publication of the Class B records of the Commission, containing material mostly relating to the interpretation of section 72 of the Constitution; and in June 2017 they authorised the publication of the Class A records of the Commission, containing material relating to the conduct of the Hon. Lionel Keith Murphy, *see* Speaker's statement to House H.R. Deb. (22.6.2017) 7423–5 and <http://www.aph.gov.au/Parliamentary_Business/Parliamentary_Commission>. The records were also presented to each House, VP 2016–18/1105 (14.9.2017).

110 The Act of Settlement 1701 (UK) provided that judges held office during good behaviour but could be removed by addresses from both Houses of Parliament. For historical discussion relating to Australia *see* L. Lovelock and J. Evans, *New South Wales Legislative Council Practice*, Federation Press, Sydney, 2008, pp. 581–2.

111 *Quick and Garran*, pp. 731–2.

manner, to the Parliament in proceedings where the offender has been given proper notice and opportunity to defend himself.[112]

Mr C.W. Pincus QC, in an opinion also published by the committee, stated on the other hand:

> As a matter of law, I differ from the view which has previously been expressed as to the meaning of section 72. I think it is for Parliament to decide whether any conduct alleged against a judge constitutes misbehaviour sufficient to justify removal from office. There is no 'technical' relevant meaning of misbehaviour and in particular it is not necessary, in order for the jurisdiction under section 72 to be enlivened, that an offence be proved.[113]

The Presiding Officers presented a special report from the Parliamentary Commission of Inquiry containing reasons for a ruling on the meaning of 'misbehaviour' for the purposes of section 72.[114] Sir George Lush stated, inter alia,

> . . . my opinion is that the word 'misbehaviour' in section 72 is used in its ordinary meaning, and not in the restricted sense of 'misconduct in office'. It is not confined, either, to conduct of a criminal matter.

and later:

> The view of the meaning of misbehaviour which I have expressed leads to the result that it is for Parliament to decide what is misbehaviour, a decision which will fall to be made in the light of contemporary values. The decision will involve a concept of what, again in the light of contemporary values, are the standards to be expected of the judges of the High Court and other courts created under the Constitution. The present state of Australian jurisprudence suggests that if a matter were raised in addresses against a judge which was not on any view capable of being misbehaviour calling for removal, the High Court would have power to intervene if asked to do so.[115]

Sir Richard Blackburn stated:

> All the foregoing discussion relates to the question whether 'proved misbehaviour' in section 72 of the Constitution must, as a matter of construction, be limited as contended for by counsel. In my opinion the reverse is correct. The material available for solving this problem of construction suggests that 'proved misbehaviour' means such misconduct, whether criminal or not, and whether or not displayed in the actual exercise of judicial functions, as, being morally wrong, demonstrates the unfitness for office of the judge in question. If it be a legitimate observation to make, I find it difficult to believe that the Constitution of the Commonwealth of Australia should be construed so as to limit the power of the Parliament to address for the removal of a judge, to grounds expressed in terms which in one eighteenth-century case were said to apply to corporations and their officers and corporators, and which have not in or since that case been applied to any judge.[116]

Mr Wells stated:

> . . . the word 'misbehaviour' must be held to extend to conduct of the judge in or beyond the execution of his judicial office, that represents so serious a departure from standards of proper behaviour by such a judge that it must be found to have destroyed public confidence that he will continue to do his duty under and pursuant to the Constitution.
>
> . . . Section 72 requires misbehaviour to be 'proved'. In my opinion, that word naturally means proved to the satisfaction of the Houses of Parliament whose duty it is to consider whatever material is produced to substantiate the central allegations in the motion before them. The Houses of Parliament may act upon proof of a crime, or other unlawful conduct, represented by a conviction, or other formal conclusion, recorded by a court of competent jurisdiction; but, in my opinion, they are not obliged to do so, nor are they confined to proof of that kind. Their duty, I apprehend, is to evaluate all material advanced; to give to it, as proof, the weight it may reasonably bear; and to act accordingly.
>
> According to entrenched principle, there should, in my opinion, be read into section 72 the requirement that natural justice will be administered to a judge accused of misbehaviour . . .[117]

112 Senate Select Committee on the Conduct of a Judge, *Report,* PP 168 (1984) 58.

113 ibid., p. 27.

114 Parliamentary Commission of Inquiry, *Special report dealing with the meaning of 'misbehaviour' for the purposes of section 72 of the Constitution, 19 August 1986,* PP 443 (1986).

115 ibid., pp. 18–19.

116 ibid., p. 32.

117 ibid., p. 45. 'Natural justice' is now more commonly referred to as 'procedural fairness'.

Parliamentary Commission to investigate misbehaviour or incapacity

The *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* provides that the Houses of the Parliament may each pass a resolution, in the same session, establishing a Commission to investigate a specified allegation of misbehaviour or incapacity of a specified Commonwealth judicial officer (that is, a High Court judge, a judge of the Federal Court of Australia, the Family Court of Australia or the Federal Circuit Court). The purpose of a Commission is to investigate the allegation, and report to the Houses of the Parliament on whether there is evidence that would let the Houses of the Parliament conclude that the alleged misbehaviour or incapacity is proved.

A Commission is established by the resolution of both Houses, and consists of three members, nominated by the Prime Minister following consultation with the Leader of the Opposition. A Commission ceases to exist, by joint determination of the Presiding Officers, when the Presiding Officers are satisfied that the Commission's functions have been performed, or that the specified person has ceased to be a Commonwealth judicial officer. The Act sets down the rules for an investigation by a Commission, and requires it to report on its investigation to the Houses of the Parliament.

The courts as a check on the power of Parliament

In the constitutional context of the separation of powers, the courts, in their relationship to the Parliament, provide the means whereby the Parliament may be prevented from exceeding its constitutional powers. Wynes writes:

> The Constitution and laws of the Commonwealth being, by covering Cl. V. [5] of the *Constitution Act*, 'binding on the Courts, judges and people of every State and of every part of the Commonwealth', it is the essential function and duty of the Courts to adjudicate upon the constitutional competence of any Federal or State Act whenever the question falls for decision before them in properly constituted litigation.[118]

Original jurisdiction in any matter arising under the Constitution or involving its interpretation has been conferred on the High Court by an Act of Parliament,[119] pursuant to section 76(i) of the Constitution. The High Court does not in law have any power to veto legislation and it does not give advisory opinions[120] but in deciding between litigants in a case it may determine that a legislative enactment is unconstitutional and of no effect in the circumstances of the case. On the assumption that in subsequent cases the court will follow its previous decision (not always the case[121]) a law deemed ultra vires (that is, beyond the powers of the Parliament) becomes a dead letter.

The power of the courts to interpret the Constitution and to determine the constitutionality and validity of legislation gives the judiciary the power to determine certain matters directly affecting the Parliament and its proceedings. The range of High Court jurisdiction in these matters can be seen from the following cases:[122]

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118 W. Anstey Wynes, *Legislative, executive and judicial powers in Australia*, 5th edn, Law Book Co., Sydney, 1976, p. 30.

119 *Judiciary Act 1903*, s. 30.

120 *See In re Judiciary and Navigation Acts*, (1921) 29 CLR 257. A Constitution Alteration (Advisory Jurisdiction of High Court) Bill 1983 provided for a referendum to be held on this matter but, although passed by both Houses, it was not submitted to the people.

121 E.g. *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd (Engineers Case)* (1920) 28 CLR 129; and *Cole v. Whitfield* (1998) 165 CLR 360.

122 For the High Court's role as the Court of Disputed Returns *see* Ch. on 'Elections and the electoral system'. Cases involving challenges to membership of the Parliament under the Constitution are covered in the Ch. on 'Members', and cases involving taxation and some other laws are covered in the Ch. on 'Financial legislation'.

- Petroleum and Minerals Authority case[123]—The High Court ruled that the passage of the Petroleum and Minerals Authority Bill through Parliament had not satisfied the provisions of section 57 of the Constitution and was consequently not a bill upon which the joint sitting of 1974 could properly deliberate and vote, and thus that it was not a valid law of the Commonwealth.[124]
- McKinlay's case[125]—The High Court held that (1) sections 19, 24 and 25 of the *Commonwealth Electoral Act 1918*, as amended, did not contravene section 24 of the Constitution and (2) whilst sections 3, 4 and 12(a) of the *Representation Act 1905*, as amended, remained in their present form, the Representation Act was not a valid law by which the Parliament otherwise provides within the meaning of the second paragraph of section 24 of the Constitution.
- McKellar's case[126]—The High Court held that a purported amendment to section 10 of the *Representation Act 1905*, contained in the *Representation Act 1964*, was invalid because it offended the precepts of proportionality and the nexus with the size of the Senate as required by section 24 of the Constitution.
- Postal allowance case[127]—The High Court held that the operation of section 4 of the *Parliamentary Allowances Act 1952* and provisions of the *Remuneration Tribunals Act 1973* denied the existence of an executive power to increase the level of a postal allowance—a ministerial decision to increase the allowance was thus held to be invalid.
- Roach's case[128]—The High Court found in 2007 that amendments to section 93 of the *Commonwealth Electoral Act 1918*, to remove the entitlement to vote from all persons serving a sentence of imprisonment, were invalid, being inconsistent with the system of representative democracy established by the Constitution.
- Rowe's case[129]—During the 2010 general election campaign, the High Court declared invalid amendments to the *Commonwealth Electoral Act 1918* which had reduced the time available for updating the electoral rolls after the issue of writs.
- Cases involving Commonwealth expenditure—in *Combet* (2005) the High Court rejected arguments that the broad terms of statements in an Appropriation Act were such that the Parliament could not be said to have authorised certain expenditure. The effect was that it was recognised as a matter for the Parliament, and not the courts, to determine the level of detail in such provisions. In *Pape* (2009) the Court held that a parliamentary appropriation was a prerequisite for the lawful availability of money for expenditure, but not in itself authority for expenditure; and that authority for Commonwealth expenditure must be found in the executive power or in legislation under a head of power in the Constitution. In this case the Court upheld the validity of the *Tax Bonus for Working Australians Act (No. 2) 2009*, but in *Williams* (2012) and *Williams (No. 2)* (2014) the Court held that the Commonwealth

123 *Victoria v. Commonwealth* (1975) 134 CLR 81.
124 *See also* Ch. on 'Double dissolutions and joint sittings' for the cases concerning s. 57.
125 *Attorney-General (Australia) (ex rel. McKinlay) v. Commonwealth* (1975) 135 CLR 1.
126 *Attorney-General (NSW) (ex rel. McKellar) v. Commonwealth* (1977) 139 CLR 527.
127 *Brown v. West and anor* (1990) 169 CLR 195.
128 *Roach v. Electoral Commissioner* [2007] HCA 43.
129 *Rowe v. Electoral Commissioner* [2010] HCA 46. The amendments made in 2006 had operated for the 2007 general election.

> did not have the power to make payments under funding agreements (in this instance in relation to school chaplaincy) without the legislative authority to do so.[130]

It should be noted that the range of cases cited is not an indication that either House has conceded any role to the High Court, or other courts, in respect of its ordinary operations or workings. In *Cormack v. Cope* the High Court refused to grant an injunction to prevent a joint sitting convened under section 57 from proceeding (there was some division as to whether a court had jurisdiction to intervene in the legislative process before a bill had been assented to). The joint sitting proceeded, and later the Court considered whether, in terms of the Constitution, one Act was validly enacted.[131]

Jurisdiction of the courts in matters of privilege

By virtue of section 49 of the Constitution the powers, privileges and immunities of the House of Representatives were, until otherwise declared by the Parliament, the same as those of the House of Commons as at 1 January 1901. The *Parliamentary Privileges Act 1987* constituted a declaration of certain 'powers, privileges and immunities', but section 5 provided that, except to the extent that the Act expressly provided otherwise, the powers, privileges and immunities of each House, and the members and committees of each House, as in force under section 49 of the Constitution immediately before the commencement of the Act, continued in force.

As far as the House of Commons is concerned, the origin of its privileges lies in either the privileges of the ancient High Court of Parliament (before the division into Commons and Lords) or in later law and statutes; for example, Article 9 of the Bill of Rights of 1688[132] declares what is perhaps the basic privilege:

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

This helped establish the basis of the relationship between the House of Commons and the courts. However a number of grey areas remained, centring on the claim of the House of Commons to be the sole and exclusive judge of its own privilege, an area of law which it maintained was outside the ambit of the ordinary courts and which the courts could not question. The courts maintained, on the contrary, that the *lex et consuetudo parliamenti* (the law and custom of Parliament) was part of the law of the land and that they were bound to decide any question of privilege arising in a case within their jurisdiction and to decide it according to their own interpretation of the law. Although there is a wide field of agreement between the House of Commons and the courts on the nature and principles of privilege, questions of jurisdiction are not wholly resolved.[133]

In the Commonwealth Parliament, the raising, consideration and determination of complaints of breach of privilege or contempt occurs in each House. The Houses are able to impose penalties for contempt, although some recourse to the courts could be possible. Section 9 of the Parliamentary Privileges Act requires that where a House imposes a penalty of imprisonment for an offence against that House, the resolution imposing the

130 *Combet v. Commonwealth* (2005) 221 ALR 621; *Pape v. Commissioner of Taxation* [2009] HCA 23; *Williams v. Commonwealth* [2012] HCA 23; *Williams v. Commonwealth* (No. 2) [2014] HCA 23.

131 *And see* G. Moens and J. Trone, *Lumb, Moens and Trone, The Constitution of Australia annotated*, 9th edn, LexisNexis Butterworths, Sydney, 2016, pp. 256–61; P. Hanks, *Hanks Australian constitutional law: materials and commentary*, 9th edn, LexisNexis Butterworths, 2013, pp. 807–12.

132 Sometimes cited as 1689. However, 1688 is historical UK practice, and consistent with the *Parliamentary Privileges Act 1987* and other Australian legislation. For explanation for assigning the year 1688 *see* editorial information attached to the text of the Bill of Rights [1688] on the legislation.gov.uk database.

133 For historical account *see May*, 24th edn, pp. 281–305.

penalty and the warrant committing the person to custody must set out the particulars of the matters determined by the House to constitute the offence. The effect of this provision is that a person committed to prison could seek a court determination as to whether the offence alleged to constitute a contempt was in fact capable of constituting a contempt.

These matters are dealt with in more detail in the Chapter on 'Parliamentary privilege'.

The right of Parliament to the service of its Members in priority to the claims of the courts

This is one of the oldest of parliamentary privileges from which derives Members' immunity from arrest in civil proceedings and their exemption from attendance as witnesses and from jury service.

Members of Parliament are immune from arrest or detention in a civil cause on sitting days of the House of which the person is a Member, on days on which a committee of which the person is a member meets and on days within five days before and after such days.[134]

Section 14 of the Parliamentary Privileges Act also grants an immunity to Senators and Members from attendance before courts or tribunals for the same periods as the immunity from arrest in civil causes. In the House of Commons it has been held on occasion that the service of a subpoena on a Member to attend as a witness was a breach of privilege.[135] When such matters have arisen the Speaker has sometimes written to court authorities asking that the Member be excused.

By virtue of the Jury Exemption Act, Members of Parliament are not liable, and may not be summoned, to serve as jurors in any Federal, State or Territory court.[136]

For a more detailed treatment of this subject *see* Chapter on 'Parliamentary privilege'.

Attendance of parliamentary employees in court or their arrest

Section 14 of the Parliamentary Privileges Act provides that an officer of a House shall not be required to attend before a court or tribunal, or arrested or detained in a civil cause, on a day on which a House or a committee upon which the officer is required to attend meets, or within five days before or after such days.

Standing order 253 provides that an employee of the House, or other staff employed to record evidence before the House or any of its committees, may not give evidence relating to proceedings or the examination of a witness without the permission of the House.

A number of parliamentary employees are exempted from attendance as jurors in Federal, State and Territory courts.[137] Exemption from jury service has been provided on the basis that certain employees have been required to devote their attention completely to the functioning of the House and its committees.

(*See also* Chapters on 'Documents' and 'Parliamentary privilege'.)

134 *Parliamentary Privileges Act 1987*, s. 14.

135 *May*, 24th edn, p. 248, although it is doubtful whether in modern times actual service would as a general rule be regarded as a breach.

136 *Jury Exemption Act 1965*, s. 4.

137 Jury Exemption Regulations, SR 186 of 1987.

Parliament and the courts—other matters

Other matters involving the relationship between Parliament and the courts which require brief mention are:

- *Interpretation of the Constitution*. In 1908, the Speaker ruled:

  > . . . the obligation does not rest upon me to interpret the Constitution . . . the only body fully entitled to interpret the Constitution is the High Court . . . Not even this House has the power finally to interpret the terms of the Constitution.[138]

  This ruling has been generally followed by all subsequent Speakers.
- *The sub judice convention*. It is the practice of the House that matters awaiting or under adjudication in a court of law should not be brought forward in debate. This convention is sometimes applied to restrict discussion on current proceedings before a royal commission, depending on its terms of reference and the particular circumstances. In exercising a discretion in applying the sub judice convention the Speaker makes decisions which involve the inherent right of the House to inquire into and debate matters of public importance while at the same time ensuring that the House does not set itself up as an alternative forum to the courts or permit the proceedings of the House to interfere with the course of justice.[139]
- *Reflections on the judiciary*. Standing order 89 provides, inter alia, that a Member must not use offensive words against a member of the judiciary.[140]
- *The legal efficacy of orders and resolutions of the House*. This is discussed in the Chapter on 'Motions'.

CONSTITUTION ALTERATION

There is no limit to the power to amend the Constitution provided that the restrictions applying to the mode of alteration are met.[141] However, there is considerable room for legal dispute as to whether the power of amendment extends to the preamble and the preliminary clauses of the Constitution Act itself.[142]

The Constitution, from which Parliament obtains its authority, cannot be changed by Parliament alone, although some provisions, such as sections 46–49, while setting out certain detail, are qualified by phrases such as 'until the Parliament otherwise provides', thus allowing the Parliament to modify, supplement or alter the initial provision. To change the Constitution itself a majority vote of the electors of the Commonwealth, and of the electors in a majority of the States, at a referendum is also required. The Constitution itself, expressing as it does the agreement of the States to unite into a Federal Commonwealth, was originally agreed to by the people of the States at referendum.[143] The process of constitutional alteration commences with the Houses of Parliament.

A proposal to alter the Constitution may originate in either House of the Parliament by means of a bill. Normally, the bill must be passed by an absolute majority of each House but, in certain circumstances (*see below*), it need only be passed by an absolute majority of one House.[144] Subject to the absolute majority provision, the passage of the bill is the

138 H.R. Deb. (22.4.1908) 10486.
139 *See also* Ch. on 'Control and conduct of debate'.
140 *See also* Ch. on 'Control and conduct of debate'.
141 *Quick and Garran*, pp. 988–91.
142 G. Moens and J. Trone, *Lumb Moens and Trone, The Constitution of Australia annotated*, 9th edn, LexisNexis Butterworths, Sydney, 2016, pp. 41–2, 503–4.
143 *See Quick and Garran*, pp. 282 ff.
144 Constitution, s. 128.

same as for an ordinary bill.[145] (The House procedures for the passage of constitution alteration bills are covered in the Chapter on 'Legislation'.)

The short title of a bill proposing to alter the Constitution, in contradistinction to other bills, does not contain the word 'Act' during its various stages, for example, the short title is in the form *Constitution Alteration (Local Government) 2013*. While the proposed law is converted to an 'Act' after approval at referendum and at the point of assent, in a technical sense it is strictly a constitution alteration proposal and its short title remains unchanged.

Constitution alteration bills passed by one House only

If a bill to alter the Constitution passes one House and the other House rejects or fails to pass it, or passes it with any amendment to which the originating House will not agree, the originating House, after an interval of three months in the same or next session, may again pass the bill in either its original form or in a form which contains any amendment made or agreed to by the other House on the first occasion. If the other House again rejects or fails to pass the bill or passes it with any amendment to which the originating House will not agree, the Governor-General may submit the bill as last proposed by the originating House, either with or without any amendments subsequently agreed to by both Houses, to the electors in each State and Territory. The words 'rejects or fails to pass, etc.' have been considered to have the same meaning as those in section 57 of the Constitution.[146]

In June 1914 six constitution alteration bills which had been passed by the Senate in December 1913 and not by the House of Representatives were again passed by the Senate.[147] The bills were sent to the House which took no further action after the first reading.[148] After seven days the Senate requested the Governor-General, by means of an Address, that the proposed laws be submitted to the electors.[149] Acting on the advice of Ministers, the Governor-General refused the request.[150]

Odgers put the view that the point to be made is that, following only a short period after sending the bills to the House of Representatives, the Senate felt competent to declare that they had failed to pass the other House.[151] The view of Lumb and Moens has been that as there had been no 'rejection' or 'amendment' of the bills in the House of Representatives then the only question was whether there had been a failure to pass them, and that there had been no 'failure to pass' by the House and that therefore the condition precedent for holding a referendum had not been fulfilled.[152]

The circumstances of this case were unusual as a proposed double dissolution had been announced,[153] and the Prime Minister had made it clear that the bills would be opposed and their discussion in the House of Representatives would not be facilitated.[154]

145 *See* Ch. on 'Legislation'.

146 *See* Ch. on 'Double dissolutions and joint sittings'.

147 Constitution alteration bills relating to Corporations, Industrial Matters, Nationalization of Monopolies, Railway Disputes, Trade and Commerce, and Trusts; J 1913/120–3 (9.12.1913); VP 1913/232 (18.12.1913); J 1914/77–8 (11.6.1914).

148 VP 1914/75–7 (11.6.1914).

149 J 1914/91–4 (18.6.1914).

150 J 1914/98 (24.6.1914).

151 *Odgers*, 6th edn, p. 103; *and see* Ch. on 'Double dissolutions and joint sittings'.

152 R. D. Lumb and G. A. Moens, *The Constitution of the Commonwealth of Australia annotated*, 5th edn, Butterworths, Sydney, 1995, p. 569.

153 VP 1914/71 (5.6.1914).

154 H.R. Deb. (17.6.1914) 2191–2.

It was also significant that referendums had been held in May 1913 on similar proposals and were not approved by the electors.

Similar bills were again introduced in 1915 and on this occasion passed both Houses.[155] Writs for holding referendums were issued on 2 November 1915. The Government subsequently decided not to proceed with the referendums (*see below*).

During 1973 a similar situation arose in respect of four bills passed by the House of Representatives. Three of them were not passed by the Senate and the fourth was laid aside by the House when the Senate insisted on amendments which were not acceptable to the House.[156] After an interval of three months (in 1974), the House again passed the bills which were rejected by the Senate.[157] Acting on the advice of Ministers, the Governor-General, in accordance with section 128 of the Constitution, submitted the bills to the electors where they failed to gain approval.[158]

Constitution alteration bills not submitted to referendum

In some cases constitution alteration bills have not been submitted to the people, despite having satisfied the requirements of the 'parliamentary stages' of the necessary process. The history of the seven constitution alteration bills of 1915 is outlined above. These were passed by both Houses, and submitted to the Governor-General and writs issued. When it was decided not to proceed with the proposals, a bill was introduced and passed to provide for the withdrawal of the writs and for other necessary actions.[159] In 1965 two constitution alteration proposals, having been passed by both Houses, were deferred, but on this occasion writs had not been issued. When a question was raised as to whether the Government was not 'flouting . . . the mandatory provisions of the Constitution' the Prime Minister stated, inter alia, '. . . the advice of our own legal authorities was to the effect that it was within the competence of the Government to refrain from the issue of the writ'.[160] In 1983 five constitution alteration bills were passed by both Houses, but the proposals were not proceeded with.[161] More recently, the *Constitution Alteration (Local Government) 2013* was passed by both Houses but was not proceeded with. Section 7 of the *Referendum (Machinery Provisions) Act 1984* provides that whenever a proposed law for the alteration of the Constitution is to be submitted to the electors, the Governor-General *may* issue a writ for the submission of the proposed law.

Referendum

In the case of a bill having passed through both Houses, if a referendum is to be held the bill must be submitted to the electors in each State and Territory[162] not less than two

155 VP 1915/276–7 (2.7.1915); J 1915/229–32 (15.7.1915).

156 Constitution alteration bills relating to Simultaneous Elections, Democratic Elections, Local Government Bodies, and Mode of Altering the Constitution, VP 1973–74/525–8 (14.11.1973), 532–8 (15.11.1973), 551–6 (21.11.1973); J 1973–74/552–5 (4.12.1973), 567–8 (5.12.1973); VP 1973–74/609–10, 615–16 (5.12.1973).

157 VP 1974/17–29 (6.3.1974); J 1974/49, 50, 54–5 (13–14.3.1974).

158 Detailed proceedings of all proposals to alter the Constitution initiated in the 1973–75 period are shown in Appendix 25 of the 1st edn.

159 *Referendum (Constitution Alteration) (No. 2) Act 1915*. During its passage through the House the bill was incorrectly identified in the Votes and Proceedings as the Referendum (Withdrawal of Writs) Bill, VP 1914–17/408 (11.11.1915), 420 (9.5.1916). The reason for this is unknown. It was correctly identified in the Senate.

160 H.R. Deb. (9.3.1966) 51.

161 S. Deb. (15.12.1983) 3920–1.

162 The reference to 'Territory' in relation to a referendum means a Territory which is represented in the House of Representatives. Electors in the Australian Capital Territory and the Northern Territory gained the right to vote at a referendum in 1977, *Constitution Alteration (Referendums) 1977*.

nor more than six months after its passage. The bill is presented to the Governor-General for the necessary referendum arrangements to be made.[163] Voting is compulsory. If convenient, a referendum is held jointly with an election for the Senate and/or the House of Representatives. The question put to the people for approval is the constitutional alteration as expressed in the long title of the bill.[164]

The *Referendum (Machinery Provisions) Act 1984* contains detailed provisions relating to the submission to the electors of constitution alteration proposals. It covers, inter alia, the form of a ballot paper and writ, the distribution of arguments for and against proposals, voting, scrutiny, the return of writs, disputed returns and offences. The Act places responsibility for various aspects of the conduct of a referendum on the Electoral Commissioner, State Electoral Officers and Divisional Returning Officers. The interpretation of provisions of the Referendum (Machinery Provisions) Act came before the High Court in 1988, when a declaration was made that the expenditure of public moneys on two advertisements was, or would be, a breach of subsection 11(4) of the Act. Arguments were accepted that certain words used in two official advertisements, which were said to be confined to an encouragement to the electors to be aware of the issues in the impending referendums, in fact promoted aspects of the argument in favour of the proposed laws, that is, in favour of the 'yes' case.[165]

If the bill is approved by a majority of the electors in a majority of the States, that is, at least four of the six States, and also by a majority of all the electors who voted, it is presented to the Governor-General for assent.[166] However, if the bill proposes to alter the Constitution by diminishing the proportionate representation of any State in either House, or the minimum number of representatives of a State in the House of Representatives, or altering the limits of the State,[167] the bill shall not become law unless the majority of electors voting in that State approve the bill. This means that the State affected by the proposal must be one of the four (or more) States which approve the bill.

An Act to alter the Constitution comes into operation on the day on which it receives assent, unless the contrary intention appears in the Act.[168]

Distribution to electors of arguments for and against proposed constitutional alterations

The Referendum (Machinery Provisions) Act makes provision for the distribution to electors, by the Australian Electoral Commission, of arguments for and against proposed alterations. The 'Yes' case is required to be authorised by a majority of those Members of the Parliament who voted in favour of the proposed law and the 'No' case by a majority of those Members of the Parliament who voted against it.[169] In the case of the four constitution alteration bills of 1974, which were passed by the House of Representatives only and before the enactment of the Referendum (Machinery Provisions) Act provisions, the Government provided by administrative arrangement for 'Yes' and 'No' cases to be

163 *See* Ch. on 'Legislation'.

164 *Referendum (Machinery Provisions) Act 1984,* schedule 1.

165 *Reith v. Morling and ors*, (12 August 1988, High Court Registry, No. M58 of 1988).

166 For assent details *see* Ch. on 'Legislation'.

167 *See* 5th paragraph of s. 128 of Constitution.

168 *Acts Interpretation Act 1901*, s. 5(1B).

169 *Referendum (Machinery Provisions) Act 1984*, s. 11. If a proposal is passed unanimously by the Parliament, a 'No' case is not prepared. Members may vote against the bill, not because they oppose the question being put to the people, but to be able to be involved in the preparation of the 'No' case, H.R. Deb. (9.8.1999) 8148. *See also* Standing Committee on Legal and Constitutional Affairs, *A time for change: Yes/No? Inquiry into the machinery of referendums*, December 2009; PP 40 (2010).

distributed, the 'No' case being prepared by the Leader of the Opposition in the House of Representatives.[170]

Dispute over validity of referendum

The validity of any referendum or of any return or statement showing the voting on any referendum may be disputed by the Commonwealth, by any State or by the Northern Territory, by petition addressed to the High Court within a period of 40 days following the gazettal of the referendum results.[171] The Electoral Commission may also file a petition disputing the validity of a referendum.[172] Pending resolution of the dispute or until the expiration of the period of 40 days, as the case may be, the bill is not presented for assent.

Referendum results

Of the 44 referendums[173] submitted to the electors since Federation, eight have been approved. Of those which were not approved, 31 received neither a favourable majority of electors in a majority of States nor a favourable majority of all electors, while the remaining five achieved a favourable majority of all electors but not a favourable majority of electors in a majority of States.

The eight constitution alterations which gained the approval of the electors were submitted in 1906, 1910, 1928, 1946, 1967 and 1977 (three). The successful referendums were approved by majorities in every State, with the exception that New South Wales alone rejected the Constitution Alteration (State Debts) Bill submitted in 1910.

The proposals of 1906, 1910, 1946, 1974 and 1984 were submitted to the electors concurrently with general elections.

Successful referendums relating to the electoral and parliamentary processes have been:

- *Constitution Alteration (Senate Elections) 1906*. This was the first constitutional referendum. It altered section 13 to cause Senators' terms to commence in July instead of January.
- *Constitution Alteration (Senate Casual Vacancies) 1977*. This provided that, where possible, a casual vacancy in the Senate should be filled by a person of the same political party as the Senator chosen by the people and for the balance of the Senator's term.
- *Constitution Alteration (Referendums) 1977*. This provided for electors in the Territories to vote at referendums on proposed laws to alter the Constitution.

The Constitution Alteration (Mode of Altering the Constitution) Bill 1974 sought to amend section 128 in order to facilitate alterations to the Constitution but was rejected by the electors. The intention of the amendment was to alter the provision that a proposed law has to be approved by a majority of electors 'in a majority of the States' (four States) and, in its stead, provide that a proposed law has to be approved by a majority of electors 'in not less than one-half of the States' (three States). The further requirement that a proposed law has to be approved by 'a majority of all the electors voting' was to be retained.

170 *See* S. Deb. (21.3.1974) 469–70.
171 *Referendum (Machinery Provisions) Act 1984*, s. 100.
172 *Referendum (Machinery Provisions) Act 1984*, s. 102.
173 *See* Appendix 14.

Proposals rejected by the electors which have specifically related to the parliamentary and electoral processes have included:

- *Constitution Alteration (Parliament) 1967*. This proposal intended to amend section 24 by removing the requirement that the number of Members shall be, as nearly as practicable, twice the number of Senators. Other than by breaking this 'nexus', an increase in the number of Members can only be achieved by a proportionate increase in the number of Senators, regardless of existing representational factors applying to the House of Representatives only.
- *Constitution Alteration (Simultaneous Elections) 1974* and *1977*. These proposals were intended to ensure that at least half of the Senate should be elected at the same time as an election for the House of Representatives. It was proposed that the term of a Senator should expire upon the expiration, or dissolution, of the second House of Representatives following the first election of the Senator. The effective result of this proposal was that a Senator's term of office, without facing election, would be for a period less than the existing six years.
- *Constitution Alteration (Democratic Elections) 1974*. This proposal intended to write into the Constitution provisions which aimed to ensure that Members of the House and of the State Parliaments were elected directly by the people, and that representation was more equal and on the basis of population and population trends.
- *Constitution Alteration (Terms of Senators) 1984*. This proposal sought to make Senators' terms equal to two terms of the House and to ensure that Senate and House elections were held on the same day.
- *Constitution Alteration (Parliamentary Terms) 1988*. This proposal sought to extend the maximum term of the House of Representatives from three years to four years, beginning with the 36th Parliament. It also proposed that the terms of all Senators would expire upon the expiry or dissolution of the House of Representatives, that is, the 'continuity' achieved from the half-Senate election cycle would have been ended, and Senators would have been elected as for a double dissolution election. The practical effect of the bill was to establish a maximum four-year term and elections for both Houses of Parliament on the same day.
- *Constitution Alteration (Fair Elections) 1988*. This proposal sought, inter alia, to incorporate in the Constitution a requirement concerning a maximum ten per cent tolerance (above or below the relevant average) in the number of electors at elections for the Commonwealth and State Parliaments and for mainland Territory legislatures.
- *Constitution Alteration (Establishment of Republic) 1999*. This proposal sought to establish the Commonwealth of Australia as a republic with the Queen and Governor-General being replaced by a President appointed by a two-thirds majority of the members of the Commonwealth Parliament.

National votes for other purposes—plebiscites

Referendums, other than for purposes of constitution alteration, were held in 1916 and 1917. These referendums related to the introduction of compulsory military service and were rejected by the people. The first was authorised by an Act of Parliament[174] and the second was held pursuant to regulations made under the War Precautions Act.[175]

In May 1977, concurrent with the constitution alteration referendums then being held, electors were asked, in a poll[176] as distinct from a referendum, to express on a voluntary basis their preference for the tune of a national song to be played on occasions other than Regal and Vice-Regal occasions.

Modern practice is to use the word 'referendum' to cover only national votes on changes to the Constitution. The national votes on other matters (however referred to at the time) are now referred to as plebiscites. There is no established statutory framework to provide for or regulate the conduct of plebiscites. The Plebiscite (Same-Sex Marriage) Bill 2016 provided that the *Referendum (Machinery Provisions) Act 1984* would apply (subject to modifications) to the proposed plebiscite, meaning that it would be conducted in much the same way as a referendum.[177]

Review of the Constitution

In August 1927 the Government appointed a royal commission to inquire into and report upon the powers of the Commonwealth under the Constitution and the working of the Constitution since Federation. The report was presented to Parliament in November 1929[178] but did not bring any positive results. In 1934 a Conference of Commonwealth and State Ministers on Constitutional Matters was held but little came of it.[179] In 1942 a Convention of Government and Opposition Leaders and Members from both Commonwealth and State Parliaments met in Canberra to discuss certain constitutional matters in relation to post-war reconstruction. They made significant progress and approved a draft bill transferring certain State powers, including control of labour, marketing, companies, monopolies and prices, from the States to the Commonwealth Government. However, only two of the State Parliaments were prepared to approve the bill.[180]

The next major review of the Constitution was conducted by a joint select committee of the Parliament, first appointed in 1956.[181] The committee presented its first report in 1958[182] and a final report in 1959.[183] The report made many significant recommendations, but no constitutional amendments resulted in the short term.

174 *Military Service Referendum Act 1916*.

175 War Precautions (Military Service Referendum) Regulations, SR 290 of 1917.

176 Conducted pursuant to ministerial direction, VP 1977/4 (9.3.1977). In 1974 a 'National Anthem Poll'—a survey of a sample of the population—had been conducted by the Australian Bureau of Statistics, *see* H.R. Deb. (8.4.1974) 1108–10.

177 The bill was passed by the House but defeated in the Senate. After a later motion to restore the bill to the Senate Notice paper was defeated, arrangements were made for a 'voluntary postal plebiscite'—the Australian Marriage Law Postal Survey of persons on the electoral roll—conducted by the Australian Bureau of Statistics pursuant to ministerial direction (Census and Statistics (Statistical Information) Direction 2017).

178 Royal Commission on the Constitution, *Report*, PP 16 (1929–31); VP 1929–31/9 (21.11.1929).

179 P. H. Lane, *An introduction to the Australian Constitution*, 2nd edn, Law Book Co., Sydney, 1977, p. 247.

180 Convention of Representatives of Commonwealth and State Parliaments on Proposed Alteration of the Commonwealth Constitution—*Record of proceedings*, 24 November—2 December, 1942, Govt Pr., Canberra.

181 VP 1956–57/168–9 (24.5.1956), 171 (29.5.1956).

182 VP 1958/214 (1.10.1958); Joint Committee on Constitutional Review, *Report,* PP 50 (1958).

183 VP 1959–60/306 (26.11.1959); Joint Committee on Constitutional Review, *Report*, PP 108 (1959–60).

Recommendations of the committee which were submitted some years later to the people at referendum were:

- to enable the number of Members of the House to be increased without necessarily increasing the number of Senators (1967);
- to enable Aboriginals to be counted in reckoning the population (1967);
- to ensure that Senate elections are held at the same time as House of Representatives elections (1974 and 1977);
- to facilitate alterations to the Constitution (1974);
- to ensure that Members of the House are chosen directly and democratically by the people (1974); and
- to ensure, so far as practicable, that a casual vacancy in the Senate is filled by a person of the same political party as the Senator chosen by the people (1977).

In 1970 the Victorian Parliament initiated a proposal to convene an Australian Constitutional Convention. Following agreement by the States to the proposal and the inclusion of the Commonwealth in the proposed convention, the first meeting took place at Sydney in 1973 and was followed by further meetings of the convention at Melbourne (1975), Hobart (1976) and Perth (1978). The convention agreed to a number of proposals for the alteration of the Constitution, some of which were submitted to the people at the referendums of 1977. The referendums on Simultaneous Elections, Referendums, and the Retirement of Judges were the subject of resolutions of the convention at meetings held in Melbourne and Hobart.

In 1985 the Commonwealth Government announced the establishment of a Constitutional Commission to report on the revision of the Constitution. It consisted of five members (a sixth resigning upon appointment to the High Court) and it operated by means of five advisory committees, covering the Australian judicial system, the distribution of powers, executive government, individual and democratic rights, and trade and national economic management. A series of background papers was published by the commission and papers and reports were prepared by the advisory committees.[184] The commission's first report was presented on 10 May 1988, and a summary was presented on 23 May 1988.[185] The commission's review and report preceded the presentation of four constitution alteration bills, dealing respectively with parliamentary terms, elections, local government, and rights and freedoms.[186]

In 1991 the Constitutional Centenary Foundation was established with the purposes of encouraging education and promoting public discussion, understanding and review of the Australian constitutional system in the decade leading to the centenary of the Constitution.[187]

In 1993 Prime Minister Keating established the Republic Advisory Committee with the terms of reference of producing an options paper describing the minimum constitutional changes necessary to achieve a republic, while maintaining the effect of existing conventions and principles of government. The committee's report *An Australian republic—the options* was tabled in the House on 6 October 1993.[188]

184 *And see* VP 1987–90/30 (16.9.1987).
185 VP 1987–90/516 (10.5.1988), 559 (23.5.1988).
186 VP 1987–90/517–8 (10.5.1988).
187 A non-partisan non-government body (although mostly funded by Commonwealth, State and Territory government grants).
188 PP 167–169 (1993).

In February 1998 the Commonwealth Government convened a Constitutional Convention to consider whether Australia should become a republic and models for choosing a head of state. Delegates (152—half elected, half appointed by the Government) met for two weeks in Canberra in Old Parliament House. The Convention also debated related issues, including proposals for a new preamble to the Constitution. The Convention supported an in-principle resolution that Australia should become a republic, and recommended that the model, and other related changes, supported by the Convention be put to the Australian people at a referendum. Constitution alteration bills for the establishment of a republic and for the insertion of a preamble followed in 1999, with those concerning the proposed republic being referred to a joint select committee for an advisory report. All the proposals were unsuccessful at referendum.

ASPECTS OF THE ROLE OF THE HOUSE OF REPRESENTATIVES

The bicameral nature of the national legislature reflects the federal nature of the Commonwealth. The House of Representatives was seen by *Quick and Garran* in 1901 as embodying the national aspect and the Senate the State aspect of the federal duality.[189]

It has been said that the federal part of the Australian Parliament is the Senate which being the organ of the States links them together as integral parts of the federal union. Thus, the Senate is the Chamber in which the States, considered as separate entities and corporate parts of the Commonwealth, are represented.[190] The (original) States have equal representation in the Senate, irrespective of great discrepancies in population size.

On the other hand the House of Representatives is the national branch of the Federal Parliament in which the people are represented in proportion to their numbers—that is, each Member represents an (approximately) equal number of voters. In this sense the House may be said to be not only the national Chamber but also the democratic Chamber.[191] *Quick and Garran* stated 'its operation and tendency will be in the direction of unification and consolidation of the people into one integrated whole, irrespective of State boundaries, State rights or State interests'.[192] Thus, the House of Representatives is the people's House and the inheritance of responsible government, through the Cabinet system, is the most significant characteristic attaching to it.

The framers of our Constitution, in some cases almost as a matter of course,[193] took the Westminster model of responsible government (influenced by the colonial experience and by the experience of the United States of America[194]) and fitted it into the federal scheme. Thus the role and functions of the House of Representatives are direct derivatives of the House of Commons, principal features being the system of Cabinet Government and the traditional supremacy of the lower House in financial matters.

The notion of responsible government is embodied in the structure and functions of the House of Representatives.[195] That party or coalition of parties which commands a

189 *Quick and Garran*, p. 339.
190 *Quick and Garran*, p. 414.
191 *Quick and Garran*, p. 448.
192 *Quick and Garran*, p. 337.
193 But not without question in the minds of others—s*ee*, for example, I. C. Harris, 'The Structure of the Australian House of Representatives over its first one hundred years', *UNSW Law Journal*, vol. 24, no. 3, 2001, referring to statements by Messrs Baker and Barton at the Adelaide Convention.
194 It has been stated that 'Probably the most striking achievement of the framers of the Australian instrument of government was the successful combination of the British system of parliamentary government containing an executive responsible to the legislature with American federalism.' *R v. Kirby; ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254 at 275.
195 *See also* Ch. on 'House, Government and Opposition'.

majority in the House is entitled to form the Government. From this group emerges the Prime Minister and the major portion of the Ministry, usually more than 75 per cent. This fact, and certain provisions of the Constitution concerning legislation, means that most legislation originates in the House of Representatives, and this emphasises its initiating and policy roles as distinct from the review role of the Senate.

In Australia the legal power to initiate legislation is vested in the legislature and nowhere else. In practice the responsibility falls overwhelmingly to one group within the legislature—the Ministry. However there are checks and balances and potential delays (which may sometimes be regarded as obstruction) in the legislative process because of the bicameral nature of the legislature, and these have particular importance when the party or coalition with a majority in the House does not have a majority in the Senate.

The Ministry is responsible for making and defending government decisions and legislative proposals. There are few important decisions made by the Parliament which are not first considered by the Government. However, government proposals are subject to parliamentary scrutiny which is essential in the concept of responsible government. The efficiency and effectiveness of a parliamentary democracy is in some measure dependent on the effectiveness of the Opposition; the more effective the Opposition, the more responsible and thorough the Government must become in its decision making.

The nature of representation in the Senate, the voting system used to elect Senators and the fact that only half the Senators are elected each third year may cause the Senate to reflect a different electoral opinion from that of the House. The House reflects, in its entirety, the most recent political view of the people and is the natural vehicle for making or unmaking governments. Jennings emphasises the role of the lower House in the following way:

> The fact that the House of Commons is representative, that most of the ministers and most of the leading members of Opposition parties are in that House, and that the Government is responsible to that House alone, gives the Commons a great preponderance of authority. The great forum of political discussion is therefore in the Lower House.[196]

In Parliaments in the Westminster tradition the greater financial power is vested in the lower House. The modern practice in respect of the House of Commons' financial privileges is based upon principles expressed in resolutions of that House as long ago as 1671 and 1678:

> That in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords; . . .
>
> That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.[197]

These principles are reflected in a modified way in the Australian Constitution. The Constitution was framed to express the traditional right of the lower House, the representative House, to initiate financial matters,[198] to prevent the Senate from amending certain financial bills and to prevent the Senate from amending any proposed law so as to increase any proposed charge or burden on the people.[199] In all other respects the

196 Sir Ivor Jennings, *Parliament*, 2nd edn, Cambridge University Press, 1957, p. 398.
197 *May*, 24th edn, p. 786; CJ (1667–87) 235, 509.
198 For a detailed discussion *see* Ch. on 'Financial legislation'.
199 Constitution, s. 53.

Constitution gives to the Senate equal power with the House of Representatives in respect of all proposed laws, including the power of rejection.

INDEPENDENCE OF THE HOUSES

Each House functions as a distinct and independent unit within the framework of the Parliament. The right inherent in each House to exclusive cognisance of matters arising within it has evolved through centuries of parliamentary history[200] and is made clear in the provisions of the Constitution.

The complete autonomy of each House, within the constitutional and statutory framework existing at any given time, is recognised in regard to:

- its own procedure;
- questions of privilege and contempt; and
- control of finance, staffing, accommodation and services.[201]

This principle of independence characterises the formal nature of inter-House communication. Communication between the Houses may be by message,[202] by conference,[203] or by committees conferring with each other.[204] The two Houses may also agree to appoint a joint committee operating as a single body and composed of members of each House.[205]

Contact between the Houses reaches its ultimate point in the merging of both in a joint sitting. In respect of legislative matters this can occur only under conditions prescribed by the Constitution and when the two Houses have failed to reach agreement.[206]

The standing orders of both the House and the Senate contain particular provisions with respect to the attendance of Members and employees before the other House or its committees. Should the Senate request by message the attendance of a Member before the Senate or any committee of the Senate, the House may authorise the Member to attend, provided the Member agrees. If a similar request is received in respect of an employee, the House may instruct the employee to attend.[207] In practice, there have been instances of Members and employees appearing as witnesses before Senate committees, in a voluntary capacity, without the formality of a message being sent to the House.[208] Senators have appeared before the House Committee of Privileges, the Senate having given leave for them to appear, after having received a message from the House on the matter.[209] In 2001 the Senate authorised Senators to appear before the committee 'subject to the rule, applied in the Senate by rulings of the President, that one House of the

200 For example, *see* John Hatsell, *Precedents of proceedings in the House of Commons* (1818) Vol 3, p. 67. Hatsell notes the leading principle that there shall subsist a perfect equality between the two Houses and total independence in every respect one of the other, and continues 'From hence it is, that neither House can claim, much less exercise, any authority over a Member of the other …'. *See also* R v. Chaytor and others [2010] UKSC 52, pp. 25–31, for a more contemporary discussion of exclusive cognisance.

201 *See also* Chs on 'Parliament House and access to proceedings' and 'The Speaker, Deputy Speakers and officers'.

202 S.O.s 258–261.

203 S.O.s 258, 262–266.

204 S.O. 238, 258; *and see* Ch. on 'Parliamentary committees'.

205 S.O.s 224–7; *and see* Ch. on 'Parliamentary committees'.

206 Constitution, s. 57; *and see* Ch. on 'Double dissolutions and joint sittings'. For joint sittings to choose a person to fill a vacancy in the place of a Senator for a Territory *see* Ch. on 'Elections and the electoral system'.

207 S.O.s 251, 252; Senate S.O.s 178, 179; *and see* Chs on 'Committee inquiries' and 'Parliamentary privilege'.

208 In 1981 Speaker Snedden appeared voluntarily before the Senate Select Committee on Parliament's Appropriations and Staffing, S. Deb. (12.6.1981) 3198–9. In 2014 the Minister for Immigration and Border Protection appeared voluntarily before the Senate Legal and Constitutional Affairs References Committee (31.1.2014).

209 VP 1985–87/1365 (27.11.1986); J 1985–87/1514 (1.12.1986), 1576 (5.12.1986); VP 1993–96/596 (15.12.1993), 649 (17.12.1993); J 1993–96/1077–8 (17.12.1993).

Parliament may not inquire into or adjudge the conduct of a member of the other House'.[210]

As an expression of the principle of independence of the Houses, the Speaker took the view in 1970 that it would be parliamentarily and constitutionally improper for a Senate estimates committee to seek to examine the financial needs or commitments of the House of Representatives.[211] In similar manner the House of Representatives estimates committees, when they operated, did not examine the proposed appropriations for the needs of the Senate.

As a further expression of the independence of the Houses it had been a traditional practice of each House not to refer to its counterpart by name but as 'another place' or 'Members of another place'. The House agreed to remove the restriction on direct reference to the Senate and Senators in 1970 following a recommendation by the Standing Orders Committee.[212] The standing orders prescribe that a Member must not use offensive words against either House of the Parliament or a Member of the Parliament.[213]

FUNCTIONS OF THE HOUSE

The principal functions of the House, and the way in which they are expressed and carried out, can be summarised under the headings which follow.[214] It should be realised, however, that the House frequently performs functions which cross categories. For example, in a body in which a predominance of time is devoted to debating legislation initiated by the Government, the House is performing an accountability function as well as a legislative function.

The Government—making and unmaking

It is accepted that the House of Representatives, which reflects the current opinion of the people at an election, is the appropriate House in which to determine which party or coalition of parties should form government. Thus the party or coalition of parties which commands the support of a majority in the House assumes the Government and the largest minority party (or coalition of parties) the Opposition.

A hung Parliament is said to exist when no single party or coalition of parties has a majority of seats in the House of Representatives. A minority Government can be formed when a party or coalition, not having a majority of seats in its own right, is nevertheless able to achieve a majority on the floor of the House with support from independent Members or minor parties. As was the case in the 43rd Parliament, in the formation of a minority Government the support of certain Members may be limited to specified matters, but the Government's continuation in office necessarily requires majority support on the main appropriation bills and motions of confidence and want of confidence. When the leadership of the governing party changed during the 43rd Parliament, documents released by the Governor-General's office referred to the newly commissioned Prime

210 VP 1998–2001/2157 (7.3.2001).
211 Following introduction of Senate estimates committees in l970.
212 VP 1970–72/252–3 (20.8.1970); PP 114 (1970) 2–3.
213 S.O. 89; *and see* Ch. on 'Control and conduct of debate'.
214 Detailed discussion of the procedural forms mentioned can be found elsewhere in the text.

Minister notifying the House of his appointment at the first possible opportunity, so that the House could take whatever action it chose.[215]

Within this framework resides the power to 'unmake' a Government should it not retain the confidence and support of a majority of the Members of the House. To enable a Government to stay in office and have its legislative program supported (at least in the House), it is necessary that Members of the government party or parties support the Government, perhaps not uncritically, but support it on the floor of the House on major issues. Party discipline is therefore an important factor in this aspect of the House's functions.

A principal role of the House is to examine and criticise, where necessary, government action, with the knowledge that the Government must ultimately answer to the people for its decisions. It has been a Westminster convention and a necessary principle of responsible government that a Government defeated on the floor of the House on a major issue should resign or seek a dissolution of the House. Such a defeat would indicate prima facie that a Government had lost the confidence of the House, but there is no fixed definition of what is a matter of confidence. If a defeat took place on a major matter, modern thinking is that the Government would be entitled to seek to obtain a vote on a motion of confidence in order to test whether in fact it still had the confidence of the House. Defeat on a minor or procedural matter may be acknowledged, but not lead to further action, the Government believing that it still possessed the confidence of the House.

The Government has been defeated on the floor of the House of Representatives on an issue accepted by the Government as one of confidence on eight occasions since Federation following which either the Government resigned or the House was dissolved. The most recent cases were in 1929 (the Bruce–Page Government), 1931 (the Scullin Government), and 1941 (the Fadden Government)—for more detail *see* 'Withdrawal of confidence shown by defeat on other questions' in Chapter on 'Motions'. On 11 November 1975 immediately following the dismissal of the Whitlam Government, the newly appointed caretaker Government was defeated on a motion which expressed a want of confidence in Prime Minister Fraser and requested the Speaker to advise the Governor-General to call the majority leader (Mr Whitlam) to form a government. However, within the next hour and a half both Houses were dissolved and the resolution of the House was not acted on.[216]

The fact that the power of the House to 'unmake' a Government is rarely exercised does not lessen the significance of that power. Defeat of the Government in the House has always been and still is possible. It is the ultimate sanction of the House in response to unacceptable policies and performance. In modern times, given the strength of party discipline, defeat of a Government on a major issue in the House would in normal circumstances most likely indicate a split within a party or a coalition, or in a very finely balanced House the withdrawal of key support.

For greater historical detail *see* 'Motions of no confidence and censure' in Chapter on 'Motions'. *See also* 'New Government commissioned without dissolution' at page 10.

215 Correspondence between the Official Secretary of the Governor-General and the Acting Solicitor-General, dated 26 June 2013. H.R. Deb. (27.6.2013) 7243–4.

216 For further detail on 1975 events *see* 'The 1975 double dissolution' in Ch. on 'Double dissolutions and joint sittings'.

The initiation and consideration of legislation

Section 51 of the Constitution provides that the Parliament has the power to make laws for the peace, order, and good government of the Commonwealth with respect to specified matters. The law-making function of Parliament is one of its most basic functions. The Senate and the House have substantially similar powers in respect of legislation, and the consideration of proposed laws occupies a great deal of the time of each House. Because of the provisions of the Constitution with respect to the initiation of certain financial legislation and the fact that the majority of Ministers are Members of the House of Representatives, the great majority of bills introduced into the Parliament originate in the House of Representatives.

Any Member of the House may introduce legislation—*see* Chapters on 'Legislation', 'Financial legislation' and 'Non-government business'.

Seeking information on and clarification of government policy

The accountability of the Government to Parliament is pursued principally through questions, in writing or without notice at Question Time, directed to Ministers concerning the administration of their departments, during debates of a general nature—for example, the Budget and Address in Reply debates—during debates on specific legislation, or by way of parliamentary committee inquiry.

The aim of parliamentary questioning and inquiry is to seek information, to bring the Government to account for its actions, and to bring into public view possible errors or failings or areas of incompetence or maladministration.

Surveillance, appraisal and criticism of government administration

Debate takes place on propositions on particular subjects, on matters of public importance, and on motions to take note of documents including those moved in relation to ministerial statements dealing with government policy or matters of ministerial responsibility. Some of the major policy debates, such as on defence, foreign affairs and the economy, take place on motions of this kind. Historically, opportunities for private Members to raise matters and initiate motions which may seek to express an opinion of the House on questions of administration were limited, but these increased significantly in 1988. In addition Members have regular opportunities to raise matters of concern during periods set aside for Members' statements, adjournment debates and grievance debates.[217]

It is not possible for the House to oversee every area of government policy and executive action. However the House may be seen as an essential safeguard and a corrective means over excessive, corrupt or extravagant use of executive power.[218] From time to time the Opposition may move a specific motion expressing censure of or no confidence in the Government. If a motion of no confidence were carried, the Government would be expected to resign. A specific motion of censure of or no confidence in a particular Minister or Ministers may also be moved. The effect of carrying such a motion against a Minister may be inconclusive as far as the House is concerned as any further action would be in the hands of the Prime Minister. However a

217 *See* Ch. on 'Non-government business'.

218 For commentary on these matters *see* John Uhr, *Deliberative democracy in Australia: The changing place of Parliament*, Cambridge University Press, 1998.

vote against the Prime Minister, depending on circumstances, would be expected to have serious consequences for the Government.[219]

Consideration of financial proposals and examination of public accounts

In accordance with the principle of the financial initiative of the Executive, the Government has the right to initiate or move to increase appropriations and taxes, but it is for the House to make decisions on government proposals and the House has the right to make amendments which will reduce a proposed appropriation or tax or to reject a proposal. Amendments to certain financial proposals may not be made by the Senate, but it may request the House to make amendments.

The appropriation of revenue and moneys is dependent on a recommendation by the Governor-General to the House of Representatives. Traditionally the Treasurer has been a Member of the House. Reflecting this, the government front bench in the House, now commonly known as the ministerial bench, was in past times referred to as the Treasury bench.

It is the duty of the House to ensure that public money is spent in accordance with parliamentary approval and in the best interests of the taxpayer. The responsibility for scrutinising expenditure is inherent in the consideration of almost any matter which comes before the House. The most significant means by which the Government is held to account for its expenditure occurs during the consideration of the main Appropriation Bill each year. However the examination of public administration and accounts has to some extent been delegated to committees[220] which have the means and time available for closer and more detailed scrutiny (*and see below*).

Inquiry by committee

The consideration of specific matters by a selected group of Members of the House is carried out by the use of standing and select committees, which is now an important activity of a modern Parliament and a principal means by which the House performs some of its functions, such as the examination of government administration. In 1987 the House took a significant step in establishing a comprehensive system of general purpose standing committees, empowered to inquire into and report upon any matter referred to them by either the House or a Minister, including any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or document (*see* Chapter on 'Parliamentary committees').

The Public Accounts and Audit Committee, a joint statutory committee, is required to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report made by the Auditor-General. As is the case with other committees, inquiries undertaken by the committee result in the presentation of reports to the Parliament. The Public Works Committee, also a joint statutory committee, considers and reports on whether proposed public works referred to it for investigation should be approved, taking into account, inter alia, the financial aspects.

219 *And see* 'Motions of no confidence or censure' in Ch. on 'Motions'.
220 *See* Ch. on 'Parliamentary committees'.

Ventilation of grievances and matters of interest or concern

The provision of opportunities for the raising by private Members of particular matters—perhaps affecting the rights and liberties of individuals, or perhaps of a more general nature—is an important function of the House. Opportunities for raising these matters occur principally during periods for private Members' business, Members' statements, constituency statements, grievance debates, adjournment debates, and during debates on the Budget and the Address in Reply. Outside the House Members may make personal approaches to Ministers and departments regarding matters raised by constituents or other matters on which they require advice or seek attention.[221]

Receiving petitions

Petitions from citizens requesting action by the House may be sent directly to the Petitions Committee or via a Member. They are presented to the House by the Chair of the committee or may be presented directly by Members themselves. A copy of the petition may then be (and in practice is) referred to the appropriate Minister for a response, which is expected within 90 days. The ministerial response is also reported to the House.[222]

Examination of delegated legislation

Regulations and other forms of subordinate legislation made by the Government pursuant to authority contained in an Act of the Parliament must be tabled in both Houses. A notice of motion for the disallowance of any such delegated legislation may be submitted to the House by any Member. Disallowance is then automatic after a certain period, unless the House determines otherwise.[223]

Prerequisites for fulfilling functions

The exigencies of politics, the needs of the Government in terms of time, and its power of control of the House, have resulted in the evolution of a parliamentary system which reflects the fact that, while the will of the Government of the day will ultimately prevail in the House, the House consists of representatives of the people who will not hesitate to speak for the people and communities they represent. A responsible Government will keep the House informed of all major policy and administrative decisions it takes. A responsible Opposition will use every available means to ensure that it does. However, the effective functioning of the House requires a continual monitoring and review of its own operations and procedure. The forms of procedure and the way in which they are applied have an important effect on the relationship between the Government and the House. The Procedure Committee has presented reports on many aspects of the work of the House and its committees and has dealt with the issue of community involvement. It has sought to contribute to the maintenance and strengthening of the House's capacity to perform its various functions.

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221 As a collective function of the House this is largely an extension of a fundamental role of the individual Member whether it is exercised in the House or outside it. *See* particularly Ch. on 'Members'.

222 *See* 'Petitions' in Ch. on 'Documents'.

223 *See* 'Delegated legislation' in Ch. on 'Legislation'. The Senate Standing Committee on Regulations and Ordinances plays a major role in overseeing delegated legislation.

2
House, Government and Opposition

A knowledge of the structure of the House of Representatives is important to an understanding of its mode of operation. The components or groups which make up the House and which are described in the text that follows are common to most parliamentary systems based on the Westminster model. The relationship and interaction between these components is at the heart of parliamentary activity. The nature of the relationships between the groups largely determines the operational effectiveness of the Parliament, particularly in relation to the Executive Government.

GOVERNMENT AND PARLIAMENT

Relationships

The relationship between the groups is governed by a combination of constitutional provisions, convention and political reality, which can be simplified as follows:

- Members are individually elected to represent constituents within each electoral division and collectively form the House of Representatives.[1]
- In most cases Members belong to and support a particular political party.
- The party (or coalition of parties[2]) having the support of the majority of Members becomes the government party.
- The party (or coalition of parties) opposed to the party supporting the government forms the 'official' Opposition.
- The party having the support of the majority of Members elects one of its members as leader, who is commissioned by the Governor-General as Prime Minister to form a Government.
- The party supporting the Government may elect, or the Prime Minister may appoint, a specified number of its members to be Ministers of State (the Ministry) who form the Federal Executive Council (the body which, in a formal sense, advises the Governor-General in the executive government of the Commonwealth) and who administer the Departments of State of the Commonwealth.[3]
- The full Ministry, or a selected group from within the Ministry, becomes the principal policy and decision-making group of government which is commonly known as the Cabinet.[4]

With its membership drawn from the Parliament, the Executive Government is required to seek the Parliament's approval of new legislation, including financial legislation. Thus, as many of the more important executive actions are subject to parliamentary approval, the Government is responsible to the Parliament and through it to the electors. In this lies the distinctiveness of the Westminster model—the interrelation of

1 For discussion of the Member as the basic unit of the House *see* Ch. on 'Members'.
2 That is, two or more parties which combine their numbers to form a coalition government.
3 *See* 'Composition of the Ministry' at p. 58, and 'Federal Executive Council' at p. 77.
4 *See* 'Cabinet' at p. 75

the Executive Government and the Parliament. It is the essence of what in Westminster terms is called 'parliamentary government'.

A Government is subject to the judgment of the electors at periodical general elections, but between elections a Government can only maintain office while it retains the confidence of the House of Representatives. In 1975 a third element came into play when the Government was effectively subjected to the will of the Senate which, in the circumstances, forced the Government to the electors.[5]

This basic dissection of the way Government relates to Parliament points to the fact that our system of parliamentary government is not entirely based on provisions of the written Constitution (*see* page 48). A full analysis can only be made from an understanding of the development of the Westminster system of responsible government adopted by Australia.[6]

A note on separation of powers and checks and balances

The doctrine of separation of powers was popularised by Montesquieu in 1748 in his work *L'Esprit des Lois*. The doctrine held that there were three essentially different powers of government: legislative, executive and judicial; and that a country's liberty depended on each of these powers being vested in a separate body. This theory had a marked effect on subsequent parliamentary and governmental development in democratic societies.

The doctrine of the separation of powers influenced the framing of the Australian Constitution to the extent that the powers of the main arms of government were set down in three separate chapters (s. 1, The Legislature; s. 61, The Executive; s. 71, The Judicature). However, as Ministers must be, or become, members of the legislature, there is a combining and overlapping of the legislative and executive functions.

According to Bagehot, the relationship between the legislative and executive powers in the Westminster system is better described as a 'fusion of powers':

> The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers.[7]

This fusion takes place in a Cabinet, which:

> . . . is a combining committee—a hyphen which joins, a buckle which fastens, the legislative part of the State to the executive part of the State. In its origin it belongs to the one, in its functions it belongs to the other.[8]

Although this fusion of powers in the Westminster tradition may be regarded as a strength, it is also recognised as a potential danger. It is accepted to be undesirable for all or any two of the three powers to come under the absolute control of a single body. There are therefore checks and balances which prevent the fusion of executive and legislative powers from being complete. The essence of a democratic Parliament is that the policy and performance of government must be open to scrutiny, open to criticism, and finally open to the judgment of the electors. When the Government puts its policy and legislation before Parliament it exposes itself to the scrutiny and criticism of an organised Opposition and of its own Members, who may be critical of, and suggest changes to, government

5 *See* Ch. on 'Double dissolutions and joint sittings'.

6 For commentaries on the relationship between Government and Parliament *see*, for example, J. Uhr, 'Parliament' in *Government, politics, power and policy in Australia*, Longman Cheshire, 1994; and J. Uhr, *Deliberative democracy in Australia: The changing place of Parliament*, Cambridge University Press, 1998.

7 Walter Bagehot, *The English Constitution*, 4th edn, Fontana, London, 1965, p. 65.

8 Bagehot, pp. 67–8.

policy and administration. Parliament is an important brake on the misuse of executive power of the Government collectively, or Ministers individually. It is essential that there be no erosion of Parliament's role in scrutinising the actions of government, such as might cause the Parliament to become a mere 'rubber stamp' in respect of government policy. Through the procedures of the House and the will of individual Members, and especially through the institutionalised Opposition, the executive and legislative functions remain sufficiently distinct.

The Government and House proceedings

The Executive Government exercises a controlling influence over the decisions of the House of Representatives. The principal factors in this are that:

- the Ministry is drawn from the legislature;
- for the Government to continue in office it depends on the support of the majority of the Members of the House; and
- the party system and its strong discipline help the Government to maintain its majority.

The capacity of the parties to control the votes of the majority of Members provides the means by which the Government, either directly or indirectly, may exercise its control over the House. At the same time the Government's control is constrained by its accountability and responsibility to the Parliament in which the Opposition (the significance of which is discussed at page 79) and the Senate play vital and at times determining roles. Notwithstanding these factors, as all decisions of the House are taken by majority vote, the Government is able to exert substantial influence over the operations of the House.

Indicative of the significance of some of the matters governed by standing orders but subject to the will of the majority are:

- the election of the Speaker and Deputy Speakers;
- decisions on legislation;
- additions to, and amendments of, standing and sessional orders;
- the curtailment of debate under the various closure and guillotine provisions;
- the suspension of standing orders;
- the determination of the days and hours of sitting; and
- the establishment and operation of parliamentary committees.

Other significant ways in which the business of the House is controlled by the Government under the standing orders include the provisions:

- that government business takes precedence of all other business on each sitting day except the period on Mondays when non-government business has precedence;[9] and
- that the Leader of the House may arrange the order of government business as he or she thinks fit, and may move items of government business between the House and Federation Chamber by means of a programming declaration.[10]

Priority for government business acknowledges the need for the Government to be provided with sufficient parliamentary time for the pursuit of its legislative program and the communication of its policies.

9 S.O. 35.

10 S.O. 45. Programming declarations can also be made by the Chief Government Whip.

Other provisions of the standing orders which give a preference or latitude to Ministers[11] are:

- a motion for fixing the next meeting of the House (S.O. 30) may be moved by a Minister without notice;
- a motion for the adjournment of the House (S.O. 32) may be moved only by a Minister;
- a motion (or amendment) of no confidence in or censure of the Government may be allowed precedence over other business only if accepted by a Minister (S.O. 48);
- a motion to discuss a matter of special interest (S.O. 50) may only be initiated by a Minister;
- the initiation of financial proposals (partly for constitutional reasons) is restricted to Ministers (S.O.s 178–179);
- documents may be presented by Ministers at any time when there is no other business before the House (S.O. 199); and
- a motion to take note of a document, or to make it a Parliamentary Paper, at the time of presentation (S.O. 202) may be moved by a Minister without notice.

The principle of responsibility and accountability of Ministers to Parliament is to some extent recognised by standing orders in that:

- a motion or an amendment which expresses a censure of or no confidence in the Government may be moved (S.O. 48) (there is no specific provision for a motion of censure of or no confidence in an individual Minister);
- questions with or without notice may be asked of Ministers in accordance with the rules of the House governing questions (S.O.s 97–105);
- the procedures in relation to grievance debate and matters of public importance (S.O.s 192b and 46) are used for the purposes of ministerial accountability;
- by order of the House a Minister may be required to present documents for tabling (S.O. 200);
- a document relating to public affairs quoted from by a Minister (unless stated to be confidential[12]) shall, if required, be presented (S.O. 201); and
- the Petitions Committee may refer a petition received by the House to the responsible Minister, and Ministers are expected to respond to the committee within 90 days[13] (S.O. 209).

The Constitution and Executive Government

The executive power of the Commonwealth, although vested in the Queen, is exercisable by the Governor-General, and in the words of section 61 of the Constitution 'extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth'.[14]

The significance of this section is expressed by *Quick and Garran*:

11 Including Parliamentary Secretaries, *see* p. 70.

12 This is an important exception as it has regard to the concept of 'executive privilege' which has been invoked in respect of the publication of government documents and information. *See* Chs on 'Documents' and 'Committee inquiries'.

13 Since the inception of the Petitions Committee in 2008 its practice has been that the majority of petitions received are referred. Before 2008 there was no obligation for a Minister to respond.

14 Constitution, s. 61; *and see* 'Governor-General' in Ch. on 'The Parliament and the role of the House'.

> This statement stereotypes the theory of the British Constitution that the Crown is the source and fountain of Executive authority, and that every administrative act must be done by and in the name of the Crown . . .
>
> The Governor-General appointed by the Queen is authorized to execute, in the Commonwealth, during the Queen's pleasure and subject to the Constitution, such powers and functions as may be assigned to him by Her Majesty (sec. 2) and by the Constitution (sec. 61). Foremost amongst those powers and functions will necessarily be the execution and maintenance of the Constitution, and the execution and maintenance of the laws passed in pursuance of the Constitution.[15]

The succeeding sections of the Constitution supplement section 61 by establishing in broad terms how and by whom the executive power is in practice to be executed:

First (section 62)—There is a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council are chosen and summoned by the Governor-General and sworn as Executive Councillors. They hold office during the Governor-General's pleasure.

The essence of this provision, read in conjunction with the succeeding provisions, is in the words of *Quick and Garran*:

> Whilst the Constitution, in sec. 61, recognizes the ancient principle of the Government of England that the Executive power is vested in the Crown, it adds as a graft to that principle the modern political institution, known as responsible government, which shortly expressed means that the discretionary powers of the Crown are exercised by the wearer of the Crown or by its Representative according to the advice of ministers, having the confidence of that branch of the legislature which immediately represents the people. The practical result is that the Executive power is placed in the hands of a Parliamentary Committee, called the Cabinet, and the real head of the Executive is not the Queen but the Chairman of the Cabinet, or in other words the Prime Minister.[16]
>
> Ever since the resignation of Sir Robert Walpole in 1742, it has been recognized that the Crown could not for any length of time continue to carry on the government of the country, except through Ministers having the confidence of the House of Commons. That constitutes the essence of Responsible Government.[17]

Although there is no constitutional restriction on who shall be appointed to the Executive Council, it has been composed, with a few exceptions, of Ministers of State.[18] (For discussion of the Federal Executive Council, *see* page 77.)

Second (section 63)—The provisions of the Constitution referring to the Governor-General in Council are to be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

This section makes it mandatory, as a constitutional principle, that in such matters the Governor-General acts only with the advice of the Federal Executive Council which, by virtue of section 64, and by convention, is the Ministry. The import of this section is to give further constitutional recognition to the concept of responsible government.

Third (section 64)—The Governor-General may appoint officers to administer such Departments of State of the Commonwealth as the Governor-General in Council may establish. Such officers hold office during the pleasure of the Governor-General. They must be members of the Federal Executive Council, and are 'the Queen's Ministers of State for the Commonwealth'. Section 64 further provides that after the first general election no Minister of State can hold office for a longer period than three months unless he or she is or becomes a Senator or a Member of the House of Representatives.

This section provides the constitutional authority for the appointment of Ministers and determines that the Ministry, for all intents and purposes, forms the Executive

15 *Quick and Garran*, p. 702.
16 *Quick and Garran*, p. 703.
17 *Quick and Garran*, p. 704.
18 Including since 2000 Ministers of State designated as Parliamentary Secretaries, *see* p. 71.

Government of the Commonwealth. The requirement that Ministers must eventually sit in Parliament brings together the executive and legislative organs of government.

Fourth (sections 65–67)—The Constitution gives further recognition to the Ministry by empowering the Parliament to determine the number of Ministers and the offices they shall hold[19] (*see* page 58) and the salaries they are to be paid (*see* page 72). The Executive Government in the broader sense is not only composed of the Ministry. The Constitution also makes provision, until the Parliament otherwise provides, for the appointment (and removal) of other officers of the Executive Government by the Governor-General in Council.

Constitutional conventions

The existence of a wide range of conventions of the Constitution[20] plays a fundamental part in Parliament/Executive Government relations. These conventions are numerous, and in some cases there is no universal agreement that they exist. Conventions are based on established precedent and practice and in many respects have their foundation in British law and practice established before 1901. They are subject to change by way of (political) interpretation or (political) circumstances and may in some instances be broken.

Constitutional conventions are of great significance in the exercise of the reserve powers of the Crown. This is particularly evident in the exercise of the power of dissolution,[21] vested by the Constitution solely in the Governor-General but not normally exercised without regard to convention.

The workings of responsible government, the concept of ministerial responsibility (collective and individual) and the existence of Cabinet (not mentioned in the Constitution) are for all practical purposes the subject of constitutional convention. The Constitution made no mention of political parties until 1977 when section 15, relating to the filling of casual vacancies in the Senate, was amended. Also majority or minority groups and the offices of Prime Minister and Leader of the Opposition are not mentioned.

Constitutional convention and the way it is interpreted and applied may, on occasions, have the same force as, but be not superior to, the Constitution itself, and its existence has been recognised by important cases of the High Court.[22] Crisp briefly defines constitutional conventions as:

> . . . extra-legal rules of structure or procedure or principle, established by precedent, consolidated by usage and generally observed by all concerned. They will affect the operation of the Constitution and may affect the working of the law but they themselves have not the force of law.[23]

Professor Gordon Reid interprets the phrase as follows:

> . . . the expression is little more than an article of political rhetoric and . . . our academic constitutional lawyers were publicly [in 1975] using it as such.
>
> It is well known that Australia's written Constitution is silent on many important aspects of government. It says nothing about the Prime Minister, the Cabinet, responsible government, ministerial responsibility, electing a government, dismissing a government, parliamentary control,

19 The Parliament has never exercised the power regarding the particular office a Minister shall hold.

20 In referring to the British constitutional framework Mill referred to these rules as 'the unwritten maxims of the constitution'. Twenty years later Dicey called them 'the conventions of the constitution' while Anson referred to them as 'the custom of the constitution'. Sir Ivor Jennings, *The law and the Constitution*, 5th edn, University of London Press, London, 1959, pp. 81 ff.

21 Also prorogation and appointing the time for holding sessions, (Constitution, s. 5) and other powers. *See* 'Governor-General' in Ch. on 'The Parliament and the role of the House'.

22 *See*, for example, *Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd* (1920) 28 CLR 129 (Engineers Case) and more recently *Cormack v. Cope* (1974) and others discussed in Ch. on 'Double dissolutions and joint sittings'.

23 L. F. Crisp, *Australian national government*, 5th edn, p. 352.

> what is to be done if the Senate refuses to pass an appropriation Bill (or a supply Bill), and so on. In reality this void is filled-in by well established practice, methods, habits, maxims, usages, many of them of long-standing, which were inherited from colonial Parliaments, which in turn inherited them from Westminster. It is these practices, methods and usages which tend to be referred to, albeit vaguely, as 'conventions of the Constitution'.[24]

Although reference to constitutional conventions is made throughout this text, it is not intended to identify and separately examine in depth the full range and meaning of all of them,[25] as they have been subjected to continuing political questioning which has left the status of many so-called conventions in doubt.

Even though the division is not always clear, there are other conventions which may fall under such headings as governmental, (party) political, and parliamentary. Parliamentary convention may be considered to be synonymous with parliamentary practice which is, as the term implies, of very broad scope.

Aspects of ministerial responsibility

Ministerial responsibility takes two forms—collective cabinet responsibility (or 'cabinet solidarity') and individual ministerial responsibility. Both concepts are governed by conventions inherited from Westminster and both are central to the working of responsible government.

Collective Cabinet responsibility

Cabinet is collectively responsible to the people, through the Parliament, for determining and implementing policies for national government. Broadly, it is required by convention that all Ministers must be prepared to accept collective responsibility for, and defend publicly, the policies and actions of the Government. The Cabinet Handbook states 'Members of the Cabinet must publicly support all Government decisions made in the Cabinet, even if they do not agree with them. Cabinet ministers cannot dissociate themselves from, or repudiate the decisions of their Cabinet colleagues unless they resign from the Cabinet'.[26]

Most importantly, the convention has also been regarded as requiring that the loss of a vote on a no-confidence motion in the House or on a major issue is expected to lead to the resignation of the whole Government (including Ministers not in the Cabinet) or, alternatively, the Prime Minister is expected to recommend to the Governor-General that the House be dissolved for an election. Such events are, in the ordinary course, unlikely, given the strength of party discipline. Further, contemporary thinking is that, should a Government lose a vote on a major issue, it would be entitled to propose a motion of confidence to test or confirm its position before resigning or recommending an election.[27]

It has been stated that among the principles implicit in the convention each Minister is required to abide by the following:[28]

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24 G. S. Reid, 'The double dissolutions and joint sitting commentaries', in Gareth Evans (ed.), *Labor and the Constitution 1972–1975*, Heinemann, Melbourne, 1977, p. 244.

25 Suggested references include Sawer, *Federation under strain*; G. Evans (ed.), *Labor and the Constitution*; Cooray, *Conventions, the Australian Constitution and the future*; Saunders and Smith, *Paper prepared for Standing Committee D* (of the Australian Constitutional Convention) *identifying the conventions associated with the Commonwealth Constitution*.

26 *Department of the Prime Minister and Cabinet*, Cabinet Handbook, 9th edn, 2016, p. 9. *See also* Prime Minister, *A guide on key elements of ministerial responsibility*, Dec. 1998, pp. 2, 4.

27 *See* 'Motions of no confidence or censure' in Ch. on 'Motions'.

28 *See*, for example: L. F. Crisp, *Australian national government*, 5th edn, pp. 354–6; Hugh V. Emy, *The politics of Australian democracy*, 2nd edn, Macmillan, South Melbourne, 1978, pp. 246, 312–13; S. Encel, *Cabinet government in Australia*, 2nd edn, Melbourne University Press, Carlton, 1974, p. 107.

- he or she must be prepared not only to refrain from publicly criticising other Ministers and their actions but also to defend them publicly, or else resign;
- he or she must not announce a major new policy without previous Cabinet consent—if a Minister does, Cabinet must either provide support or request his or her resignation;
- he or she must not express private views on government policies nor speak about or otherwise become involved in a ministerial colleague's portfolio without first consulting that colleague and possibly the Prime Minister; and
- government advice to the Governor-General must be assumed to be unanimous.

Not all principles associated with the convention have always been scrupulously upheld. At times governments have perhaps chosen to espouse the convention for political expediency or have chosen not to follow it for the same reason. Where crucial political advantage or disadvantage has been involved party political considerations have sometimes predominated over strict adherence to the convention.

While there have been departures from the convention the following comment on the controversy concerning the vitality of the convention places the matter in perspective:

> Most of the current disagreement turns on degree. Some critics have been concerned to point to the increasing number of deviations from the traditional rules; this article has been emphasising the overwhelming majority of cases in which the rules are still followed. The break with the past is less than has been thought.[29]

For precedents of resignations by individual Ministers in accordance with the convention *see* page 66.

Individual ministerial responsibility

During this century there has been a change in the perceptions of both Ministers and informed commentators as to what is required by the convention of individual ministerial responsibility. The real practical limitations on strict adherence to the convention as it was traditionally conceived are now openly acknowledged.

The 1976 report of the Royal Commission on Australian Government Administration stated:

> It is through ministers that the whole of the administration—departments, statutory bodies and agencies of one kind and another—is responsible to the Parliament and thus, ultimately, to the people. Ministerial responsibility to the Parliament is a matter of constitutional convention rather than law. It is not tied to any authoritative text, or amenable to judicial interpretation or resolution. Because of its conventional character, the principles and values on which it rests may undergo change, and their very status as conventions be placed in doubt. In recent times the vitality of some of the traditional conceptions of ministerial responsibility has been called into question, and there is little evidence that a minister's responsibility is now seen as requiring him to bear the blame for all the faults and shortcomings of his public service subordinates, regardless of his own involvement, or to tender his resignation in every case where fault is found. The evidence tends to suggest rather that while ministers continue to be held accountable to Parliament in the sense of being obliged to answer to it when Parliament so demands, and to indicate corrective action if that is called for, they themselves are not held culpable—and in consequence bound to resign or suffer dismissal—unless the action which stands condemned was theirs, or taken on their direction, or was action with which they ought obviously to have been concerned.[30]

29 David Butler, 'Ministerial responsibility in Australia and Britain', *Parliamentary Affairs* XXVI, 4, 1973, pp. 413–14.

30 Royal Commission into Australian Government Administration, *Report*, PP 185 (1976) 59–60; *see also* B. M. Snedden, 'Ministerial responsibility in modern parliamentary government', paper presented to the Third Commonwealth and Empire Law Conference, *Record*, Law Book Co., Sydney, 1966; R. V. Garland, 'Relations between Ministers and departments', *Royal Institute of Public Administration (ACT Group), Newsletter*, 3 August 1976, p. 24.

As the Royal Commission and other authorities have noted, there are still circumstances in which a Minister is expected to accept personal responsibility and to resign (or be dismissed):

> Resignation is still a valid sanction where ministers have been indiscreet or arbitrary in exercising power. In cases where the minister has misled parliament, condoned or authorized a blatantly unreasonable use of executive power, or more vaguely, where the minister's behaviour contravenes established standards of morality, resignation or dismissal is the appropriate action. In these cases, the factors which may often excuse the minister from blame for administrative blunders do not operate to the same degree: the minister's personal responsibility may be more easily isolated.[31]
>
> The responsibility of ministers individually to parliament is not mere fiction. An individual can be disciplined whereas the whole cannot. The events of recent years show that a minister can become too great a burden to carry. The parliament's role has been to expose and demean. Forced ministerial resignations and dismissals have been the decision of the prime minister not the parliament by its vote. The chief of the executive has judged that the public would accept no less. The credibility of a number of other ministers has been rightly challenged in parliament. Whether the challenges were merited or not the right of parliamentary inquiry cannot be denied. For a government to deny the right may prove to be suicidal. Parliament is the correct forum, the only forum, to test or expose ministerial administrative competence or fitness to hold office. However, allegations of a different kind, that is, offences against the law, should not be tried by parliament. The proper forum for those allegations is the courts. In cases of moral misconduct by a minister, the sanction should be political, in the form of resignation or defeat.
>
> I continue to believe that in the matter of ministerial responsibility, in the strict sense of actions done in his name for him or on his behalf in his role as a minister, his responsibility is to answer and explain to parliament for errors or misdeeds but there is no convention which would make him absolutely responsible so that he must answer for, that is, to be liable to censure for all actions done under his administration.
>
> . . . If the compelling penalty for a 'mistake' is resignation then the compelling prerequisite for punishment is the establishment of proof. This is not easily done in the political arena. The gravity of the 'mistake' would be an essential factor to any requirement of resignation. Equally the premise is only as sound as 'personal fault' or 'lack of reasonable diligence' can be established. Penalty by compulsion is dependent on the establishment of guilt. For the purposes of political advantage, allegations of ministerial 'mistakes' of a baseless or minor nature are no less possible than ministerial or government defence in the interests of self-preservation. Executives and ministers will always find it hard to permanently cover-up allegations of serious maladministration or misconduct.[32]

In a practical sense, a Minister may resign, not as an admission of culpability, but rather to remove pressure from the Government while serious criticisms of his or her capacity or integrity are properly and dispassionately assessed. Alternatively, a Minister may be given leave from ministerial duties for the same purpose (*see* page 69).

When responsibility for a serious matter can be clearly attached to a particular Minister personally, it is of fundamental importance to the effective operation of responsible government that he or she adhere to the convention of individual responsibility. However, the prime consideration in determining whether a Minister should resign or be dismissed has sometimes been the assessment of the likely political repercussions on the Government.[33]

Excluding the most serious cases and those where a Minister is clearly culpable the records have shown that a Government can rely on party discipline to ensure that a Minister's resignation is not forced by a direct vote of the House. Indeed there has been no occasion of an adverse resolution of the House in the nature of a no confidence or censure motion in an individual Minister (excluding the unusual events on 11 November

31 H. V. Emy, *The politics of Australian democracy*, 2nd edn, Macmillan, South Melbourne, 1978, p. 280.

32 Sir Billy M. Snedden, 'Ministers in Parliament—A Speaker's eye view'. In *Responsible government in Australia*, Patrick Weller & Dean Jaensch (eds), Drummond, Richmond, 1980, p. 76. *See also* Sir Robert Garran oration, (1988) by the Hon. R. J. L. Hawke.

33 *See* R. V. Garland, *Relations between Ministers and departments*, p. 24.

1975) on which resignation or dismissal would be expected. Some ministerial resignations, however, have been forced by pressure applied through questioning and criticism in the House. The effects of this pressure on public opinion have been such that the Minister concerned or the Prime Minister has been forced to take action.

The Senate has on several occasions passed motions of censure of Ministers (both Senate and House Ministers).[34] It appears that in none of these cases did the Minister concerned feel compelled to resign as a result. These instances would seem to reinforce the principle inherent in the system of responsible government that Ministers collectively and individually (unless they are Senators) are responsible to the lower House.

POLITICAL PARTIES

Although political parties were not recognised by the Constitution until 1977,[35] their existence has since Federation, and more particularly since 1910, dominated the operation of the House of Representatives.

Political parties are not formally recognised in the standing orders of the House yet the proceedings of the House turn on the interaction of the major parties forming the Government and Opposition.[36] In the Commonwealth Parliament party loyalty and discipline are strong, with the effect of Members generally voting in accordance with the decision taken by the party unless a 'free' vote has been permitted.[37] Failure to vote along party lines on important issues may seriously jeopardise a Member's chances of re-election in the event of the party organisation withdrawing its support.[38] Party discipline is essential to the governing party in order to retain the support of the majority of the Members of the House, without which it could not continue to govern. Conversely, the basic strength of the private Member lies in the dependence of ministries and shadow ministries on the support of the individual Members of the parliamentary party. While it can be said that in some respects a private Member does not, for practical purposes, normally exercise great authority in the House, where party solidarity is usually exhibited, he or she has many opportunities to put a matter before the House under the opportunities available under the standing orders or to put a personal point of view within the party (*see* page 56).

From the practical point of view, the working of the House is greatly facilitated by the existence of political parties, as they create a degree of certainty and add stability. Parties create 'numbers', or blocks of votes, on many issues which come before the House and it is around these 'numbers' on each side of a question that parliamentary activity often revolves. However, when from time to time the governing party is not able to maintain a majority of votes, the immediate consequences of this inability fall on the party, and the machinery of the House is not affected.

Between 1901 and 1910 allegiances to party, particularly in respect of the groups known as protectionists and free traders, were fluid and governments were made and unmade on the floor of the House.[39] Following the defeat of the Deakin 'Fusion' Ministry

34 *See* 'Motions of no confidence or censure' in Ch. on 'Motions'.

35 Section 15 of the Constitution altered with respect to filling of casual vacancies in the Senate.

36 For discussion of the private Member's conflicting responsibilities *see* Ch. on 'Members'.

37 *See* Ch. on 'Order of business and the sitting day'.

38 The discipline exercised by the Labor Party has generally been considered to be more direct and greater than that exercised by the coalition parties.

39 VP 1904/49 (27.4.1904), 149–51 (17–18.8.1904); VP 1905/9 (5.7.1905); VP 1908/79 (10.11.1908), 81–3 (12&17.11.1908); VP 1909/11–13 (1&2.6.1909).

at the general election of 1910 a two party situation developed in the ensuing Parliament—Labour and Liberal.[40] With the formation of the Country Party in 1919 a third party was introduced into the House.[41] Since then representation in the House of Representatives has been composed almost entirely of these three political parties and their successors, namely, the Australian Labor Party,[42] the Liberal Party of Australia (under various names) and the National Party of Australia (under various names). Since 1910 Australia has generally had majority Governments under which either the Australian Labor Party or a coalition of non-Labor parties has held office.[43]

The Labor Party is Australia's oldest political party, having evolved in the 1890s as the political wing of the trade union movement. The present Liberal Party was formed in October 1944 out of the United Australia Party and its earlier predecessor, the Nationalist Party. Since the general election of 1949 the Liberal Party and the National Country Party (later renamed the National Party of Australia and since 2003 known as the Nationals) when forming government have done so as a coalition.[44]

The three major political parties are organised at a national, State and sometimes at local level. While there are important differences in the structure of the parties represented in Parliament, at the national level they all have an organisational and a parliamentary wing. The extra-parliamentary or organisational wings of the political parties are not recognised in a procedural sense and have no role in the formal parliamentary structure and workings of the Parliament. Parliamentary activity revolves in a large measure around the parliamentary wings of the political parties—that is, the elected representatives.

Leaders and office holders

The parliamentary parties determine who shall be their leaders and deputy leaders in both Houses; hence they determine who shall be Prime Minister and Leader of the Opposition. Leaders and other office holders receive a salary additional to their salary as a Member of Parliament.[45] While Ministers are in fact holders of (ministerial) office, those offices are strictly positions of government under the Crown.[46] For constitutional and statutory reasons therefore, and for the purposes of the Remuneration Tribunal, Ministers are not defined as office holders of the Parliament.

40 This earlier Liberal Party later formed part of the Nationalist Party in 1917.

41 Renamed National Country Party of Australia in 1975, VP 1974–75/624 (13.5.1975). Renamed National Party of Australia in 1982, H.R. Deb. (19.10.1982) 2163. Known as the Nationals since 2003.

42 Spelling changed from 'Labour' to 'Labor' from circa 1912.

43 Hung Parliaments—that is, where no party or coalition has obtained a majority of seats in the House of Representatives—occurred following the 1940 and 2010 general elections. In 1940 the United Australia Party–Country Party coalition led by Prime Minister Menzies formed a minority Government with the support of two independents. However, in 1941, following coalition leadership changes which brought Country Party leader Fadden to the Prime Ministership, the two independents transferred their support to the Labor Party. The Labor Party then formed a minority Government led by Prime Minister Curtin for the remainder of the Parliament. In 2010 the Australian Labor Party led by Prime Minister Gillard formed a minority Government with the support of a minor party Member (Australian Greens) and three independents.

44 Since the general election in 1949 the other parties represented in the House have been: 1) the Australian Labour Party (Anti-Communist) in 1955 which comprised seven former members of the Australian Labor Party, VP 1954–55/161 (19.4.1955); H.R. Deb. (19.4.1955) 3; 2) One Nation in 1997 (a single former independent); 3) Australian Greens (one Member elected at a by-election in 2002, one Member elected in 2010, 2013 and 2016); 4) the Nationals–WA (one Member elected in 2010); 5) Palmer United Party (one Member elected in 2013); 6) Katter's Australian Party (a single former independent elected in 2013 and 2016); 7) Nick Xenophon Team (one Member in 2016). In recent Parliaments there have been up to five independents elected. Most Parliaments since 1996 have also had a Member from the Northern Territory based Country Liberal Party, however this party has been formally part of the Liberal–Nationals coalition. In 2008 the Queensland branches of the Liberal Party and the Nationals merged to form the Liberal National Party of Queensland: however, LNP candidates elected to the Federal Parliament continued to sit as Liberals or Nationals. For a record of party representation in the House since 1901 *see* Appendix 10.

45 *See also* Ch. on 'Members'.

46 This is an important distinction for the purpose of the constitutional provision regarding 'office of profit', *see* p. 73.

The Remuneration Tribunal regards the occupants of the following positions as office holders of the Parliament for the purposes of payment of salaries in addition to their salary as a Member:[47]

Speaker of the House of Representatives
President of the Senate
Deputy Speaker in the House of Representatives
Deputy President and Chair of Committees in the Senate
Second Deputy Speaker in the House of Representatives
Temporary Chair of Committees in the Senate
Member of the Speaker's Panel in the House of Representatives
Chair or Deputy Chair of a parliamentary committee[48]
Leader of the Opposition
Deputy Leader of the Opposition
Leader of the Opposition in the Senate
Deputy Leader of the Opposition in the Senate
Leader of a recognised party[49]
Head of a recognised party where Leader of party sits in the other house[50]
Manager of Opposition Business in the House of Representatives
Shadow Minister
Chief Government Whip in the House of Representatives
Chief Opposition Whip in the House of Representatives
Chief Government Whip in the Senate
Chief Opposition Whip in the Senate
Whip[51]
(The Leader of the House and the Leader of the Government in the Senate, who also have parliamentary roles, receive additional salary as Ministers—*see* page 72.)

For parliamentary purposes the Remuneration Tribunal's definition of office holders of the Parliament needs some qualification to distinguish their parliamentary or party relationship:

- The Presiding Officers and their deputies[52] are elected by their respective Houses and are correctly known as Officers of the House and the Senate respectively. These are strictly parliamentary offices.
- Temporary Chairs of Committees in the Senate and members of the Speaker's Panel in the House are nominated by the Presiding Officers in consultation with the respective parties. These are parliamentary positions.

47 For level of additional salary *see* latest Remuneration Tribunal determination. In 2016 amounts ranged from 85% for the Leader of the Opposition to 2% for a minor party deputy whip. Note that these positions are not regarded as offices of profit under the Crown by virtue of section 44(iv) of the Constitution; the persons are neither appointed by nor are they servants of the Crown. Those officers not in bold type are not strictly *parliamentary* office holders.

48 Level of additional remuneration varies.

49 Other than a party whose leader is the Prime Minister or Leader of the Opposition. Level of additional remuneration depends on number of party members in the Parliament (minimum 5).

50 Other than a party whose leader is the Prime Minister or Leader of the Opposition. Minimum 5 party members in each House.

51 Including specified Deputy Whips. Level of additional remuneration varies.

52 The occupants however are pre-selected for nomination by the parliamentary parties; *and see* Ch. on 'The Speaker, Deputy Speakers and officers'.

- Chairs and Deputy Chairs of parliamentary committees may be either elected by the committee[53] or nominated by the Prime Minister. These are parliamentary positions.
- Leaders and deputy leaders of the political parties, although receiving parliamentary recognition, hold party positions determined within the parliamentary parties.
- Whips and deputy whips strictly hold party positions determined within the parliamentary parties.[54]

At the commencement of each Parliament (or whenever a change occurs) the leader of each party makes a formal announcement to the House as to its leadership and whips.[55]

Party whips

All parties have whips whose main functions are to act as administrative officers to their parliamentary parties. Although whips, and especially the Chief Government Whip, have duties in relation to the proceedings of the House, they occupy essentially party political positions. Outside the Chamber the whips may be required to provide support for such matters as party meetings and consultations, party committees, arranging party nominations to parliamentary committees and organising any party balloting which may be required.[56]

The term 'whip' is derived from the English hunting expression 'whipper-in', which was the title for the person responsible for preventing the hunting hounds from straying from the pack. The first use of the term in a parliamentary context has been attributed to Edmund Burke who, in 1769, described the intense lobbying over a particular division as a 'whipping-in' of Members.[57] Wilding and Laundy, however, trace the use of the term back even further, when they refer to Porritt's claim that the whip, meaning a document instructing persons which side to take on a particular question, was in vogue as early as 1621. In the House of Commons, whips of all parties supply their Members with information on forthcoming business with each item of business underlined according to its importance, hence the use of the term 'whip' in relation to the document, for example, a 'three line whip'.[58]

In recent Parliaments the Government and Opposition have each had a Chief Whip and two other whips. In the case of a coalition the whips of the senior party have taken the various government whip positions when in government and the various opposition whip positions when in opposition. The National Party, the junior coalition party, has had its own Chief Whip and another whip. The positions of Chief Government Whip and Chief Opposition Whip were created in 1994 with the establishment of the Main Committee (later renamed Federation Chamber) and the consequential additional workload on the whips. Whips are either elected by the parliamentary party or appointed by the parliamentary leader of the party. Whips do not have any administrative responsibility or control in relation to the parliamentary or government administrations.

53 However, the occupants are normally selected for nomination by the parliamentary parties in the first instance; *and see* Ch. on 'Parliamentary committees'.

54 The Parliamentary Labor Party nominates or elects its members to occupy all parliamentary and party positions. The parliamentary wing of the Liberal Party elects its leader (and deputy leader) who appoints its Senate leaders, and whips in the House. Liberal Party whips in the Senate are elected. The Nationals elect their leaders and whips.

55 E.g. VP 2016–18/7–9 (30.8.2016).

56 The whips may be assisted by a returning officer or a secretary to the parliamentary party (also members of the parliamentary party). They are party internal positions which have no formal recognition within the Parliament itself.

57 *Odgers*, 6th edn, p. 417.

58 N. Wilding & P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, pp. 785–7, including reference to Porritt, *The unreformed House of Commons*.

The Chief Government Whip in the House of Representatives is not a Minister as he or she is in the House of Commons. In recognition of their party duties, not shared by other private Members, whips and their deputies receive an additional salary in addition to their salary as Members.

Within the parliamentary process a whip is required to perform a multitude of tasks including:

- arrangement of the number and order of Members who wish to speak in debate;[59] this may be done in consultation with the Leader of the House in respect of government Members and his or her counterpart in the Opposition or the party leader(s) in respect of opposition Members;
- ensuring the attendance of party members for divisions and quorum calls (this responsibility is more onerous on the government whips as it has been considered that the Government should ensure that a quorum is maintained[60]);
- in conjunction with other whips, the arrangement of 'pairs'[61] for Members who are, or who may desire to be, absent from the House; and
- in divisions, by convention on appointment from the Chair, to act as a teller.

The Chief Government Whip has the added responsibility of assisting the Leader of the House in ensuring that the timetable for the Government's legislative program is met and regularly moves procedural motions such as the motion for the closure. On the creation of the position in 1994 the Chief Government Whip was empowered to move motions, without the requirement for a seconder, relating to the conduct of the business or the sitting arrangements of the House or the then Main Committee (now Federation Chamber).[62] The Chief Government Whip exercises these functions, previously the preserve of the Leader of the House, principally in relation to the business of the Federation Chamber. The Chief Government Whip has primary responsibility for determining the Federation Chamber's agenda in relation to government business, following consultation with Ministers, opposition whips and independent Members, and normally moves the motions referring bills and other orders of the day to the Federation Chamber. The Chief Government Whip, Chief Opposition Whip and the Third Party Whip, or their nominees, are members of the Selection Committee. Any procedural function of a Chief Whip under the standing orders can be performed by another whip acting on his or her behalf.[63]

Party committees and meetings

Both the government and the opposition parties have backbench committees to assist them in the consideration of legislative proposals and other issues of political significance allied to each committee's function. These committees, which consist of Members and Senators having a special interest in the subject matter of the committee, provide a forum in which a Member is able to discuss on a party basis matters of importance to his or her party and possibly to the Member's electoral division. These committees have been

59 The 'list of speakers' is advisory only and does not bind the Chair in allocating the call.

60 Although the Procedure Committee has expressed the view that it is incumbent on all Members to maintain a quorum, as it is generally government business which is before the House, it is to the Government's advantage to see that it does not lapse through lack of a quorum. *See* Ch. on 'Order of business and the sitting day'.

61 *See* Ch. on 'Order of business and the sitting day'.

62 The presentation or moving of the stages of government bills specifically excluded. VP 1993–96/982–3 (12.5.1994).

63 S.O. 2 (definitions)—relevant to S.O. 116(c).

shown to influence (and in some cases directly or indirectly overturn) government policy or decisions.

All parties have party meetings in sitting weeks but usually at times when the House is not sitting. The proceedings of party meetings are regarded as confidential, and the detail of discussions is not normally made public. These meetings provide the forum, particularly for backbenchers, for internal party discussion of party policy, parliamentary activity, parliamentary tactics, the resolution of internal party disputes, the election of officers, and they provide a means of exerting backbench pressure on, and communication with, its leaders.

Party meetings of the Parliamentary Labor Party are commonly referred to as 'caucus' meetings.[64] Used in its collective sense the 'caucus' of the Labor Party is composed of all Labor Members of the House and the Senate meeting together. In its extended sense the 'caucus system', as applying to all parties, has developed from the development of formalised party arrangements and rules.

Important differences between the two main parties in their caucus arrangements are:

- The Chair of the Labor Party caucus is elected from among its members and is usually a backbencher, while in the Liberal Party the leader traditionally presides over party meetings, including joint party meetings.
- The Labor Party caucus historically has elected its members to all positions of office including Ministers, while the leader of the Liberal Party has appointed members to most offices, including Ministers.[65]
- Party discipline, in particular voting requirements, may be more formal in the Labor Party and the Nationals than the Liberal Party, but in each case party discipline is strong.

Parties and their effect on the House

In many respects the functioning of the House is based on the clear-cut division between Government and Opposition, that is, the opposing political parties, and the working arrangements and conduct of business reflect this. An obvious recognition of this historical development is the seating arrangement in the House with government Members sitting to the right of the Speaker's Chair and opposition Members to the left. Procedural recognition is exemplified by the practice of the Chair of alternating the call between government and non-government Members.

The important functions performed by the parties are mostly unrecognised by the standing orders in the working of procedure, although the standing orders recognise the Government's control in arranging the business of the House (*see* page 45).[66]

The party system has a strong influence on the day-to-day workings and decision-making of the modern legislature. This has not been without criticism; one commentator has written:

> The implications of a predominantly team approach to parliamentary matters even to the abrogation of any effective rights of the individual representative raises important questions about the nature of our

64 The word 'caucus' was originally an American term meaning in its broadest sense simply a meeting of parliamentary members of a particular party to consult. *See* Patrick Weller (ed.), *Caucus minutes 1901–1949*; Vol. I, Melbourne University Press, 1975, pp. 5–7.

65 *See* 'Composition of the Ministry' at p. 58.

66 *See also* Ch. on 'Order of business and the sitting day'.

> modern parliamentary system and the extent to which public frustration with it as an institution may relate to undue party cohesiveness.[67]

To facilitate the management and programming of the business of the House, a Government/Opposition consultative arrangement has existed since 195l. The Leader of the House, generally a senior Minister, consults, or ensures that consultations are held, with a member of the shadow ministry nominated by the Leader of the Opposition (the Manager of Opposition Business) and is assisted by the Chief Government Whip. They are jointly responsible, within the requirements of the standing orders, for the daily programming of the House, although the final responsibility remains with the Leader of the House acting on behalf of the Government (*see* page 65).

THE MINISTRY

Number of Ministers

The Constitution provides for the number of Ministers as follows:

> Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.[68]

The Parliament increased the number of Ministers of State from seven to eight in 1915.[69] Further statutory increases have brought the number up to the present limit of 30. In addition, twelve positions of Minister of State to be designated as Parliamentary Secretary were created in 2000 (*see* page 70).[70] These constitutional and statutory limitations apply to the number of Ministers administering a Department of State. In earlier years 'Ministers' who did not administer a department were also appointed—*see* 'Ministerial assistance' at page 70.

Composition of the Ministry

The allocation of portfolios—that is, the Departments of State that Ministers shall administer—has never been determined by the Parliament although there have been unsuccessful attempts in the House to have the Parliament elect the Ministry.[71] In practice the Governor-General determines the allocation of portfolios on the advice of the Prime Minister. In the case of a Liberal–Nationals coalition the Prime Minister, following consultation with the Leader of the Nationals, nominates Ministers and decides the allocation of portfolios for recommendation to the Governor-General. Since the formation of the Fisher Ministry in 1908,[72] the Australian Labor Party caucus has elected its Ministers and the Prime Minister has allocated portfolios for recommendation to the Governor-General. The exception to this practice occurred between 2007 and 2013 when Labor Party Ministers were appointed by the Prime Minister.

The approval of the Governor-General to the composition of the Ministry, the creation of departments, the allocation of portfolios and any ministerial and departmental change

67 K. Jackson, 'Caucus—the anti-Parliament system', *The Parliamentarian* LIX, 3, 1978, p. 159.

68 Constitution, s. 65.

69 *Ministers of State Act 1915*.

70 *Ministers of State Act 1952*, s. 4; for a schedule of statutory increases in the number of Ministers *see* Appendix 9; for a list of Ministries *see* Appendix 7.

71 VP 1905/47 (17.8.1905), 89 (21.9.1905), 146 (2.11.1905); VP 1909/66 (29.7.1909; VP 1910/122 (15.9.1910); VP 1925/42 (9.7.1925), 73 (20.8.1925).

72 In the first Labor Government in 1904 Prime Minister Watson chose the members of his Ministry.

is notified publicly[73] and announced in the House.[74] The principal areas of departmental responsibility and enactments administered by the respective Ministers are notified publicly by order of the Governor-General.[75] Temporary ministerial arrangements may be made by the Prime Minister without reference to the Governor-General.

Since the formation of the first Commonwealth Government on 1 January 1901 the Ministry has always included a Prime Minister, a Treasurer, an Attorney-General and a Minister for Defence.[76] The titles and functions of other Ministers have varied over the years. A Vice-President of the Executive Council has always been appointed and, since the early 1930s, has usually administered a Department of State in addition to performing Executive Council duties.[77] A Minister may administer more than one department.

The two-level Ministry

In September 1987 the 3rd Hawke Government instigated a two-level ministerial structure accompanied by a reorganisation of the public service which considerably reduced the number of government departments. Each of the major departments so created[78] was headed by a senior or 'portfolio' Minister, who was also a member of Cabinet. Senior Ministers were assisted in the administration of their portfolios by junior Ministers with specific titles and responsibilities for designated areas of departmental operations.

In announcing the new administrative arrangements the Prime Minister stated that under the new system portfolio Ministers were released from some of the detailed administrative work, enabling them to give greater attention to policy. All portfolios were represented in Cabinet without the need for the Cabinet to be expanded to an unmanageable size. Portfolio Ministers were ultimately responsible for the administration of their entire portfolios and were accountable to Parliament for their overall operation. All Ministers, however, had a clear accountability within specific responsibilities allocated to them, which included responding to questions without notice.[79] This approach has been followed in later Parliaments.

Coalition Ministries

On occasions Governments have been formed from the combined membership of two (or more) political parties. Coalition Governments have occurred when the numerical strength of one party is less than an absolute majority of the House, or for political reasons by agreement between the parties. The Ministry is composed of members of the coalition parties determined by agreement. Between 1949 and 1972, between 1975 and 1983, and between 1996 and 2007, and from 2013, Liberal–National Party (formerly Country Party, later Nationals) coalition Governments were in office.

The Free Trade–Protectionist coalition between August 1904 and July 1905 was known as the Reid–McLean Ministry. Between February 1923 and October 1929 the Nationalist–Country Party coalition was known as the Bruce–Page Ministry. Between

73 E.g. Gazette C2016G01034 (27.07.2016).
74 E.g. VP 2016–18/7–9 (30.8.2016).
75 Known as the Administrative Arrangements Order.
76 Except for a re-organisation of the Department of Defence between 1939 and 1942.
77 In the early Ministries the Vice-President was a member of the Executive Council without ministerial portfolio. Prime Minister Lyons filled the position between 1935 and 1937.
78 The number of departments was reduced by amalgamation from 28 to 18; 16 major departments were so created, with two small departments remaining administratively distinct under junior Ministers, H.R. Deb. (15.9.1987) 43–4.
79 H.R. Deb. (15.9.1987) 43–6.

June 1909 and April 1910 the existing three non-Labour groups formed a Protectionist–Free Trade–Tariff Reform coalition which was known as the 'Fusion' Ministry.

Interim Ministries

In order that the government of the country continues uninterrupted there have been occasions when the Governor-General has found it necessary to appoint an interim or 'caretaker' Government pending the resolution of political matters, for example, the election of party leaders or a general election (and *see* page 96 of second edition).

On the dismissal of the Whitlam Australian Labor Party Government on 11 November 1975, the Governor-General commissioned the Leader of the Opposition, Mr Fraser (Liberal Party), to form a 'caretaker' Government (Liberal–National Country Party coalition) until a general election was held. The 'caretaker' Ministry, consisting of 15 Ministers, was formed on the basis that it 'makes no appointments or dismissals and initiates no policies'[80] and held office until 22 December 1975.

Caretaker conventions

By convention, Governments ensure that important decisions are not made during the period immediately prior to a general election which would bind an incoming Government and limit its freedom of action. The conventions require a Government to avoid implementing major policy initiatives, making appointments of significance or entering into major contracts or undertakings during the caretaker period, and also to avoid involving departmental employees in election activities. The Ministry, Cabinet or Cabinet committees may meet, if necessary, for the normal business of Government, but the matters considered are constrained by the conventions. Normally efforts are made to clear necessary business prior to the caretaker period. The 'caretaker' period applies formally from the dissolution of the House until the election results are clear, or in the event of a change of Government, until the new Government is appointed. However, it is also accepted that care should be exercised in the period between the announcement of the election and dissolution.

Other practices applying to the election period, usually regarded as being part of the caretaker conventions, are aimed at ensuring that departments avoid partisanship during an election campaign and that government resources are not directed to supporting a particular political party. They address matters such as the nature of requests that Ministers may make of their departments, procedures for consultation by the Opposition with departmental officers, travel by Ministers and their opposition counterparts and the continuation of government advertising campaigns.[81]

The Ministry and the Senate

The composition of the Ministry has always included some Senators to represent the Government by presenting its policies and facilitating the passage of its legislation in the Senate. Senate Ministers initiate bills (other than financial bills) and make policy statements to the Senate connected with their portfolios. In addition each Senate Minister represents in the Senate one or more Ministers located in the House. Likewise each Senate Minister is represented by a Minister in the House of Representatives.

80 Statement by Governor-General on 11 November 1975. *See* Ch. on 'Double dissolutions and joint sittings'.

81 Department of the Prime Minister and Cabinet, *Cabinet Handbook*, 9th edn, 2016, p. 26. *See also* Department of the Prime Minister and Cabinet, *Guidance on caretaker conventions*, 2016.

The House from which Ministers shall be drawn is not mentioned in the Constitution. In practice the number of Senate Ministers is determined by the Prime Minister or the parliamentary party, as the case may be, and in recent years has varied between four and thirteen. A large component of Senate Ministers may be seen as running counter to the concept of responsible government and the Senate's traditional role as a 'House of review'. In keeping with constitutional principles and the constitutional limitations on the Senate regarding the initiation of financial legislation, the majority of the Ministry, including the Prime Minister and the Treasurer, has always been drawn from the House of Representatives.

Following the presumed death of Prime Minister Holt on 17 December 1967, the Liberal Party chose Senator Gorton as its leader on 10 January 1968 and he was sworn in as Prime Minister the same day. Although there had been previous occasions of Senate Ministers acting as Prime Minister,[82] this is the only occasion on which a sitting Senator has been commissioned to form a Government. Senator Gorton did not sit in the Senate as Prime Minister because neither House met during the period between his election as Prime Minister and his subsequent election as a Member of the House of Representatives. Prime Minister Gorton resigned his place as a Senator on 1 February 1968, in order to seek election to the House of Representatives. He was elected on 24 February 1968 at the by-election for the division of Higgins left vacant by Mr Holt's death. Between 1 February and 24 February Mr Gorton was a Member of neither House but, as permitted by the Constitution, was able to remain Prime Minister during this period.[83]

From time to time the view has been put that the presence of Ministers in the Senate is incompatible with its effective performance as a House of review and a States House. In 1979 a motion was moved in the Senate, but remained unresolved, to the effect that Senators should no longer hold office as Ministers of State, with the exception of the Leader of the Government in the Senate, and that chairmen of the Senate's Legislative and General Purpose Standing Committees should be granted allowances, staff and other entitlements similar to Ministers.[84] In 1986 the House Standing Committee on Procedure expressed the opinion that all Ministers should be Members of and responsible to the House of Representatives.[85] In 1988 a private Member's motion was debated in the House, but remained unresolved, urging the party winning the next and subsequent elections to appoint all Ministers from the House of Representatives and urging the Senate to further expand its committee system and adopt greater powers of investigation and inquiry.[86]

Prime Minister

The origin of the title of Prime Minister[87] is to be found in English constitutional history with the title being first attributed to Sir Robert Walpole in 1721.[88] The Cabinet system of government and the position within it of the Prime Minister was established

82 (i) H.R. Deb. (9.5.1916) 7686, (ii) during adjournment of the Houses between 30 August 1962 and 2 October 1962.

83 Constitution, s. 64.

84 J 1978–80/571 (22.2.1979); S. Deb. (22.2.1979) 229–40. A notice of motion with similar intent was later given in the House on 3 May 1979, NP 96 (8.5.1979) 5205.

85 PP 354 (1986) 25.

86 H.R. Deb. (24.3.1988) 1292–8.

87 For a list of Australian Prime Ministers *see* Appendix 6. For a commentary on the Prime Ministership *see* J. Uhr, 'Prime Ministers and Parliament: patterns of control' in *Menzies to Keating—the development of the Australian Prime Ministership*, Melbourne University Press, 1992.

88 N. Wilding & P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 581.

Westminster practice at the time of the establishment of the Commonwealth. The occupant of the position has been variously described as the First Minister, primus inter pares (first among equals),[89] Chairman of the Cabinet,[90] Chief Adviser to the Crown and in contemporary usage Head (or Leader) of the Government. The Prime Minister is placed third in the Commonwealth of Australia Table of Precedence, immediately after the Governor-General and State Governors.

The first Prime Minister (Mr Barton) was officially appointed as Minister for External Affairs and it was not until 1913 that the Prime Minister (Mr Fisher) was appointed by the Governor-General to administer his own department.

In Australia the appointment (and removal) of a Prime Minister clearly rests with the Governor-General and the Governor-General alone, whose prerogative power is nevertheless limited by the rules of established constitutional conventions with the result that the choice is made for him or her. The selection of the Prime Minister is in practice made in the party political and parliamentary arenas. Since the appointment of Prime Minister Barton, excepting the 1975 incident noted below, the choice of Prime Minister has been limited to the person, for the time being, elected as leader of the party having the support, directly or indirectly, of the majority of Members of the House of Representatives.

The constitutional convention is that the Prime Minister remains in office while maintaining the support (leadership) of the majority party (or coalition) and the support of a majority of the Members of the House of Representatives. The only exception to this convention occurred in 1975 when Prime Minister Whitlam was dismissed as Prime Minister even though he retained the leadership of the majority party and majority support in the House of Representatives. (A deadlock had arisen between the House and the Senate over the appropriation bills, with the actions of the Senate in failing to pass the bills threatening the availability of funds necessary for the operation of government departments and programs.)[91]

Apart from dismissal, Prime Ministers have ceased to hold office as a result of death,[92] failure to be re-elected as a Member of the House,[93] removal as leader of the majority party,[94] failure to maintain majority support of the House of Representatives[95] and retirement.[96]

The Prime Minister's prestige and power are largely due to the authority and control enjoyed as Chair of Cabinet and the ability, not available to other Ministers in the same manner, to make important decisions outside Cabinet. One of the most significant powers is the control over the composition of the Cabinet and the Ministry. The appointment and removal of Ministers, changes in the Ministry and the allocation of portfolios are made by the Governor-General on the advice of the Prime Minister.[97]

89 Attributed to Keith, *British Cabinet system*, referred to in Wilding & Laundy, p. 580. With the development of Cabinet government and growth in power and prestige of the Prime Minister, this term can no longer be strictly acceptable terminology.

90 *Quick and Garran*, p. 703.

91 *See* Ch. on 'Double dissolutions and joint sittings'.

92 Three Prime Ministers have died while in office —Mr Lyons in 1939, Mr Curtin in 1945 and Mr Holt in 1967.

93 The only Prime Ministers defeated at an election were Mr Bruce in 1929 and Mr Howard in 2007.

94 Most recently Mr Gorton in 1971, Mr Hawke in 1991, Mr Rudd in 2010, Ms Gillard in 2013 and Mr Abbott in 2015.

95 (i) Loss of majority on floor of the House without general election, most recently Mr Fadden in 1941; (ii) loss of majority following general election, most recently Mr Fraser in 1983, Mr Keating in 1996, Mr Howard in 2007 (himself defeated), and Mr Rudd in 2013; and (iii) loss of majority in House and failure to regain majority at general election, most recently Mr Bruce in 1929 (himself defeated), and Mr Hughes in 1923.

96 Most recently Sir Robert Menzies in 1966.

97 *See also* 'Composition of the Ministry' at p. 58.

A Ministry's existence depends on the Prime Minister's continuance in office. The resignation or dismissal of the Prime Minister, by convention, causes the resignation of the full Ministry. A Prime Minister may resign, hence causing the resignation of all Ministers, in order to reconstruct a new Ministry[98] and continue in office.

The Prime Minister may make temporary ministerial arrangements without reference to the Governor-General. A Minister may act for another Minister on account of absence from Australia or from the Ministry or due to ill health. The *Acts Interpretation Act 1901* confers upon an Acting Minister the same power and authority with respect to the absent Minister's statutory responsibilities.[99]

Another example of personal Prime Ministerial power is advice to the Governor-General on dissolving the House of Representatives, as this advice may be given by the Prime Minister without reference to the Cabinet.[100] Most other major matters of State are subject to the collective decision of Cabinet (*see* page 75), but nevertheless the Prime Minister would exercise considerable authority and control.

In the past Prime Ministers frequently held an additional portfolio, usually that of Treasury or Foreign Affairs. Prime Minister Hughes was also Attorney-General between 1915 and 1921. Other than for brief periods, and with the exceptions of Prime Ministers Menzies and Whitlam, who also held the portfolio of External Affairs and Foreign Affairs respectively for substantial periods,[101] the modern practice is for Prime Ministers not to administer more than one Department of State (the Department of the Prime Minister and Cabinet).

Prime Ministers of both the coalition parties and the Australian Labor Party have been assisted by another Minister who is appointed as Deputy Prime Minister. In the case of a coalition Government the Deputy Prime Minister has been the Leader of the Nationals, and in the case of a Labor Government the Deputy Leader of the party. The position is a formal one without portfolio per se for which the occupant is paid a higher salary than other Ministers (*see* page 72). It is the practice for the Deputy Prime Minister to be Acting Prime Minister when the Prime Minister is absent from Australia or absent on account of leave (for illness or brief recreation periods). The Deputy Prime Minister would normally be commissioned to become Prime Minister in a caretaker capacity in cases of emergency, for example, the death of the Prime Minister.[102]

Treasurer

A Treasurer has been included in all Ministries since Federation, the first Treasurer being Sir George Turner. The requirement of a separate Department of State is implied by section 83 of the Constitution which provides, in part:

> No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

The Treasurer has always been a senior member of the Government and is responsible for economic and financial matters. Although the Cabinet takes collective decisions and assumes collective responsibility, the Treasurer is nevertheless the focal point of the financial deliberations of Cabinet, not only within the scope of his or her own portfolio,

98 For example, Mr Fraser in 1977.

99 *Acts Interpretation Act 1901*, s. 19.

100 L. F. Crisp, *Australian national government*, 5th edn, p. 368.

101 Prime Minister Menzies was also Minister for External Affairs between 4 February 1960 and 22 December 1961. Prime Minister Whitlam was also Minister for Foreign Affairs between 5 December 1972 and 6 November 1973.

102 Most recently Mr McEwen in 1967.

but in relation to the financial implications of all other matters that come before Cabinet. The Treasurer introduces major financial proposals into the House as the responsible Minister, the preparation and presentation of the annual Budget being the most obvious manifestation of this responsibility.

That the duties of Treasurer have been considered to be more demanding than most other portfolios is recognised by the Remuneration Tribunal which grants the Treasurer a higher salary than other Cabinet Ministers excepting the Prime Minister and Deputy Prime Minister (*see* page 72).

A unique feature of the office of Treasurer is that it must always reside in the House of Representatives since under the Constitution it is in that House that financial legislation must be initiated.[103]

In 1976 the functions of the Department of the Treasury were redefined resulting in the establishment of a separate Department of Finance (later Finance and Administration, Finance and Deregulation, and then again Finance). Initially the Treasurer administered both Departments but in 1977 a Minister for Finance was appointed to administer the new department. This portfolio has been held both by Members of the House and Senators.

Attorney-General

The Attorney-General was another of the seven original Ministers appointed in 1901, the first Attorney-General being Alfred Deakin. The origins of the office of Attorney-General can be traced back in English history to the 13th century and many of the traditions surrounding it have continued to characterise the office in Australia.

The Attorney-General is the chief legal adviser to the Commonwealth Government and has overall responsibility for the conduct of actions brought by the Commonwealth Government in the legal system.[104] He or she is the Minister responsible for the Office of Parliamentary Counsel[105] the duties of which include the drafting of government bills and amendments.

Historically, the Attorney-General has been the First Law Officer of the Crown, having responsibilities in relation to the laws of the Commonwealth, and needing to make decisions about whether the laws of the Federal Parliament are being properly observed and whether people should be prosecuted for not observing the law (although since 1983 day-to-day responsibilities for the prosecution of offences have been given, by statute, to the Director of Public Prosecutions). As First Law Officer the Attorney-General gives advice on the basis of what is just, and must separate the advice from any political considerations. The principle of this independence of the office of Attorney-General was the subject of the resignation of Attorney-General Ellicott on 6 September 1977.[106] In his letter of resignation to the Prime Minister he stated:

> It is with great regret that I am forwarding herewith my resignation as Attorney-General.
>
> I am doing so because decisions and actions which you and the Cabinet have recently made and taken have impeded and in my opinion have constituted an attempt to direct or control the exercise by me as Attorney-General of my discretion in relation to the criminal proceedings Sankey v. Whitlam and others.

103 There are examples of State Treasurers coming from State upper houses, e.g. Mr Egan in NSW (April 1995), Mr Lenders in Victoria (August 2007).

104 The Attorney may appear in court personally, e.g. *Re Patterson Ex parte Taylor* [2001] HCA 51 (2001) 182 ALR 657.

105 *Parliamentary Counsel Act 1970*; *see also* Ch. on 'Legislation'.

106 VP 1977/249 (6.9.1977); H.R. Deb. (6.9.1977) 721–32.

> In the circumstances I feel that I have no other course but to resign my office. I regard it as vital to our system of government that the Attorney-General's discretion in criminal matters remains completely independent.[107]

This resignation illustrates one Attorney-General's view of the independent nature of the office of Attorney-General, notwithstanding the general concept of Cabinet responsibility.

The Second Law Officer is the Solicitor-General. The Solicitor-General may appear in court in the major cases in which the Government is involved, but importantly is a statutory appointee and not a Member of the Parliament. The Solicitor-General gives independent legal advice to the Government. This independence is reflected in the *Law Officers Act 1964*.

Leader of the House

The office of Leader of the House was created without legislation and without any formal decision of the House. By convention, it is now accepted as an office which is necessary for the proper functioning of the House. Because of the demands placed on the incumbent during the sittings of the House, the office has received special consideration by the Remuneration Tribunal by way of payment of an additional salary greater than that paid to other members of Cabinet.

The position of Leader of the House as a defined and separate office originated in 1951.[108] In a press statement on 10 May 1951, Prime Minister Menzies announced the appointment of the first Leader of the House, the Hon. E. J. Harrison, then Vice President of the Executive Council and Minister for Defence Production. The Prime Minister's aim was to improve the organisation and conduct of business in the House of Representatives, from which both he and the Deputy Prime Minister were of necessity often absent.

The appointment is made by the Prime Minister, and the Leader of the House is responsible to the Prime Minister who has ultimate authority and responsibility for government business. As it is a delegated function, it is not unusual for the Prime Minister, when in attendance, to intervene in the proceedings of the House and even to move procedural motions.

In broad terms the Leader of the House is responsible for the arrangement and management of government business in the House of Representatives. In respect of the daily business of the House, it is his or her responsibility, in consultation, as necessary, with the Prime Minister and other Ministers, and the Opposition, to determine the order in which the items of government business will be dealt with, and to ensure that, as far as practicable, the passage of government business is not unduly delayed or disrupted. The majority of formal or general procedural motions are moved on behalf of the Government by the Leader of the House.[109]

The Leader of the House works closely with the government whips and consults with them regarding the selection of speakers from the government parties. He or she arranges the allocation of time for debates and, where problems arise in regard to the program, determines the tactics to be followed by the Government.

An important function of the Leader of the House is to undertake or oversee negotiations (often resulting in a 'trading' of available parliamentary time) with the

107 H.R. Deb. (6.9.1977) 721.

108 For a list of Leaders of the House *see* Appendix 8.

109 For example, motions for leave of absence to Members, suspension of standing orders, alterations in the order of business, changes in days and hours of sitting, and often motions for the closure, debate management motions, the adjournment, etc.

opposition counterpart, the Manager of Opposition Business, on matters relating to the programming of the House. In respect of the programming of Federation Chamber business this function has been delegated to the Chief Government Whip.

There is a continuing process of negotiation with the Opposition on such matters as the order in which bills will be debated; arranging for cognate debates to be held on related bills; the making of, and the Opposition's reply to, ministerial statements; the amount of time to be made available for particular debates; and on any other matter that may arise during the course of proceedings that may have a bearing on the progress of government business.

It is essential for the Leader of the House to ensure that a constant liaison is maintained with the Speaker and the staff of the House in regard to the arrangements for programming government business,[110] and in regard to the wide range of procedural questions which arise from time to time. The Leader of the House must also be kept in touch with developments in the Senate that may have a bearing on the future programming of the House—for example, where it appears that the Senate may return a bill to the House with requests and/or amendments—and must also take into account the Senate's own programming requirements when planning the program for the House. The Leader of the House is assisted in carrying out these responsibilities by the Parliamentary Liaison Officer, an employee of the Department of the Prime Minister and Cabinet.

Day-to-day functions must be set against the longer term policy objectives of the Government. The principal body concerned with these longer term objectives, apart from the Cabinet itself, is the Parliamentary Business Committee of Cabinet of which the Leader of the House is a member. This committee decides the composition of the Government's legislation program for a period of sittings and undertakes a general supervisory role over the progress of legislation.

The office, combined as it is with a ministerial portfolio, can be demanding, especially during the sittings of the Parliament when the Leader of the House normally gives some priority to the functions of the office and spends a great deal of time in the Chamber itself.[111] The Manager of Government Business in the Senate, also a Minister, performs an equivalent function in the Senate.

Cessation of ministerial office

Resignation

Ministers may resign for personal reasons, or following defeat at a general election or resignation from Parliament.[112] When a Government loses office, the Prime Minister resigns and, therefore, so do Ministers.[113] A Prime Minister may resign and then be reappointed in order to form another Ministry.[114] Ministers have also resigned in order for ministerial rearrangements to be made and, while remaining members of the Executive Council, have subsequently been reappointed as Ministers to administer other or new Departments of State.[115] On occasions Prime Ministers, on questions of principle, have

110 *See also* Ch. on 'Order of business and the sitting day'.

111 Another Minister is appointed Deputy Leader of the House to assist the Leader of the House in these duties. This position receives no additional salary.

112 Sir Garfield Barwick resigned his seat to become Chief Justice of the High Court of Australia, VP 1964–66/76 (23.4.1964).

113 *See* Gazettes 98 (19.12.1949) 3831, 124A (5.12.1972) 1, and S94 (11.3.1996).

114 Gazette S290 (20.12.1977) 1.

115 Gazette S268 (5.12.1978); *see also* Gazettes 32 (22.3.1971) 2007 and 48B (12.6.1974) 1–2, but the Minister's appointments on these occasions were 'determined'.

refused to accept voluntary resignations of Ministers who have then remained in the Ministry.[116]

Convention requires that Ministers accept collective responsibility for the policies and performance of the Government (*see* page 49). If any Minister is unable to accept or publicly dissents from the opinion and policy of Cabinet, it has been said that it is his or her duty to resign.[117]

Examples of ministerial resignations, other than for personal reasons, based on individual or collective ministerial responsibility and accountability to Parliament and the people,[118] have been:

- publishing or expressing views opposed to government policy;[119]
- disagreement with government policy;[120]
- breaching Cabinet confidentiality;[121]
- misleading the Parliament;[122]
- misleading the Prime Minister, and through him the Parliament;[123]
- a Minister's department entering into contracts with a company in which the Minister held a position;[124]
- initiation of legal action against a Minister for an alleged breach of the Commonwealth Electoral Act;[125]
- private dealings with an officer of a company negotiating with a Minister's department;[126]
- disagreement with actions of the Prime Minister;[127]
- adverse reflections on a Minister's integrity in a Royal Commission report;[128]
- allegations concerning the propriety of possible conflicts between a Minister's public duty and personal and family financial interests;[129]
- perceived attempts by Cabinet to control or direct a Minister's independence and integrity as Attorney-General;[130]
- allegations that a Minister had used his official position to assist business dealings of a relative and that he had misled the Senate about the matter;[131]

116 E.g. Cases of the Hon. Peter Howson, H.R. Deb. (8.11.1967) 2775–80; the Hon. P. Nixon, H.R. Deb. (21.9.1982) 1674.

117 *Quick and Garran*, pp. 705–6.

118 As a duty to the Parliament and the people, reasons for resignation or dismissal are normally made public. *See also* Sir Robert Garran oration (1988), by the Hon. R. J. L. Hawke, for comment on the grounds justifying resignation.

119 Case of the Rt Hon. W. M. Hughes, H.R. Deb. (6.11.1935) 1306–7; *see also* case of the Hon. L. H. E. Bury in 1962 who was asked to resign by the Prime Minister, L. F. Crisp, *Australian national government*, 5th edn, p. 355.

120 Case of the Rt Hon. R. G. Menzies on 20 March 1939. *See* H.R. Deb. (20.4.1939) 18.

121 Case of the Hon. M. J. Young, H.R. Deb. (23.8.1983) 16; subsequently reappointed, H.R. Deb. (28.2.1984) 1.

122 Case of the Hon. J. Brown, S. Deb. (17.12.1987) 3390.

123 Case of the Hon. R. F. X. Connor, H.R. Deb. (14.10.1975) 2031–2, 2033, 2038.

124 Case of Senator the Hon. A. J. McLachlan, H.R. Deb. (4.11.1938) 1322; S. Deb. (3.11.1938) 1189.

125 Case of the Hon. R. V. Garland in 1976, *The Parliamentarian* LVII, 4, 1976, p. 253.

126 Case of the Hon. J. N. Lawson in 1940, G. Sawer, *Australian federal politics and law 1929–1949*, Melbourne University Press, 1963, p. 104.

127 Case of the Hon. J. M. Fraser, H.R. Deb. (9.3.1971) 679–84; case of the Hon. A. S. Peacock, H.R. Deb. (28.4.1981) 1607–14.

128 Case of the Hon. E. G. Theodore, H.R. Deb. (8.7.1930) 3749–53. Mr Theodore submitted his resignation to the Prime Minister on 5 July 1930 following certain allegations against himself contained in the report of a Royal Commission appointed by the Government of the State of Queensland.

129 Case of the Rt Hon. P. R. Lynch, *Commonwealth Record* 2, 45, 14–20 November 1977, pp. 1662–4.

130 Case of the Hon. R. J. Ellicott, H.R. Deb. (6.9.1977) 721–32.

131 Case of Senator G. F. Richardson on 19.5.1992 (the Senator had earlier been censured by the Senate on the matter). Senator Richardson later returned to the Ministry.

- allegations of irregular payments of election and electorate office funds to a business partner;[132]
- reports of the Auditor-General and a House of Representatives committee finding inadequacies in administrative procedures relating to the distribution of funds;[133]
- breach of Prime Minister's guidelines in relation to shareholdings of Ministers;[134]
- following allegations of conflict of interest with the Minister's private business affairs;[135]
- allegations of irregularities in relation to travel allowance claims;[136]
- breach of Prime Minister's Standards of ministerial ethics;[137]
- allegations of inappropriate behaviour.[138]

Ministers have also resigned following disagreements with the Prime Minister over organisational and party matters,[139] following failed[140] and successful[141] party leadership challenges, and following allegations of impropriety in matters unrelated to parliamentary or ministerial duties.[142]

Dismissal

Although there is no constitutional distinction between resignation and dismissal, reasons for ministerial dismissal would be expected to concern questions of ministerial responsibility and accountability. Resignation implies voluntary action, at least publicly, on the part of a Minister whereas dismissal implies involuntary removal or may reflect the seriousness of the situation or offence.

In 1918 the Hon. J. A. Jensen was 'removed' from the office of Minister for Trade and Customs having received unfavourable mention in the report of the Royal Commission on Navy and Defence Administration.[143]

In 1975 the Hon. C. R. Cameron had his appointment as Minister for Labor and Immigration 'determined' after he had refused to resign during a rearrangement of the Ministry. Later, on the same day, he was appointed to another portfolio.[144] Also in that year the appointment of the Hon. J. F. Cairns as Minister for the Environment was formally 'determined'.[145] Prime Minister Whitlam informed the House that this action was because of a total discrepancy between information supplied to the House by the

132 Case of the Hon. A. Griffiths on 22.1.1994. Police investigation subsequently found no evidence of criminal offences by Mr Griffiths and an inquiry concluded that, in one respect Mr Griffiths' conduct was improper, but that it would properly be open to the Prime Minister to accept the return of Mr Griffiths to the Ministry (Report by M. H. Codd, AC, July 1995).

133 Case of the Hon. R. Kelly, H.R. Deb. (28.2.1994) 1365.

134 Case of Senator the Hon. J. R. Short on 13.10.1996.

135 Case of the Hon. G. D. Prosser, H.R. Deb. (25.8.1997) 6701.

136 Case of the Hon. J. R. Sharp (claimant) and the Hon. D. F. Jull (administratively responsible), H.R. Deb. (24.9.1997) 8318–23; case of the Hon. P. J. McGauran, H.R. Deb. (24.9.1997) 8318–23 (Mr McGauran later returned to the Ministry).

137 Case of the Hon. J. Fitzgibbon on 4.6.2009 (Minister's office use for, and Minister's staff members' involvement with, relative's business meetings).

138 Case of the Hon. J. Briggs on 29.12.2015. Case of the Hon B. Joyce, Gazette C2018G00137 (26.2.2018).

139 Case of the Hon. E. L. Robinson, VP 1978–80/645 (22.2.1979), 648 (27.2.1979); H.R. Deb. (22.2.1979) 334. Mr Robinson was reappointed a few days later, H.R. Deb. (27.2.1979) 345–6. Case of the Hon. P. J. Keating (following unsuccessful leadership challenge), H.R. Deb. (3.6.1991) 4507.

140 E.g. Ministers resigned who had supported the challenger (Mr Rudd) to Prime Minister Gillard (21–22.3.2013).

141 E.g. Ministers resigned who did not support new Prime Minister Rudd (26.6.2013).

142 Case of the Rt Hon. I. McC. Sinclair, *Commonwealth Record* 4, 38, 24–30 September 1979, p. 1444; Gazette S192 (27.9.1979). Mr Sinclair was reinstated to the Ministry following acquittal from criminal charges, Gazette S180 (19.8.1980).

143 Gazette 193 (13.12.1918) 2353; VP 1917–19/411 (13.12.1918); H.R. Deb. (13.12.1918) 9296. *See* H.R. Deb. (17.12.1918) 9614–39 for Mr Jensen's comments.

144 Gazettes S104 (6.6.1975) and S106 (6.6.1975); *see also* John Kerr, *Matters for judgment*, Macmillan, Melbourne, 1978, pp. 242–3. Sir John Kerr discusses also the power of the Governor-General to dismiss Ministers and the attempt by Mr Cameron to be heard by the Governor-General before being dismissed.

145 Gazette S133 (2.7.1975).

Minister and a letter he had written earlier, and because reported activities of an officer of the Minister's staff would make it possible for that officer to make a profit from his position. The Prime Minister had received no satisfactory explanation of these matters.[146]

On 11 November 1975 the Governor-General 'determined' the appointment of the Hon. E. G. Whitlam as his Chief Adviser and Head of Government as, in view of the prevailing circumstances, he had refused to resign or advise an election. Concomitantly the appointments of all the Ministers of his Government were also 'determined'.[147]

Following the finding of the Royal Commission of Inquiry into Matters in Relation to Electoral Redistribution of Queensland, 1977, that a certain action of Senator the Rt Hon. R. G. Withers constituted 'an impropriety' within the meaning of the Letters Patent appointing the Royal Commission,[148] his appointment as Minister for Administrative Services was 'determined' and his appointment as Vice-President of the Executive Council was 'terminated'.[149]

Ministers' appointments have also been 'determined' by reason of ill health;[150] and following defeat at a general election.[151]

Leave of absence

The Hon. E. J. Ward, Minister for Labour and National Service, was 'relieved of his administrative duties' on 24 June 1943 during the inquiry of a Royal Commission into allegations by the Minister that an important document, relating to 'The Brisbane Line', was missing from the official files.[152] The report of the Royal Commission was made public on 14 July 1943 and, on the same date, the Prime Minister directed Mr Ward by letter to continue to abstain from the administration of his office until the Parliament had dealt with matters arising from the report.[153] A general election followed and Mr Ward continued on leave until his appointment to the new Ministry on 21 September 1943.[154]

On a second occasion, in 1949, Mr Ward, as Minister for Transport and Minister for External Territories, was relieved of the administration of his ministerial offices from 1 January 1949 to 24 June 1949 while a Royal Commission investigated allegations of corrupt practices in relation to the handling of timber leases in Papua New Guinea. The findings of the Royal Commission were that the charges were completely without foundation.[155]

The Hon. E. L. Robinson, Minister for Finance, was granted 'leave from ministerial duties' on 24 April 1978 while allegations against him were being examined by an inquiry into the 1977 electoral redistribution of Queensland. The report of the Royal Commission exonerated the Minister and he resumed his ministerial duties on 8 August 1978.[156]

146 H.R. Deb. (9.7.1975) 3556–7.

147 *Simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 11 November 1975*, PP 15 (1979) 1.

148 'Matters in relation to electoral redistribution, Queensland, 1977', *Report of the Royal Commission of Inquiry*, PP 263 (1978) 243.

149 Gazette S149 (8.8.1978); H.R. Deb. (15.8.1978) 16–19.

150 On 8 July 1976 the appointment of Senator the Hon. I. J. Greenwood was 'determined' because of his continuing ill health, VP 1976–77/253 (17.8.1976).

151 The appointment of the Hon. A. J. Grassby was 'determined' almost a month after his defeat at a general election. Gazette 48B (12.6.1974) 1.

152 H.R. Deb. (24.6.1943) 333; H.R. Deb. (30.6.1943) 572.

153 H.R. Deb. (15.10.1943) 673–4.

154 H.R. Deb. (23.9.1943) 18; *also* information from the 'Register of Executive Councillors' maintained by the Department of the Prime Minister and Cabinet.

155 VP 1948–49/335 (24.6.1949); *also* information from the 'Register of Executive Councillors'.

156 VP 1978–80/156 (2.5.1978); H.R. Deb. (2.5.1978) 1584; H.R. Deb. (15.8.1978) 18; PP 263 (1978); *also* information from the 'Register of Executive Councillors'.

Senator the Hon. A. Sinodinos announced that he was standing aside as Assistant Treasurer on 19 March 2014, after being called to give evidence before the NSW Independent Commission against Corruption (ICAC), for the duration of an inquiry.[157] He resigned from the position on 19 December 2014 after learning that the report of the inquiry would be delayed. Senator Sinodinos was later reappointed to the Ministry as Cabinet Secretary.[158]

Ministerial assistance

For 50 years following Federation it was not uncommon for Executive Councillors, formally or informally, to assist the Ministry without administering a Department of State. These positions have been referred to generically as that of 'Assistant Minister'.[159] At various times they were known as 'Member of the Executive Council',[160] 'Honorary Minister',[161] 'Assistant Minister',[162] 'Assistant Minister' to assist a specified Minister or with specific duties,[163] 'Minister without portfolio'[164] and 'Minister in charge of' certain responsibilities.[165] Further discussion of the role of Assistant Ministers historically is provided in earlier editions—for current practice *see* 'Assistant Ministers' at page 72.

Assistance to Ministers was also provided by Members not appointed as Executive Councillors. They were known as Parliamentary Under-Secretaries or Parliamentary Secretaries (*see below*). Members have been 'appointed' to assist Ministers while not being given any title or recognition in the House.[166] A more recent method of sharing the ministerial work-load has been the formal appointment of a Minister to assist a more senior Minister, such an appointment being in addition to the Minister's appointment to a particular portfolio.[167]

Parliamentary Secretaries

In earlier years Parliamentary Under-Secretaries and Parliamentary Secretaries (the latter term becoming preferred) were on occasions appointed to assist Ministers in the performance of their duties, but their function was never well established.[168] They were not paid a salary for the duties they performed[169] but did receive an allowance to

157 S. Deb. (19.3.2014) 1487.The Prime Minister announced that while standing aside the Senator would draw no ministerial salary or entitlements, H.R. Deb. (19.3.2014) 2453.

158 On 21.9.2015. The ICAC report (30.8.2016) did not make adverse findings against the Senator.

159 S. Encel, *Cabinet government in Australia*, 2nd edn, Melbourne University Press, Carlton, 1974, p. 176.

160 VP 1905/11 (7.7.1905); VP 1907–08/271 (11.3.1908).

161 VP 1909/13 (2.6.1909); VP 1929–31/5 (6.2.1929). In 1918 one Honorary Minister acted as Minister for the Navy and had charge of shipping and ship building and another was given complete control of recruiting, H.R. Deb. (10.4.1918) 3724. In 1934 the Hon. C. W. Marr was appointed an Honorary Minister in charge of the Royal Visit then in progress, VP 1934–37/19 (14.11.1934).

162 VP 1914–17/381 (27.10.1915), 513 (29.11.1916); VP 1932–34/436 (13.10.1932).

163 VP 1929–31/484 (5.3.1931); VP 1934–37/6 (23.10.1934); VP 1970–72/708 (10.9.1971).

164 VP 1934–37/6 (23.10.1934). In the coalition Ministry of 1909–10 Prime Minister Deakin did not administer a Department of State, VP 1909/13 (2.6.1909). There have also been appointments of Ministers without portfolios with specific duties, VP 1934–37/6 (23.10.1934), 262 (23.9.1935), 641 (11.9.1936); VP 1937–40/5 (30.11.1937), 241 (8.11.1938).

165 VP 1937–40/349 (3.5.1939); VP 1940/2 (17.4.1940).

166 VP 1940–43/279 (25.2.1942); H.R. Deb. (20.5.1942) 1455.

167 For example 'Minister for Employment and Youth Affairs and Minister Assisting the Prime Minister'. There have also been 'Ministers appointed only to assist' a specified Minister, VP 1937–40/349 (3.5.1939); VP 1940/2 (17.4.1940). In *Zoeller v. Attorney-General (Commonwealth) and others* (76 ALR 279) it was held that s. 64 did not require that only one Minister could administer each department and that it was lawful to appoint two Ministers.

168 For a summary of earlier precedents *see* pp. 108–9 of the second edition.

169 As a recognition of their duties the Nicholas Committee on the salaries and allowances of Members of Parliament recommended 'Subject to the proper interpretation of Section 44 of the Constitution' that an under-secretary or an assistant minister be paid an additional salary of £500 per annum. 'Salaries and Allowances of Members of the National Parliament', *Report of Committee of Enquiry*, 1952, p. 19 (not made a Parliamentary Paper).

reimburse them for expenses incurred.[170] They did not have a 'ministerial' role in Chamber proceedings and did not answer questions in the House.[171] The Parliamentary Secretaries Act 1980 provided, for the first time, a clear authority for appointment, by the Prime Minister, of Members or Senators to become Parliamentary Secretaries to Ministers.[172]

In May 1990 the Government announced its intention of reinstituting, on a systematic basis, the institution of Parliamentary Secretaries. In contrast to previous practice, the new Parliamentary Secretaries were to have ministerial responsibilities in the Chamber. A resolution of the House gave authority to this innovation.[173] The resolution was amended the following year to remove a qualification relating to bills,[174] leaving Parliamentary Secretaries with the ability to take the role of Ministers in the Chamber in all respects (other than that of being able to answer questions on portfolio matters), including being in charge of the business of the House. The provisions of this resolution are now integrated into the standing orders.[175]

In 1992 the Speaker issued guidelines on the role of Parliamentary Secretaries in relation to the procedures of the House and its committees.[176] The guidelines may be summarised by saying that Parliamentary Secretaries may substitute for Ministers in the Chamber in all respects (apart from answering questions), and are subject to the same constraints—for example, Parliamentary Secretaries may not ask questions and are prevented from participating in Private Members' business[177] and Members' 90 second statements. In relation to committees the guidelines stated that, as a general rule, Parliamentary Secretaries should not be members of a committee of inquiry, but recognise that there may be occasions when special reasons make a strong case for them to serve. However, standing orders now provide that any Member appointed as a Minister (by definition including Parliamentary Secretary or Assistant Minister) immediately ceases to be a member of all committees.[178]

Parliamentary Secretaries sit in the row of seats immediately behind the ministerial front bench. They address the House from the despatch box when in charge of the business before the House on behalf of a Minister, and from their places at other times.

Four Parliamentary Secretaries were appointed in 1990. Their number increased steadily and since 2000 there has been a legislated maximum of 12 (*see below*). In contrast to previous practice, since 1990 Parliamentary Secretaries have been members of the Executive Council. A Parliamentary Secretary may be appointed to assist more than one Minister.

For many years, as was formerly the case with Assistant Ministers, only strictly limited payments could be made to Parliamentary Secretaries because of the constitutional limitations relating to offices of profit under the Crown. These restrictions were circumvented when the *Ministers of State Act 1952* was amended in 2000 to increase the

170 H.R. Deb. (27.8.1952) 619. Outside Australia on ministerial business all expenses were an official charge, H.R. Deb. (26–27.10.1961) 2647.

171 *But see* H.R. Deb. (12.7.1922) 324; H.R. Deb. (5.12.1934) 786; H.R. Deb. (29.11.1934) 650.

172 *Parliamentary Secretaries Act 1980*.

173 H.R. Deb. (9.5.1990) 154.

174 H.R. Deb. (16.10.1991) 2045. The resolution was later repassed with continuing effect, VP 1993–96/25 (5.5.1993).

175 S.O.s 2, 98(b) and 99.

176 H.R. Deb. (26.3.1992) 1247.

177 The restriction is interpreted as relating to sponsorship of Private Members' business. Parliamentary Secretaries and Ministers are not prevented from taking part in debate on a private Members' motion or bill.

178 S.O. 229(d) (since 2016).

number of Ministers appointed to administer a department of State by 12 additional positions, to be designated by the Governor-General as Parliamentary Secretary.[179] Although Parliamentary Secretaries were now technically 'Ministers of State' for constitutional purposes, their functions of assisting Ministers inside and outside the House were not changed.

Assistant Ministers

Assistant Ministers are technically Parliamentary Secretaries and their role is as described above under the heading 'Parliamentary Secretaries'. Any reference elsewhere in this text to Parliamentary Secretary applies equally to Assistant Minister. (For background on the role of Assistant Ministers historically *see* 'Ministerial assistance' at page 70, and earlier editions.)

In January 2007 Prime Minister Howard announced the appointment of two senior Parliamentary Secretaries to be designated Assistant Ministers. As far as the procedures of the House were concerned the new Assistant Ministers had exactly the same rights and responsibilities as Parliamentary Secretaries and standing orders were amended to make this clear.[180]

In September 2015 Prime Minister Turnbull's ministry list renamed all 12 Parliamentary Secretary positions as Assistant Minister. Despite their new titles they remained designated as Parliamentary Secretaries under the *Ministers of State Act 1952*.[181]

Ministerial salaries

All Ministers receive a salary in addition to their salary and allowance as a Member of Parliament.[182] Ministers are not parliamentary office holders (*see* page 53) but holders of (ministerial) office under the Crown. Authority is made in the Executive Government provisions (Part II) of the Constitution for salaries to be paid to Ministers of State in the following terms:

> There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.[183]

The *Parliamentary Business Resources Act 2017* sets a sum of money, in lieu of the sum stated in the Constitution, for the payment of ministerial salaries.[184] Increases in ministerial salaries can be made by regulation under the Act[185] to increase the annual sum appropriated. However, the manner in which the total appropriated is apportioned is a matter for the Government. The Remuneration Tribunal is required to report to the Government annually to make recommendations on the additional salary payable to Ministers.[186]

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179 *Ministers of State and Other Legislation Amendment Act 2000*. The Act repealed the Parliamentary Secretaries Act. The validity of these appointments was upheld by the High Court in *Re Patterson Ex Parte Taylor* [2001] HCA 51 (2001); 182 ALR 657.

180 VP 2004–07/1702–3 (13.2.2007).

181 H.R. Deb. (12.10.2015) 10751–3. Initially, the shadow ministry continued to use the title of shadow parliamentary secretary. The title shadow assistant minister was used from the start of the 45th Parliament.

182 *See* Ch. on 'Members'.

183 Constitution, s. 66.

184 *Parliamentary Business Resources Act 2017,* s. 55.

185 *Parliamentary Business Resources Act 2017,* s. 61

186 *Parliamentary Business Resources Act 2017,* s. 44.

The amount of additional salary[187] varies according to each Minister's level of responsibility, in the following descending scale:

Prime Minister
Deputy Prime Minister
Treasurer, Leader of the Government in the Senate
Leader of the House
Other Ministers in Cabinet
Other Ministers
Parliamentary Secretaries (including Assistant Ministers).[188]

Office of profit

The Constitution disqualifies any person who 'holds any office of profit under the Crown' from being chosen or sitting as a Member of Parliament.[189] The Constitution goes on to provide that this restriction does not apply 'to the office of any of the Queen's Ministers of State for the Commonwealth'[190] who of necessity sit as Members of Parliament. There is therefore no constitutional inconsistency between this section and the later section which authorises the payment of salaries to Ministers of State.[191]

No exemption exists, and no payment of salary can be authorised, for a Member of Parliament, who is not a Minister, performing the duties of Assistant Minister or similarly termed appointee, whether sworn of the Federal Executive Council or not. To be a Minister, and therefore constitutionally eligible to receive a ministerial salary of office, a Member, by definition, must administer a Department of State of the Commonwealth.[192] Parliamentary Secretaries have been able to receive salaries since they became legally defined as Ministers of State in 2000 (*see* page 71).

Personal or pecuniary interest and related matters

Declarations of interests

In the House of Representatives the treatment of the personal and pecuniary interests of Members of Parliament is governed by precedent and practice established in accordance with sections 44 and 45 of the Constitution, standing orders 134 and 231 and resolutions of the House.[193] The question of the interests of Ministers is of greater importance than that of other Members, having regard to the paramount place of Ministers in the decision-making process. The question has arisen from time to time in the House of Representatives and, on occasions, the Prime Minister of the day has stated the general understanding which the Ministers in his Government have had in the matter. (For detail on earlier precedents in this area *see* pages 111–2 of the second edition.)

Ministers are required to make full declarations of their own private interests and those of their immediate families as far as they are aware of them. In 1983 the Hawke Government instigated the practice of periodically tabling copies of Ministers' statements

187 Expressed as a percentage of a parliamentarian's base salary (in 2016 ranging from 160% for the Prime Minister to 25% for a Parliamentary Secretary/Assistant Minister).

188 The Manager of Government Business in the Senate receives an additional amount which varies depending on whether he or she is a Cabinet Minister, other Minister, or a Parliamentary Secretary.

189 Constitution, s. 44(iv).

190 Constitution, s. 44.

191 Constitution, s. 66.

192 For fuller discussion of this issue *see* Senate Standing Committee on Constitutional and Legal Affairs, *The constitutional qualifications of Members of Parliament*. PP 131 (1981) Ch. 6.

193 *See* Ch. on 'Members' for discussion generally.

of their interests, with more detailed information including the actual values of such interests being retained by the Prime Minister on a confidential basis.[194]

Following the adoption by the House in 1984 of standing orders and resolutions relating to the registration and declaration of Members' interests,[195] details of the interests of Ministers from the House of Representatives have been included with those of other Members in the Register of Members' Interests presented at the commencement of each Parliament.

As well as the requirement for the formal registration of their interests, Ministers attending meetings of the Ministry, Cabinet or Cabinet committees are required to declare any private interests of which they are aware. This can include pecuniary interests, held by them or by members of their immediate family, which may give rise to conflict with their public duties. Following such a declaration, which is recorded by Cabinet staff, it is open to the Chair of the meeting to excuse the Minister from the discussion or to agree to his or her participation.[196]

Ministerial standards

Standards expected of Ministers have been made more explicit in recent years. In June 1995 Speaker Martin, on behalf of an all-party working group, presented a draft framework of ethical principles for Members and Senators (*see* Chapter on 'Members') and a draft framework of ethical principles for Ministers and Presiding Officers.[197]

At the commencement of the 38th Parliament in 1996 Prime Minister Howard presented a ministerial guide, which set out practices and principles to be followed by members of his administration.[198] The section of the guide covering ministerial conduct stressed the importance of Ministers avoiding any appearance of using public office for private purposes, and imposed specific prohibitions or restrictions on engaging in professional practice, directorships of and shareholdings in companies, appointments of relatives or associates, and the acceptance of benefits or gifts.

In 2007 newly elected Prime Minister Rudd issued standards of ministerial ethics to replace the section of his predecessor's guide covering ministerial conduct. The standards imposed stricter requirements, and included additional restrictions on post-ministerial employment and on contact with lobbyists. The standards were reissued by Prime Minister Abbott in 2013 as a statement of ministerial standards, containing expanded detail on shareholdings and on contact with lobbyists, and by Prime Minister Turnbull in 2018, adding a section stating that Ministers must not engage in sexual relations with their staff. The standards state that Ministers will be required to stand aside if charged with a criminal offence, or if the Prime Minister regards their conduct as constituting a prima facie breach of the standards. Ministers will be required to resign if convicted of a criminal offence, and may be required to resign if the Prime Minister is satisfied that they have breached or failed to comply with the standards in a substantive and material manner.[199]

194 H.R. Deb. (22.9.1983) 1172–4.

195 S*ee* 'Pecuniary interest' in Chapter on 'Members'.

196 Department of the Prime Minister and Cabinet, *Cabinet Handbook,* 9th edn, 2016, p. 17.

197 VP 1993–96/2203 (21.6.1995).

198 *A guide on key elements of ministerial responsibility*, Prime Minister, April 1996; H.R. Deb. (30.4.1996) 14. Reissued in slightly amended form December 1998; H.R. Deb. (9.2.1999) 2196.

199 Australian Government, *Standards of ministerial ethics,* December 2007 (reissued by Prime Minister Gillard in 2010). Australian Government, *Statement of ministerial standards,* February 2018.

Standards for ministerial staff

In 2008 the Government issued a code of conduct for ministerial staff, which was reissued in 2013 as a statement of standards. This sets out standards of behaviour expected from ministerial employees employed under the *Members of Parliament (Staff) Act 1984*, including ministerial advisers, Ministers' electorate office staff, and consultants. It also covers the relationship between ministerial advisers and public servants.[200]

Register and code of conduct for lobbyists

Since 2008 lobbyists seeking contact with government representatives have been required to be registered on a publicly accessible Register of Lobbyists, and to agree to comply with the lobbying code of conduct.[201]

Foreign Influence Transparency Scheme

In December 2017 a bill was introduced to establish a scheme for the registration of persons who undertake certain activities on behalf of foreign governments, foreign businesses and other foreign principals. Persons required to register included recent Cabinet Ministers, recent Ministers or members of Parliament, and recent holders of senior Commonwealth positions.[202]

CABINET

The Cabinet is the focal point of the decision-making process of government. It is composed of either the full Ministry, or a specified group of Ministers selected by the Prime Minister.[203] The latter has been the practice of non-Labor Governments since 1956 and Labor Governments since 1983. This practice resembles more closely the model of Cabinet Government developed in the United Kingdom. The group of Ministers known as the Cabinet is not explicitly provided for in the Constitution nor by any other law. The relationship between Cabinet and Parliament is of no greater or lesser significance than the relationship between the Ministry as a whole and Parliament.[204] In a purely parliamentary context the existence of a Cabinet is of little procedural consequence. It is in basic terms an administrative mechanism to facilitate the decision-making process of the Executive Government.

The Australian Cabinet system between 1956 and 1972 and since 1975 has followed the British practice of including only selected Ministers in the Cabinet. The periods of government when the Cabinet was composed of the full Ministry were due in part to its relatively small size (11 in number in 1941), but may also have been influenced by the provision of the Constitution which determines that a Federal Executive Council, which constitutionally and in practice is composed of all Ministers of State, is to advise the Governor-General.

A Cabinet is an administrative arrangement for government decision-making. In constitutional terms certain decisions of government may be made by Cabinet but can only be formally implemented via the Federal Executive Council (*see* page 77).

Quick and Garran describes the Cabinet as:

200 Department of the Special Minister of State, *Statement of standards for ministerial staff*, 2013.

201 *See* <http://lobbyists.pmc.gov.au> and Department of the Prime Minister and Cabinet, *Lobbying code of conduct*, 2013.

202 Foreign Influence Transparency Scheme Bill 2017.

203 Originally referred to as an 'Inner Cabinet'.

204 On a point of terminology 'Cabinet government' in parliamentary terms has been equated with 'responsible government'; 'Cabinet solidarity' and 'collective Cabinet responsibility' with 'collective ministerial responsibility'.

> . . . an informal body having no definite legal status; it is in fact an institution unknown to the law; it exists by custom alone, and yet is the dominant force in the Executive Government of every British country . . .
>
> There are thus two commonly recognized qualifications necessary for ministerial appointment, (1) membership of the Privy or Executive Council, (2) membership of Parliament. From the point of view of the first qualification the ministry may be described as a select committee of the Privy or Executive Council; the remaining members of that body not being summoned to attend either the meetings of committees or the ordinary meetings of the Council. From the point of view of the second qualification the ministry may be called a Parliamentary committee, whose composition and policy is determined by the party commanding a majority in the national chamber.[205]

Quick and Garran also states some of the time-honoured and pre-eminent features of Cabinet organisation and some of the rules of Cabinet discipline and government:

> The proceedings of the Cabinet are conducted in secret and apart from the Crown. The deliberations of the Executive Council are presided over by the representative of the Crown. Resolutions and matters of administrative policy requiring the concurrence of the Crown, decided at meetings of the Cabinet, are formally and officially submitted to the Executive Council, where they are recorded and confirmed. The principle of the corporate unity and solidarity of the Cabinet requires that the Cabinet should have one harmonious policy, both in administration and in legislation; that the advice tendered by the Cabinet to the Crown should be unanimous and consistent; that the Cabinet should stand or fall together.
>
> The Cabinet as a whole is responsible for the advice and conduct of each of its members. If any member of the Cabinet seriously dissents from the opinion and policy approved by the majority of his colleagues it is his duty as a man of honour to resign.
>
> Advice is generally communicated to the Crown by the Prime Minister, either personally or by Cabinet minute. Through the Prime Minister the Cabinet speaks with united voice.[206]

This concise statement of principles attaching to Cabinet organisation is regarded as having continuing validity, even though the rules have from time to time been broken or qualified under exceptional political circumstances.[207]

Select Cabinets

On a number of occasions Prime Ministers have organised their Ministry to form small Cabinet groups composed of selected Ministers. Following the reconstruction of the Lyons Ministry on 7 November 1938, Prime Minister Lyons reorganised Cabinet to form an 'inner group' of Ministers to examine and formulate policy prior to submission to the full Cabinet.[208] This scheme ceased with Lyons' death on 7 April 1939 but later found an equivalent in the War Cabinet formed on 15 September 1939 by Prime Minister Menzies.

As noted by Sawer, the War Cabinet, which originally consisted of six Ministers:

> . . . was the inverse of the Lyons scheme for an 'inner group', because full Cabinet remained responsible for general policy and the function of War Cabinet was detail and execution; however, in practice War Cabinet tended to become the first formulator of general policies having a relation to the war, which came to mean most issues of political significance. The War Cabinet developed secretarial and recording procedures which profoundly influenced the subsequent development of federal Cabinet as a whole.[209]

The War Cabinet was continued by successive Governments until January 1946 when the powers vested in it reverted to the Cabinet composed of the full Ministry. Other forms of Cabinet committee organisation have occurred to facilitate the work of Cabinet[210]

205 *Quick and Garran*, pp. 704–5.

206 *Quick and Garran*, pp. 705–6.

207 For a detailed exposition of the role, functioning and organisation of Cabinet the reader is referred to Jennings, *Cabinet government*; Crisp, *Australian national government*; Encel, *Cabinet government in Australia*.

208 H.R. Deb. (8.11.1938) 1323 ff.

209 Sawer, *Australian federal politics and law 1929–1949*, p. 103.

210 L. F. Crisp, *Australian national government*, 5th edn, pp. 374–83.

including an 'Economic Cabinet' instituted in 1939. World War II also produced an Advisory War Council which included senior Ministers and senior opposition Members.

The Inner Cabinet system was first introduced informally by Prime Minister Menzies in 1954, primarily in the form of a Cabinet committee structure.[211] The present practice, whereby the Cabinet is comprised of some but not all Ministers, was formally adopted on 11 January 1956 and has characterised all Governments since, with the exception of the Whitlam Government when all Ministers comprised the Cabinet, thereby reverting to the pre-1956 practice.

Subsequently, the size of Cabinet has ranged between 11 and 22 Ministers, while the Ministry has ranged from 22 to 30 Ministers.

In 1976 the Remuneration Tribunal reinstated the pre-1973 practice of dividing the Ministry, for the purposes of salary of office, into two groups.[212] During the period of office of the Labor Government 1983–96, the practice again reverted to Cabinet and non-Cabinet Ministers receiving equal salaries.[213] The two-tier system was reinstated following the change of government in 1996.

Under the Inner Cabinet system, a Minister not in Cabinet may be called to Cabinet meetings when affairs relating to his or her own department are under discussion. The work of Cabinet under this system is facilitated by the formation of various Cabinet committees on which Ministers not in Cabinet may serve.

Under the two-tier ministerial arrangements introduced in 1987 (*see* page 59) each senior or 'portfolio' Minister was a member of the Cabinet. The system was modified in 1996 by the Howard coalition Government; two portfolio Ministers (including the Attorney-General) were not members of Cabinet and one portfolio had two Cabinet Ministers. In the second and later Howard Ministries, and the subsequent Rudd Labor Ministry (2007), all portfolio Ministers were Cabinet Ministers.[214] In the second Gillard Ministry, where the Cabinet had expanded to 22 Ministers, several portfolios had two Cabinet Ministers and several Cabinet Ministers had responsibilities in more than one portfolio.

FEDERAL EXECUTIVE COUNCIL

The Federal Executive Council was established by the Constitution to perform similar functions in Australia to those performed by the Privy Council in the United Kingdom, that is, to advise the Crown.[215] It is the formal, constitutional and legal body responsible for advising the Governor-General (as distinct from Cabinet). The Executive Council is the legal means of ratifying executive acts (as distinct from prerogative acts) by or on behalf of the Governor-General. Any reference to the Governor-General in Council in the Constitution or elsewhere refers to the Governor-General acting on and with the advice of the Executive Council. The Acts Interpretation Act provides that where the Governor-General is referred to in an Act, the reference shall, unless the contrary intention appears, be read as referring to the Governor-General acting with the advice of the Executive Council.[216] The Governor-General's advice, however, does not come from the total

211 Announced outside the House; *but see* H.R. Deb. (10.8.1954) 116.
212 Remuneration Tribunal, *Salaries payable to Ministers of State*, PP 221 (1976) 3.
213 Remuneration Tribunal, *Salaries payable to Ministers of State*, PP 52 (1984) 13.
214 One or two portfolios had more than one Cabinet Minister.
215 *Quick and Garran*, pp. 704–5.
216 *Acts Interpretation Act 1901*, s. 16A.

membership of the Executive Council, but is limited to that group of members who are currently Ministers or Parliamentary Secretaries, the Chief Adviser being the Prime Minister.

Members of the Federal Executive Council are chosen, summoned and sworn in by the Governor-General[217] and hold office during the Governor-General's pleasure which, generally, is for life. An exception was Senator Sheil who was appointed to the Executive Council on 20 December 1977 without portfolio but following certain public statements on policy matters had his appointment terminated on 22 December 1977.[218] There have been instances of Honorary Ministers and Assistant Ministers being appointed to the Executive Council. Parliamentary Secretaries have been appointed since 1990. At any one time there are many Executive Councillors no longer holding executive office and in practice the only Executive Councillors who are summoned to Council meetings are those who are, currently, Ministers of State or Parliamentary Secretaries. Members of the Executive Council may use the title 'Honourable' while they are Executive Councillors, that is, usually for life.

There is nothing in the Constitution which determines the modus operandi of the Executive Council, which is for the Council itself to decide. In practice formal processes have been established. Two Ministers or Parliamentary Secretaries, in addition to the person presiding, are rostered to attend its meetings, which are held regularly throughout the year (normally fortnightly in Government House, Canberra). The matters dealt with are recommendations by Ministers, for the approval of the Governor-General in Council, that something be done—for example, that a regulation be made, a treaty be ratified, or a person be appointed to a position. The processes involved in bringing each matter before the Council ensure that it is properly documented and that the action has legal authority.[219]

Meetings of the Executive Council are presided over by the Governor-General or, if the Governor-General is unable to be present, by a Deputy appointed by the Governor-General.[220] The Deputy is usually the Vice-President of the Executive Council or, in the absence of the Vice-President, the senior member of the Executive Council present at the meeting may preside if so authorised.[221] This delegation of authority is limited to presiding over meetings and signifying approval of the proceedings. The delegation does not carry with it authority to make appointments and perform other acts on behalf of the Governor-General; it is limited to signifying to the Governor-General the approval of the Council to the recommendation (minute) placed before the Council.[222]

The provisions of the Constitution applying to the Governor-General also apply to any person appointed by the Queen to administer the Government of the Commonwealth.[223] Hence, in the absence of the Governor-General, the Administrator presides over meetings of the Executive Council and signs Executive Council Minutes.

217 *See* generally Constitution and particularly ss. 62–4. Having been sworn (once) as Executive Councillor, each Minister or Parliamentary Secretary also takes the oath or affirmation of office for each specific ministerial appointment. The wording of the oath or affirmation is not prescribed in either case—for history *see* Deirdre McKeown, *Oaths and affirmations made by the executive and members of the federal parliament since 1901*, Parliamentary Library research paper, 2013–14.

218 Gazettes S290 (20.12.1977) 1 and S295 (22.12.1977).

219 The secretariat of the Executive Council is located in the Department of the Prime Minister and Cabinet. For more detail *see* Department of the Prime Minister and Cabinet, *Federal Executive Council Handbook*, Canberra, 2015.

220 Constitution, s. 126.

221 Gazette S184 (24.7.1987) 6.

222 Advice from Attorney-General's Department, dated 8 January 1948, relating to execution of instruments by the Governor-General; *and see* G. Sawer, *Federation under strain*, pp. 100–2.

223 Constitution, s. 4.

THE (OFFICIAL) OPPOSITION

The Opposition is the party or group which has the greatest number of non-government Members in the House of Representatives. It is organised as a body with the officially recognised function of opposing the Government. The party (or sometimes coalition of parties) is recognised as the 'alternative Government'—that is, the body which would form the Government, with its leader as Prime Minister, if the existing Government were to lose the confidence of the House or the people. The concept of 'alternative Government' is very relevant in Australia. Every Opposition can realistically hope, eventually, to form government, and every Government knows that, sooner or later, it is likely to again be in opposition.

The Opposition is an important component in the structure of the House and is considered to be essential for the proper working of democratic government and the parliamentary process in the Westminster system.

The recognition of 'Her Majesty's Opposition' in Britain is believed to have originated in the early 19th century.[224] Essentially the term is based on the constitutional convention that, in the parliamentary system, the Crown recognises that Her Majesty's Government exists, for the time being, as the preference of the House over Her Majesty's Opposition.

Composition

In the period of the 2nd and 3rd Parliaments between 1904 and 1910, the Governor-General looked to the non-government groups (parties) for the formation of the Government on five separate occasions.[225] During the circumstances of the frequent rearrangement of alliances in this period, the acknowledged concept of the Leader of the Opposition being commissioned to form the Government did not necessarily prevail because he may have lacked sufficient support to maintain Government.[226]

In more recent times with the development and stability of the party structure, the division between Government and Opposition has become clear and constant. The nature of Australia's party system and the existing electoral system has historically produced an almost total absence of representation of minor parties in the House of Representatives.

On 7 October 1941 following the defeat on a vote and the consequent resignation of the Fadden (Country Party–United Australia Party) Government, the Governor-General called on Leader of the Opposition Curtin to form a Government. On 11 November 1975 following the dismissal of the Whitlam (Australian Labor Party) Government, the Governor-General asked Leader of the Opposition Fraser to form a 'caretaker' Government.

When the Opposition consists of more than one party opposed to the Government, and the parties prefer to remain distinct, the single party having the largest number of members is recognised as the 'official Opposition'. If the official Opposition is not clear by virtue of numbers, it is for the Speaker to decide which group shall be so called, and who will be recognised by the Chair as the Leader of the Opposition.

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224 N. Wilding & P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 509. The term 'Her Majesty's Loyal Opposition' was also used.

225 (i) On 27 April 1904 Watson (ALP) was commissioned in place of Deakin (Protectionist), (ii) on 18 August 1904 Reid (Free Trade–Protectionist) was commissioned in place of Watson, (iii) on 5 July 1905 Deakin was commissioned in place of Reid, (iv) on 13 November 1908 Fisher (ALP) was commissioned in place of Deakin, and (v) on 2 June 1909 Deakin (Fusion) was commissioned in place of Fisher.

226 On 27 April 1904 Reid (Free Trade) was Leader of the Opposition; on 5 July 1905 Watson (ALP) was Leader; on 13 November 1908 Reid was Leader; *and see* Appendix 4.

During the period of the Australian Labor Party Government between 1972 and 1975 the Opposition was composed of the Liberal Party and the National Country Party. During the 28th Parliament (1973 and 1974), the Leader and the Deputy Leader of the Opposition together with the Shadow Ministry came from the Liberal Party. In the 29th Parliament (1974 and 1975), a 'coalition' Opposition was formed and, while the offices of Leader and Deputy Leader of the Opposition remained with the Liberal Party, the Shadow Ministry was composed of Members from both parties. Following the return of the Labor Party Government in 1983, the Liberal Party–National Party coalition Opposition again shared shadow ministry positions.[227] This also occurred following the election of the Labor Government in 2007.

Leader of the Opposition

The House took no official cognisance in its records of the appointment of a Leader of the Opposition[228] prior to 1920, even though the role of the office was firmly established. The position had no constitutional base and was not recognised by the standing orders.

In 1920 the office was statutorily recognised for the purposes of the payment of an allowance.[229] Since then the status of the office has risen as reflected by the recognition of the duties of the office by way of remuneration[230] and resources, and the Leader of the Opposition has been remunerated at a rate above that for the majority of Ministers. The Leader of the Opposition is placed tenth in the Commonwealth Table of Precedence.

It was not until 1931 that the office was recognised in the standing orders, when the Leader of the Opposition was granted special rights with regard to speech time limits in specific instances.[231] The Deputy Leader of the Opposition is also recognised in the standing orders with ex officio membership of the Committee of Privileges and Members' Interests.[232]

It is the practice of the House for the Leader of the Opposition and the Deputy Leader to receive a degree of special latitude or preference from the Chair by virtue of their offices with respect to:

- receiving the call of the Chair in preference over other non-government Members, particularly in asking questions without notice; and
- indulgence of the Chair in order to explain or clarify matters before the House or to make a personal explanation.

The special role played by the Leader of the Opposition has been recognised in the following comments made in reports by independent inquiries into the parliamentary salary structure:

> A Leader of the Opposition is an essential figure in parliamentary government. In most English-speaking countries he receives a salary in addition to his salary as a private member. In Canada his salary is the same as that of a Cabinet Minister. His duties are arduous, for he has to be prepared to discuss every Bill introduced by the Government, subject to his right of delegation, and to do this he has not the power to call on departmental officers for information or assistance. His responsibility is not equal to that of the Prime Minister but it is a responsibility to his Party, to the country which he

227 Except for a period of separation prior to the 1987 election, from 29.4.87.

228 There is only one Leader of the Opposition. The Senate Leader is 'Leader of the Opposition in the Senate'. For a list of Leaders *see* Appendix 4.

229 *Parliamentary Allowances Act 1920*.

230 Particularly as a result of an enquiry into the salaries and allowances of Members of the National Parliament in 1952 (and later inquiries). This inquiry also resulted in special remuneration for the Deputy Leader of the Opposition for the first time.

231 VP 1929–31/587–90 (23.4.1931); S.O. 1.

232 S.O. 216.

> informs and which he aspires to lead. His entertainment expenses are less but are by no means negligible, for overseas visitors frequently wish to interview one whom they regard as the possible head of a government.[233]
>
> An effective Opposition is essential for the proper functioning of a democracy. Its Leader has possibly the most difficult job in the Parliament. A Minister must, of course, be thoroughly conversant with the details of Bills or other matters which affect his own department, but the advice and resources of the departmental staff are constantly at his call. The Leader of the Opposition has to make himself master of all the business which comes before the House (not merely that of one or two departments); he has to do this at times at short notice and under constant pressure; and he gets no help from permanent officials. At all times he is the spokesman for those who are critical of or opposed to the Government, and he must be unceasingly vigilant and active. He and the Prime Minister should be the most powerful agents in guiding and forming public opinion on issues of policy.[234]

Shadow Ministry

The Leader of the Opposition leads a group of Members, elected by the party or nominated by the leader, which is known as the Opposition Executive or the Shadow Ministry or the Shadow Cabinet. In past years the Opposition Executive was less than the number of Ministers but at the beginning of the 35th Parliament consisted of a total of 30 members in both Houses, making the Shadow Ministry the same size as the Ministry. Since then the Shadow Ministry has had at times more members than the Ministry itself. After the routine appointment of Parliamentary Secretaries in 1990 the opposition parties designated certain of their members 'parliamentary secretaries' to shadow ministers. Again, at times there have been more shadow parliamentary secretaries than Parliamentary Secretaries. From the start of the 45th Parliament the title shadow assistant minister was used instead of shadow parliamentary secretary.

Each shadow minister covers the responsibilities of one or possibly more Ministers or areas of administration and acts as the opposition spokesperson in respect of his or her designated areas. As potential Ministers, shadow ministers attract closer public and media scrutiny than other private Members. Because of the politically sensitive nature of their positions, for example, allegations of impropriety may cause them to stand down from the Shadow Ministry while matters are under investigation.

As with Cabinet, which is assisted by a system of standing committees and government members' party committees, the Opposition Executive has a system of opposition members' committees to develop attitudes to government policy and to develop alternative policies for presentation to the Parliament.

A senior and experienced member of the Opposition Executive is appointed Manager of Opposition Business with the responsibility, in consultation with his or her leaders and colleagues, of regularly consulting and negotiating with the Leader of the House in relation to such matters as the allocation of time for debates, and the order and priority of consideration of items of business (*see* page 65). In recent Parliaments a Deputy Manager of Opposition Business has also been appointed.

The positions of Manager of Opposition Business and shadow minister attract additional remuneration[235] but shadow parliamentary secretary, or shadow assistant minister, does not.

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233 *Enquiry into the Salaries and Allowances of Members of the National Parliament 1952*, p. 18 (not made a Parliamentary Paper).
234 *Inquiry into the Salaries and Allowances of Members of the Commonwealth Parliament*, PP 15 (1959–60) 31.
235 Ranging from 27.5% to 20% of base salary.

Role of the Opposition

A primary function of the whole House, through its role of scrutiny and criticism, is to exercise an oversight of the actions of the Government. In modern times the Opposition has a critical role in this and, thus, the functions of the Opposition have become identified and linked with the role and more important functions of the House. These functions include:

- unmaking the Government—the Opposition, by definition, seeks to defeat a Government or cause a Government to resign. Theoretically, it could be said that an Opposition endeavours to achieve this by persuading government supporters to accept its viewpoint but, in reality, it looks to a general election for defeat of the Government and endeavours to achieve this by public persuasion;
- scrutiny of, criticism of, and suggestion of improvements to, legislation and financial proposals;
- examination of expenditure and public accounts;
- seeking information on and clarification of government policy (principally questions in writing and without notice);
- surveillance, appraisal and criticism of government administration;
- ventilating grievances; and
- examination of delegated legislation.

While all private Members are to some extent involved in such functions as petitions, grievances, questions, and participation in committee work, the effective performance of the functions listed above is largely dependent on a vigilant, industrious and organised Opposition. Members supporting the Government are able to play an effective part in this parliamentary process but the Opposition may be expected to do so and to articulate, for example, the views of various groups within the community.

While government business dominates the agenda and the time of the House, the Opposition has the opportunity to express its views on all issues debated. The procedures of the House are based on the unquestioned premise that government and non-government Members have a claim to equal speaking time in debates and that the call of the chair to speak (or to ask questions) should alternate between government and non-government Members. In addition, the Opposition is not without opportunity to initiate debate on subjects of its own choosing. Most discussions of matters of public importance are on topics proposed by the Opposition. Opposition Members may use the private Members' business procedures and the other opportunities to raise matters which are open to all private Members. The Opposition is also able to move censure motions or to move to suspend standing orders to debate matters.[236] Outside the Chamber of the House, opposition Members serve on all committees and their views are taken account of in the committees' reports.[237]

Fair, democratic and efficient parliamentary government calls for:

- the provision of reasonable parliamentary time for opposition purposes;
- the protection of the rights of minorities in the House by the Speaker;

236 That censure motions are invariably unsuccessful, and opposition attempts to suspend standing orders often so, is beside the point—the matter of concern is either raised or publicly highlighted as one that a Government is reluctant to debate.

237 If not, they have the opportunity to add dissenting reports.

- the provision of information and resources[238] (to reduce the wide gap in information availability between Government and Opposition); and
- the provision of procedural advice and drafting assistance when necessary.

There are two points relating to the role of the Opposition which require qualification. First, there is normally a good deal of co-operation between the parties in dealing with business, and in arranging the program of the House, so that good use is made of the time available. Secondly, its role is not only one of criticism but, at times, it also offers agreement, assistance or improvements to the actions and policies of the Government in the interests of the people and the nation.[239] Nevertheless, despite this very necessary qualification, there is more than a grain of truth in the proposition that 'We rely for good government, not on the wisdom and probity of the House, but on the adversary relationship between the Government and the Opposition'.[240]

238 Staff assistance to the Leader of the Opposition, provided at government expense, has increased especially since the period of the ALP Government of 1974–75.

239 This is especially so in times of national emergency: in World War II senior opposition members had close involvement with the conduct of the war through their membership of the Advisory War Council.

240 J. Stewart, *The Canadian House of Commons*, Montreal, McGill–Queen's University Press, 1977, p. 168.

3

Elections and the electoral system

THE FIRST ELECTION

The Constitution made specific provision for the first general election of the Commonwealth Parliament. The first Parliament was to be summoned to meet not later than six months after the establishment of the Commonwealth,[1] which occurred on 1 January 1901. The first general election was held on 29 and 30 March 1901,[2] and the Parliament was summoned and first met on 9 May 1901. Following the enactment of the Constitution on 9 July 1900 and before the election for the first Parliament,[3] opportunity was given to the State Parliaments under the Constitution to make laws determining the divisions in each State for which Members of the House were to be chosen, and the number of Members to be chosen for each division up to the limits imposed by the Constitution. If a State failed to make a determination, the State was to be considered to be one electorate.[4]

The Constitution made further provision that, until the Parliament otherwise provided:

- the qualification of electors of Members of the House of Representatives be that which was prescribed by State laws;[5] and
- the laws in force in each State relating to elections apply to elections of Members of the House of Representatives;[6]

being those laws applying to the more numerous House of Parliament of the State.

The first general election was conducted on the basis of State laws.[7] The number of Members elected was 75, which was consistent with that prescribed by the Constitution.[8] A conference of statisticians held early in 1900 determined the population of Australia as at the end of 1899 and initial representation was based on these statistics.

THE COMMONWEALTH ELECTORAL ACT

State electoral laws ceased to have effect for the Federal Parliament when it passed its own legislation in 1902.[9] This legislation and subsequent amendments were consolidated in 1918 and formed the basis of the Commonwealth's electoral law. The *Commonwealth Electoral Act 1918* has been substantially amended over the years. This chapter outlines the provisions applicable at the 2016 general election.[10]

1 Constitution, s. 5.
2 New South Wales, Victoria, Western Australia and Tasmania on 29 March 1901, and Queensland and South Australia on 30 March 1901.
3 *Quick and Garran*, p. 409.
4 Constitution, s. 29; South Australia and Tasmania each voted as one electorate.
5 Constitution, s. 30.
6 Constitution, s. 31.
7 At that time the only States where women were entitled to vote were South Australia and Western Australia.
8 Constitution, s. 26.
9 *Commonwealth Electoral Act 1902*; *Commonwealth Franchise Act 1902*.
10 Comprehensive details of electoral procedures and election statistics are available from the Australian Electoral Commission and on the Commission's web site <www.aec.gov.au>. Historical coverage of election results is also contained in the *Parliamentary Handbook*.

Review of electoral arrangements

A Joint Select Committee on Electoral Reform was established in the 33rd and 34th Parliaments. In each Parliament since then a Joint Standing Committee on Electoral Matters has been appointed. The standing committees have inquired into and reported on the conduct of each general election and related matters. As a result of the committees' reports a number of amendments have been made to the Commonwealth Electoral Act.

ELECTORS

Members of the House of Representatives are elected on the basis of universal adult franchise for citizens. This principle is based on the interpretation of constitutional provisions.[11] Elections are characterised by:

- adult suffrage;[12]
- secret ballot;[13] and
- single vote.[14]

These features, together with the following innovations, make up the principal voting provisions which are currently followed in federal elections:

- **Compulsory registration** of voters since 1911. A roll of electors is kept for each electoral division and every eligible voter is required to enrol.[15]
- **Preferential voting system** since 1918.[16] Up until 1918 the first-past-the-post system was used at federal elections.
- **Compulsory voting** became effective at the 1925 general election.[17] It is the duty of every elector to vote at each election.[18]
- **Extension of franchise** to Aboriginal people on a restricted basis since the 1949 general election,[19] to all Aboriginal people since the 1963 general election,[20] and to persons 18 years of age and over since 1973.[21]

In summary, persons entitled to enrol and to vote at federal elections (subject to certain disqualifications) are all persons who have attained 18 years of age and who are Australian citizens. British subjects whose names were on the electoral roll on 25 January 1984 are also entitled to be enrolled and vote. Enrolment may be claimed by 16 year olds but they are not entitled to vote until they turn 18.[22] Persons who have applied for

11 Constitution, ss. 30, 41.

12 Originally excluding Aboriginal people (other than those already enrolled in a State in 1902). The passage of the 1902 Act made Australia the first country to give women (with the exception of Aboriginal women in some States) both the right to vote and the right to stand for election in the national Parliament. New Zealand had given women the right to vote, but not stand for election, in 1893. In some Australian States at Federation women already had the vote (South Australia from 1895, Western Australia from 1899), and were thus able to vote in the first federal election in 1901.

13 The main innovation of the type of secret ballot which originated in Australia in the 1850s (and is still in some jurisdictions referred to as the 'Australian ballot') was the government printed ballot paper listing all eligible candidates, combined with the marking of the paper in private. Earlier 'secret' systems, where used (notably in France and some States of the United States), had involved ballot papers, perhaps supplied by candidates or interested parties, being brought to the poll by the voter.

14 Plural voting is precluded by the Constitution, s. 30.

15 *Commonwealth Electoral Act 1918*, ss. 82, 101.

16 *Commonwealth Electoral Act 1918*, s. 240.

17 *Commonwealth Electoral Act 1924*.

18 *Commonwealth Electoral Act 1918*, s. 245. Failure to vote at an election is an offence. An elector who fails to vote can avoid the matter going to court by providing 'a valid and sufficient reason' or paying a $20 penalty to the Electoral Commission.

19 Those entitled to State enrolment, or members or former members of the Defence Force. *Commonwealth Electoral Act 1949*.

20 Amending legislation passed in 1962 in response to recommendations by the Select Committee on Voting Rights of Aborigines, H of R 1 (1961).

21 *Commonwealth Electoral Act 1918*, s. 93. Change effective for 1973 Parramatta by-election and 1974 general election (previously age 21).

22 *Commonwealth Electoral Act 1918*, ss. 93, 100.

Australian citizenship may also apply for provisional enrolment which takes effect on the granting of citizenship.[23]

A person who is the holder of a temporary visa for the purposes of the Migration Act, or a person who is an unlawful non-citizen under that Act, is not entitled to enrolment. A person who, being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting, or who has been convicted of treason or treachery and has not been pardoned, or who is serving a sentence of three years or longer for an offence against the law of the Commonwealth or of a State or Territory, is not entitled to enrolment or to retain enrolment.[24] The Registrar-General (of births, deaths and marriages) and the Controller-General of Prisons, or their equivalents, in each State and Territory are required to provide to the appropriate electoral authorities details of relevant deaths and convictions, as the case may be.[25]

Electors should normally be enrolled in the subdivision in which they live. Special provisions apply to enrolled persons leaving Australia but intending to return within six years,[26] itinerants,[27] prisoners,[28] and Members of Parliament. Senators may be enrolled in any subdivision in the State or Territory which they represent, and Members of the House of Representatives may be enrolled in any subdivision of the electoral division which they represent, even if they do not live in the division.[29]

NUMBER OF MEMBERS

The Constitution determines the composition of the House of Representatives and provides that it shall consist of Members directly chosen by the people of the Commonwealth and that the number of Members representing the States shall be, as nearly as practicable, twice the number of Senators representing the States. The number of Members in each State shall be proportionate to the populations of the respective States. The manner in which the number is determined, although set down in the Constitution, was a matter in respect of which the Parliament could legislate, and it has subsequently done so.[30]

A list showing the number of Members of the House of Representatives in each Parliament since 1901 is shown at Appendix 11.

23 *Commonwealth Electoral Act 1918*, s. 99A.

24 *Commonwealth Electoral Act 1918*, s. 93. The High Court has ruled that amendments to the Act to exclude all persons serving a sentence of imprisonment were invalid, being inconsistent with the system of representative democracy established by the Constitution, *Roach v. Electoral Commissioner* [2007] HCA 43.

25 *Commonwealth Electoral Act 1918*, ss. 108, 109.

26 *Commonwealth Electoral Act 1918,* s. 94.

27 *Commonwealth Electoral Act 1918,* s. 96.

28 *Commonwealth Electoral Act 1918,* s. 96A.

29 *Commonwealth Electoral Act 1918,* s. 99(4).

30 Constitution, s. 24; *Representation Act 1905* (repealed). The provisions are now in the Commonwealth Electoral Act—*see* 'Determination of divisions' at p. 89.

This table shows the representation of the States and Territories at the 2016 general election, and at the next general election following the redistribution of 31 August 2017.

	2016	*next election*
New South Wales	47	47
Victoria	37	38
Queensland	30	30
Western Australia	16	16
South Australia	11	10
Tasmania	5	5
Australian Capital Territory	2	3
Northern Territory	2	2
	150	151

Territorial representation

The Parliament may admit new States to the Commonwealth or establish new States, and may determine the extent of representation of new States in either House.[31] The Parliament may also make laws for the government of any Commonwealth Territory and determine the extent and terms of representation of any such Territory in either House.[32] The Parliament has determined that the Australian Capital Territory and the Northern Territory shall be represented in both the House of Representatives and the Senate.[33]

The Commonwealth Electoral Act provides for Territories to be represented in proportion to their populations, population quotas being determined in the same manner as for the original States, subject to provisos that:

- the Australian Capital Territory and the Northern Territory each have at least one Member; and
- any other external Commonwealth Territory be entitled to separate representation only if its population exceeds one half of a quota; until so entitled the Territories of Cocos (Keeling) Islands and Christmas Island are included in an electoral division of the Northern Territory;[34] and the Territory of Norfolk Island is included in an electoral division of the Australian Capital Territory.[35]

In 2004 the Commonwealth Electoral Act was amended to set aside a determination under section 48 of the Act which had specified one Member for the Northern Territory at the next election, and to provide that the prior determination (specifying two Members) should apply.[36] The amendments also made provision for the Electoral Commissioner to allow for the effect of statistical error in respect of the population count of the territory concerned, before making a determination resulting in a reduction in the representation of the Australian Capital Territory or the Northern Territory.[37]

31 Constitution, s. 121.
32 Constitution, s. 122.
33 For a description of former provisions for the representation of the Australian Capital Territory and the Northern Territory and limitations on Members representing the Territories in earlier years *see* pages 168–9 of the second edition.
34 *Commonwealth Electoral Act 1918*, s. 56A (currently Lingiari).
35 *Commonwealth Electoral Act 1918*, s. 56AA (currently Canberra, proposed to change to the new ACT electorate after the 2017 redistribution). The Territory of Jervis Bay is also included in an ACT electorate (currently Fenner).
36 *Commonwealth Electoral Act 1918*, s. 48A, inserted by the *Commonwealth Electoral Amendment (Representation in the House of Representatives) Act 2004*.
37 *Commonwealth Electoral Act 1918*, s. 48.

The growth of the House

Appendix 11 shows the number of Members of the House of Representatives and the representation of each State and Territory for each Parliament since 1901. Significant variation in membership has occurred as follows:

- In 1949 the membership of the House increased from 75 to 123 following legislation increasing the number of Senators from six to 10 for each original State.[38]
- In 1977 the High Court ruling in *McKellar's case* invalidated the formula then being used for allocating Members to the States in proportion to their populations,[39] and consequently the number of Members, which had reached 127 during 1974–75, was reduced to 124 for the ensuing Parliament.
- In 1984 the membership of the House increased from 125 to 148 following legislation increasing the number of Senators to 12 for each original State.[40]
- Redistributions increased the number of Members to 150 from the 2001 general election.

In both 1949 and 1984 a major reason given for the enlargement of the House was the increase in the number of people to be represented.

TABLE 3.1 RATIO OF ELECTORS TO MEMBERS

Year of election	*Electors*	*Members*	*Average number of electors per Member*
1901	907 658	75	12 102
1946	4 744 017	75	63 254
1949	4 913 654	123	39 948
1983	9 373 580	125	74 989
1984	9 866 266	148	66 664
2001	12 636 631	150	84 244
2016	15 676 659	150	104 511

ELECTORAL DIVISIONS

Determination of divisions

The Constitution provides that:

- the House of Representatives shall be composed of Members directly chosen by the people of the Commonwealth; and
- the number of Members chosen in the several States shall be in proportion to the respective numbers of their people.[41]

These provisions, together, express the concept of equality of representation, the national concept and the democratic character of the House of Representatives.

38 *Representation Act 1948*.

39 *Attorney-General (NSW); Ex rel. McKellar v. Commonwealth* (1977) 139 CLR 527. The invalidated formula, introduced by the *Representation Act 1964*, had involved rounding up, instead of rounding to the nearest integer. In this ruling the High Court also upheld the validity of provisions of the *Representation Act 1973* which provided that the four Territory Senate places created in 1974 could not be included for the purpose of calculating the number of Members of the House under the 'nexus' provision of the Constitution.

40 *Representation Act 1983*.

41 Constitution, s. 24; *see also* Ch. on 'Members'.

The Constitution, having provided for the determination of the number of Members and the manner in which they are chosen, also specified that, until the Parliament otherwise provided, the Parliament of each State could make laws to determine the divisions for the State. The Federal Parliament passed its own legislation in 1902 (*see* page 85). Electoral divisions are also commonly known as seats, electorates or constituencies.

In order to determine the number of Members for the States and Territories the Electoral Commissioner first ascertains a quota by dividing the population of the Commonwealth (excluding territorial populations) by twice the number of Senators for the States. The number of Members to be chosen for each State or Territory (other than Norfolk Island and the Jervis Bay Territory) is then determined by dividing the number of people of the State or Territory by the quota. If on such division there is a remainder greater than one half of a quota, an additional Member is chosen.[42] This determination is subject to the constitutional requirement of there being a minimum of five Members for each of the original States[43] and the requirement of the Commonwealth Electoral Act that there be a minimum of one Member for each of the Northern Territory and the Australian Capital Territory.[44]

The Commonwealth Electoral Act provides that each State and the Australian Capital Territory, and the Northern Territory on becoming entitled to more than one Member, shall be distributed into electoral divisions equal in number to the number of Members of the House of Representatives to be chosen for the State or Territory, and one Member of the House of Representatives shall be chosen for each division.[45] These divisions are known as single-member constituencies. Multi-member constituencies, although allowed for in the Constitution, have not been used.[46]

In order to determine these divisions, the Electoral Commissioner ascertains a quota of electors for each State and Territory by dividing the number of electors in the State or Territory by the number of Members to be chosen in that State or Territory.[47] The boundaries of each division are then determined by the State or Territory Redistribution Committee, as outlined below.

Because of Australia's uneven distribution of population, divisions vary greatly in area. In 2016 the largest division in terms of area was Durack in Western Australia (1.63 million square kilometres) and the smallest was Grayndler in New South Wales (32 square kilometres). The largest division by enrolled population was Canberra, Australian Capital Territory, with 144 391 electors; the smallest Lingiari, Northern Territory, with 65 752 electors.

42 *Commonwealth Electoral Act 1918*, s. 48.

43 Constitution, s. 24.

44 *Commonwealth Electoral Act 1918*, s. 48(2B). In addition, sections 48(2E) and (2F) prescribe a mechanism for taking account of the possible effects of estimation error on population figures, in such a way as to make it less likely that the Northern Territory or Australian Capital Territory will lose a Member as a result of a determination.

45 *Commonwealth Electoral Act 1918*, ss. 56, 57. The means of determining the number of Members is laid down in s. 48; *and see* Ch. on 'Members'.

46 Except at the first election when both South Australia and Tasmania each voted as one division.

47 *Commonwealth Electoral Act 1918*, s. 65.

Redistribution

The Commonwealth Electoral Act provides for regular redistributions.[48] The Electoral Commission must direct a redistribution of a State or Territory:

- when changes in the distribution of population (ascertained during the thirteenth month of the life of each House of Representatives, if still continuing[49]) require a change to the number of Members in a State or Territory;
- when more than one third of the divisions within a State deviate from the average divisional enrolment for the State by more than 10 per cent, and have done so for more than two months, or in the case of the Australian Capital Territory, when one division so deviates; or
- within 30 days of the expiration of a period of seven years since the previous redistribution, except that should the seven years expire during the last year of the life of a House of Representatives the redistribution is to commence within 30 days of the first meeting of the next House of Representatives.

Such provisions also apply to the Northern Territory by virtue of section 55A of the Commonwealth Electoral Act, and it is treated as a State for the purposes of redistribution.[50]

To conduct a redistribution the Electoral Commission appoints a Redistribution Committee for the State or Territory, comprising:

- the Electoral Commissioner;
- the Australian Electoral Officer for the State or Territory (in the case of the ACT the senior Divisional Returning Officer);
- the Surveyor-General for the State or Territory or the Deputy Surveyor-General (or equivalent); and
- the Auditor-General for the State or Territory or the Deputy Auditor-General.

In circumstances where the appropriate State officials are not available, the places of the Surveyor-General and Auditor-General may be filled by senior employees of the Australian Public Service from the State or Territory nominated by the Governor-General.[51]

A quota of electors, ascertained by dividing the number of electors in the State or Territory by the number of Members,[52] is the basis for the proposed redistribution. The estimated enrolment in a proposed division may not depart from this quota by more than 10 per cent. In making the proposed redistribution, the Redistribution Committee is required, as far as practicable, to endeavour to ensure that, three years and six months after the redistribution (or earlier time determined by the Electoral Commission),[53] the number of electors enrolled in each proposed electoral division in the State or Territory will be not less than 96.5% or more than 103.5% of the average divisional enrolment in the State or Territory. Subject to this requirement the Redistribution Committee shall give due consideration, in relation to each proposed electoral division, to:

48 *Commonwealth Electoral Act 1918*, s. 59. The States having been distributed into divisions once are thereafter redistributed. The words 'distributed' and 'redistributed' are commonly used synonymously.
49 *Commonwealth Electoral Act 1918*, s. 46.
50 The first redistribution of the Northern Territory to provide for two Members occurred in 2000.
51 *Commonwealth Electoral Act 1918*, s. 60.
52 *Commonwealth Electoral Act 1918*, s. 65.
53 *Commonwealth Electoral Act 1918*, s. 63A.

- community of interests within the proposed electoral division, including economic, social and regional interests;
- means of communication and travel within the proposed electoral division;
- the physical features and area of the proposed electoral division; and
- the boundaries of existing divisions in the State or Territory.[54]

Redistribution Committees are required to consider any suggestions and comments lodged with them pursuant to public advertisement in the Gazette and the press. A period is allowed for lodgement of suggestions. At the end of the lodgement period, the Redistribution Committee must make copies of all suggestions available for perusal at the relevant office of the Electoral Commission, and invite written comments on the suggestions. A further period is allowed for submission of comments.[55]

Once the initial proposals are determined by the Redistribution Committee, maps showing the names and boundaries of each proposed division must be exhibited at every Electoral Commission office in the State or Territory. Copies of any suggestions or comments made to the committee, detailed descriptions of the proposed boundaries and the committee's reasons for its proposals must be made available for perusal at Electoral Commission offices.[56] A member of a Redistribution Committee may submit a statement of dissent to any proposal[57] and copies of any such statement must also be made available.

Maps of proposed divisions and the availability of other documents must be advertised publicly and written objections may be lodged.[58] Objections to proposed redistributions are considered by an 'augmented Electoral Commission', that is, the members of the Redistribution Committee concerned and the Chairperson and the non-judicial member of the Electoral Commission.[59] The augmented Electoral Commission must hold an inquiry into an objection unless it is of the opinion that the objection is frivolous or vexatious or is substantively the same as a submission previously made.[60] Objections are determined by a majority vote of the augmented Electoral Commission. A final determination of names and boundaries of divisions requires not only a majority vote of the augmented Electoral Commission, but an affirmative vote from at least two of its three members who are also members of the Australian Electoral Commission.[61] If the findings of the augmented Electoral Commission, in its own opinion, are significantly different from the original Redistribution Committee proposals, further objections can be made and a second round of hearings occur. The resultant determinations are final and conclusive. They are not subject to appeal of any kind and cannot be challenged in any court.[62]

Parliamentary procedure

Following determination relevant documents are forwarded to the Minister responsible, who must have them presented to each House within five sitting days of

54 *Commonwealth Electoral Act 1918*, s. 66.
55 *Commonwealth Electoral Act 1918*, s. 64.
56 *Commonwealth Electoral Act 1918*, s. 68.
57 *Commonwealth Electoral Act 1918*, s. 67.
58 *Commonwealth Electoral Act 1918*, s. 69.
59 *Commonwealth Electoral Act 1918*, s. 70.
60 *Commonwealth Electoral Act 1918*, s. 72.
61 *Commonwealth Electoral Act 1918*, s. 71(6).
62 *Commonwealth Electoral Act 1918*, s. 77. The enrolment of new electors and changes to existing enrolments are implemented immediately following the determination of new boundaries. However, for the purpose of electing Members, the new boundaries do not come into effect until the next federal election.

receipt.[63] Under these procedures Parliament has no further role and has no opportunity to alter the determination in any way.[64]

Limited redistribution

If writs are issued for a general election and the number of Members to be elected in a State or the Australian Capital Territory does not correspond to the existing number of electoral divisions, a so-called 'mini-redistribution' is conducted by the Electoral Commissioner and the Australian Electoral Officer for the State or Territory (the senior Divisional Returning Officer for the Australian Capital Territory).[65] To decrease or increase the number of divisions, pairs of contiguous divisions with the least number of electors are combined or pairs of contiguous divisions with the greatest number of electors are divided into three, as the case may be. Where two contiguous divisions are combined to form one, the new division carries the names of the divisions from which it was formed, arranged alphabetically and hyphenated. If two contiguous divisions are divided into three (which has not so far occurred), the names of the former divisions are given to two of the three; and the third new division carries the names of the two former divisions, arranged alphabetically and hyphenated.[66]

Improper influence

It is an offence punishable by fine or imprisonment to seek to influence improperly members of a Redistribution Committee, members of an augmented Electoral Commission or a Redistribution Commissioner in the performance of their duties.[67]

In 1978 a Minister's appointment was terminated following a finding by a Royal Commissioner that the Minister's action in seeking to influence Distribution Commissioners in relation to names of electoral divisions had constituted impropriety.[68]

GENERAL ELECTIONS

The following constitutional provisions relate to a general election, that is, an election for all Members of the House of Representatives:

- The Governor-General may dissolve the House of Representatives.[69]
- Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.[70]
- The Governor-General in Council may cause writs to be issued for general elections of Members of the House of Representatives.[71]
- After any general election the Parliament shall be summoned to meet not later than 30 days after the day appointed for the return of the writs.[72]

63 *Commonwealth Electoral Act 1918*, s. 75.
64 Before 1984, redistributions were subject to the approval, by resolution, of each House of the Parliament. The former provisions are described in early editions (4th edn, p. 88).
65 *Commonwealth Electoral Act 1918*, s. 76. While the Northern Territory is treated as a State under these provisions, now that it has two Members (in accordance with s. 55A), s. 76A provides special arrangements.
66 *Commonwealth Electoral Act 1918*, ss. 76(10) and (12).
67 *Commonwealth Electoral Act 1918*, s. 78.
68 'Matters in relation to electoral redistribution, Queensland 1977', *Report of the Royal Commission of Inquiry*, PP 263 (1978). The case is described in more detail in early editions (4th edn, p. 89).
69 Constitution, s. 5.
70 Constitution, s. 28.
71 Constitution, s. 32.
72 Constitution, s. 5.

A general election follows the dissolution of the House by the Governor-General,[73] or the expiration of the House by effluxion of time three years from its first meeting. The period between the first meeting and dissolution, called a Parliament, has varied between seven months (11th Parliament) and a period just short of the three year maximum term (18th and 27th Parliaments). The 3rd Parliament has been the only one to have expired by effluxion of time.[74] Notwithstanding the generality of the above:

- The Governor-General may dissolve both Houses simultaneously upon certain conditions having been met under section 57 of the Constitution, resulting in a general election for the House and an election for all the Senate.[75]
- Apart from section 57, the constitutional provisions relating to dissolution only concern the House of Representatives. The election of Senators does not necessarily take place at the same time as a general election for the House of Representatives.
- The distinction between the 'Governor-General' dissolving the House and the 'Governor-General in Council' issuing writs for a general election should be noted. While the decision to dissolve the House may be made by the Governor-General,[76] the decision to call a general election can only be made on and with the advice of the Executive Council, that is, the Government.[77]

While the majority of Parliaments have extended for more than two years and six months some Parliaments have been dissolved well short of the maximum three year term. Reasons for the early dissolution of the House have included:

- defeat of the Government on the floor of the House (1929, 1931);
- double dissolution situations (1914, 1951, 1974, 1975, 1983, 1987, 2016);
- synchronisation of House elections with Senate elections (1917, 1955, 1977, 1984);
- the Government's desire to obtain a mandate for various purposes (1917, 1955, 1963); and
- perceived political or electoral advantage.[78]

BY-ELECTIONS

Whenever a vacancy occurs in the House because of the death, resignation, absence without leave, expulsion or disqualification or ineligibility of a Member,[79] it is the responsibility of the Speaker to issue a writ for the election of a new Member.[80] Since Federation there have been, on average, three or four by-elections per Parliament.[81] A by-election may be held on a date to be determined by the Speaker or, in his or her absence from Australia, by the Governor-General in Council. The polling must take place on a Saturday.[82] The issue of the writ is notified in the Gazette.[83]

73 *See* Ch. on 'The Parliament and the role of the House'.
74 For a list of federal elections *see* Appendix 12.
75 For further discussion *see* Ch. on 'Double dissolutions and joint sittings'.
76 However, in practice this power is exercised with the advice of the Federal Executive Council; *see Quick and Garran*, pp. 404–6. For further discussion *see* Ch. on 'The Parliament and the role of the House'.
77 Constitution, s. 32; *and see* s. 62.
78 Occasionally reasons for dissolving the House have been published, *see* Table 1.1 'Early Dissolutions of the House of Representatives' in Ch. on 'The Parliament and the role of the House'.
79 For discussion *see* Ch. on 'Members'.
80 Constitution, s. 33. A by-election is conducted on existing boundaries not redistributed boundaries.
81 For a list of by-elections *see Parliamentary Handbook*.
82 *Commonwealth Electoral Act 1918*, s. 158.
83 E.g. Gazette C2014G00014 (6/1/2014).

If there is no Speaker or if the Speaker is absent from the Commonwealth, the Governor-General in Council may issue the writ.[84] A by-election writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence within the Commonwealth.[85] A writ has been issued by the Deputy Speaker during the Speaker's absence within the Commonwealth[86] and the Deputy Speaker has informed the House of the Speaker's intention to issue a writ.[87]

There are no constitutional or statutory requirements that writs be issued for by-elections within any prescribed period.[88] This is a matter for the Speaker who would have regard to a variety of factors, including:

- any announcements that had been made about possible general elections and consideration of when a general election may take place;
- the cost of holding a by-election separately from a general election; and
- the period of time that a constituency may be unrepresented if a by-election is not held.

The following cases have occurred:

- with a general election pending, the Speaker has declined to issue a writ in order to avoid the need for two elections within a short period of time;[89] and
- writs have been issued and then withdrawn by the Speaker when dissolution of the House has intervened.[90]

In so far as it concerns the sequence of events following the issuing of a writ, the Commonwealth Electoral Act makes very little distinction between by-elections and ordinary (general) elections—for indicative timetable details *see* page 99.

Notwithstanding that Speakers have decided not to issue writs pending general elections, a suggestion that the Speaker should withhold issue for other purposes has been rejected. In January 1946 the Speaker issued the following statement:

> The guiding principle in fixing the date of a by-election has always been to hold the election as early as possible so that the electors are not left without representation any longer than is necessary. With that principle before me I submitted the dates I proposed to the Chief Electoral Officer; he suggested a minor alteration regarding the return of the writ, which I accepted, and the writ was accordingly issued early today. Representations were later made to me that sufficient time was not allowed for a particular State Member to resign. In reply to that I would point out that Mr Wilson's appointment to an office under the Crown had been announced early in December and was published later in December in the Gazette. Individuals and parties thus had ample notice of the pending vacancy in the House. I would also point out that in the last by-election (Fremantle) an exactly similar number of days was allowed between the issue of the writ and nominations. It has been represented to me that the writ should be withdrawn and a new writ issued. If I were to do this I would be considering the wishes of one particular individual, which should not enter into the matter and which would raise a justifiable protest from other candidates and parties. Moreover, the Chief Electoral Officer advises that the dates have already been notified to the commanders of service units outside Australia, and confusion and inconvenience would be likely if the writ were withdrawn and another issued.[91]

84 Constitution, s. 33.

85 S.O. 18; *and see* Ch. on 'The Speaker, Deputy Speakers and officers'.

86 VP 1920–21/575 (14.6.1921) (Chairman of Committees as Deputy Speaker). There is some doubt as to the constitutional validity of this action.

87 E.g. VP 1956–57/63 (20.3.1956) (Chairman of Committees as Deputy Speaker); *but see* Ch. on 'The Speaker, Deputy Speakers and officers'.

88 The time between vacancy and polling day has ranged between 17 and 82 days (1901–2016 figures). The minimum period now under the *Commonwealth Electoral Act 1918* must allow 33 days after the issue of the writ.

89 VP 1926–28/649 (12.9.1928); VP 1964–66/621 (18.8.1966); H.R. Deb. (18.8.1966)157; VP 1990–92/1941 (16.12.1992).

90 VP 1929–31/950 (26.11.1931), Gazette 97 (27.11.1931); VP 1932–34/899 (5.7.1934), Gazette 40 (5.7.1934).

91 Statement issued outside the House. Members of State Parliaments previously had to resign 14 days before nomination.

A writ has been issued by the Governor-General between a general election and the meeting of a new Parliament consequent upon the death of an elected Member and when a Member has resigned to the Governor-General before the House has met and chosen a Speaker.[92] Based on this procedure new elections have been held before the meeting of Parliament and after the meeting of Parliament.[93]

When the Court of Disputed Returns (*see* page 104) declares an election absolutely void, a writ may be issued by the Speaker for the purposes of a new election.[94]

The Clerk of the House was subpoenaed by the Supreme Court of Victoria to appear on 20 June 1904 and produce the original writ issued by the Speaker on 15 March 1904 for an election for the division of Melbourne.[95]

In issuing a writ for a by-election Speakers normally follow the procedure set out below:

- the vacancy and cause of vacancy is notified to the House at the earliest opportunity;
- convenient dates are selected and the Electoral Commission is consulted as to their suitability for electoral arrangements;
- proposed dates are forwarded to party leaders for comment;
- dates determined by the Speaker are notified by a press release;
- a writ addressed to the Electoral Commissioner is prepared, signed by the Speaker and embossed with the House of Representatives seal;
- the House is advised;
- the writ is delivered to the Electoral Commissioner;
- the Australian Communications and Media Authority is advised; and
- notification of the by-election is published in the Gazette.[96]

SENATE ELECTIONS

Senators are elected on a different basis to Members of the House of Representatives. Key features of Senate elections are:

- Each State or Territory votes as one electorate.[97] Twelve Senators are chosen for each State and two Senators for each of the Australian Capital Territory and the Northern Territory.
- Senators are elected by a system of proportional representation which ensures that the proportion of seats won by each party in each State or Territory closely reflects the proportion of the votes gained by that party in that State or Territory.
- There is an election for half the number of State Senators every third year. It is not necessary for half-Senate elections and elections for the House of Representatives to occur at the same time, although elections for the two Houses are generally held concurrently.

92 Constitution, s. 33; VP 1983–84/6 (21.4.1983).
93 VP 1964–66/3–5 (25.2.1964) (before), VP 1917/4 (14.6.1917) (after).
94 E.g. VP 1904/26 (15.3.1904), 44 (19.4.1904); VP 1907–8/4 (3.7.1907); VP 1920–21/190 (1.7.1920); VP 1996–98/428–30 (11.9.1996), 489 (16.9.1996).
95 VP 1904/85 (17.6.1904); *and see* VP 1912/15 (25.6.1912) and Chs on 'The Parliament and the role of the House' and 'Documents'.
96 E.g. Gazette S338 (17.9.1996).
97 Although the Constitution empowers the Parliament to prescribe a Senate electoral system based on divisions within a State or Territory, that has not been done.

- Elections for Territory Senators are held concurrently with general elections for the House of Representatives.
- State Senators serve for six years from the beginning of their term of service (except following a dissolution of the Senate when half of them serve for three years).[98] Territory Senators serve until the day before the poll of the next general election.
- A Senate casual vacancy is filled by a person chosen by the Parliament of the State concerned or, in relation to the Australian Capital Territory or Northern Territory, by the respective Legislative Assembly. The person chosen fills the vacancy until the end of the former Senator's term.[99] If there is one available, a person of the same political party[100] as the Senator previously filling the vacant position must be chosen.

For further information on Senate elections *see Odgers*.

METHOD OF VOTING

With every system of election there are two quite separate and distinct processes, the 'voting' process and the 'scrutiny' process, that is, the counting. The first is performed by the voters in the casting of their votes while the second is carried out by the officials responsible for the conduct of the election. The procedure for the scrutiny of votes in House of Representatives elections is provided for in the electoral law.[101]

Until 1918 the 'first-past-the-post' voting process was used. This is one of the simplest forms of voting as it requires the voter to indicate a vote for only one candidate and the candidate with the greatest number of votes (that is, a relative majority) is elected.

The voting process now in use is a preferential one, usually referred to as 'preferential voting' (also known as the 'alternative vote' system).

Preferential voting

The preferential voting system used is an absolute majority system where for election a candidate must obtain more than 50 per cent of the votes in the count. The voter is required to mark his or her vote on the ballot paper by placing the number one (1) against the name of the candidate of first choice, and to give contingent votes for all the remaining candidates in order of preference by the consecutive numbers 2, 3, 4 and so on; all squares on the ballot paper must be numbered, although one square may be left unnumbered, in which case the blank square will be deemed to be the voter's last preference, provided a first preference has been indicated.[102]

The first step in obtaining the result of the election is to count the first preferences marked for each candidate. If a candidate has an absolute majority (that is, fifty per cent plus one) on the first preferences or at any later stage of the count, that candidate is

98 Constitution, s. 13. The term of service normally starts on 1 July following the election. After a dissolution of the Senate it starts on 1 July preceding the election.

99 Constitution, s. 15; *Commonwealth Electoral Act 1918*, s. 44. Prior to 1980 NT and ACT casual Senate vacancies would have been filled by a by-election, but none occurred. Subsequently, NT vacancies were to be determined by the NT Legislative Assembly but, until the establishment of the ACT Legislative Assembly in 1989, the Senate and the House of Representatives, at a joint sitting, chose the person to fill a casual Senate vacancy in the ACT. Joint sittings for this purpose were held on 5 May 1981 (J 1980–81/227) and 16 February 1988 (J 1987–90/477–8)—for rules adopted for this sitting *see* Rules for joint sittings. The mechanism of filling a casual Senate vacancy by means of a joint sitting of the Commonwealth Parliament is retained in the case of a vacancy in a Territory other than the ACT or NT (should any gain Senate representation), *Commonwealth Electoral Act 1918*, s. 44(2A).

100 That is, the party for which the vacating Senator was elected, Constitution, s. 15.

101 *Commonwealth Electoral Act 1918*, s. 274.

102 *Commonwealth Electoral Act 1918*, ss. 240, 268.

elected. The next step is to exclude the candidate with the fewest votes and sort those ballot papers to the next preference marked by the voter. This process of exclusion is repeated (to achieve the two party preferred figure) until there are only two candidates left in the count, even though one of those candidates may have been declared elected at an earlier stage.[103]

Senate voting

A method of preferential voting related to that described above was also used for Senate elections from 1919 to 1946. A system of proportional representation has been used since 1949. Under that system, a candidate must obtain a certain percentage of the votes in the count, usually referred to as the 'quota', to be elected. This system is only appropriate to multi-member constituencies, such as those for the Senate, where each State votes as one electorate.

For Senate elections the voter has the option of marking the ballot paper preferentially by party/group or, alternatively, by individual candidate.[104] The special feature of proportional representation is contained in the method of counting the votes which ensures that the proportion of seats won by each party in a State or Territory closely reflects the proportion of the votes gained by that party. There is thus greater opportunity for the election of minority parties and independents than in the House.

The result of proportional representation has been that since 1949 the numbers of the Senate have usually been relatively evenly divided between government and opposition supporters with the balance of power often being held by minority parties or independents, whose political influence has increased as a consequence. Governments have frequently been confronted with the ability of the Opposition and minority party or independent Senators to combine to defeat or modify government measures in the Senate.

THE ELECTION PROCESS

Table 3.2 illustrates the constitutional and statutory requirements for the conduct of an election and the particular time limitations imposed between dissolution and the meeting of the new Parliament.[105]

Issue of writs

The authority for holding an election is in the form of a writ issued by the Governor-General,[106] or in the case of a by-election by the Speaker (*see* page 94), directed to the Electoral Commissioner commanding the Commissioner to conduct an election in accordance with the prescribed procedures.[107]

The writs for general elections of the House of Representatives are issued by the Governor-General (acting with the advice of the Executive Council) and specify the date by which nominations must be lodged, the date for the close of the electoral rolls, the date on which the poll is to be taken and the date for the return of the writ. The writ is deemed

103 *Commonwealth Electoral Act 1918*, s. 274.

104 *Commonwealth Electoral Act 1918*, s. 239. For a more detailed account of this system *see Odgers*, and Electoral Commission publications.

105 Appendix 12 shows significant dates in relation to each general election since 1940.

106 Constitution, s. 32.

107 *Commonwealth Electoral Act 1918*, s. 154.

to have been issued at 6 p.m. on the day of issue.[108] Eight writs are issued for a general election, one for each of the six States and the two Territories. The issue of writs is notified in the Gazette.[109]

In the case of dissolution or expiry of the House of Representatives the writs must be issued within 10 days,[110] so that there cannot be undue delay before an election is held to elect a new House of Representatives.

TABLE 3.2 TIMETABLE FOR A GENERAL ELECTION

Stage	*Limitation (a)*	*Constitutional or statutory provision*
Dissolution	—	Constitution, ss. 5, 28
Issue of writs (at 6 p.m.)	Within 10 days of dissolution	Constitution, s. 32; Commonwealth Electoral Act, ss. 152, 154
Close of electoral rolls (at 8 p.m.)	7 days after date of writ	Commonwealth Electoral Act, s. 155
Nominations close (at 12 noon)	Not less than 10 days nor more than 27 days after date of writ	Commonwealth Electoral Act, ss. 156, 175
Date of polling (a Saturday)	Not less than 23 days nor more than 31 days from date of nomination (b)	Commonwealth Electoral Act, ss. 157, 158
Return of writs	Not more than 100 days after issue	Commonwealth Electoral Act, s. 159
Meeting of new Parliament	Not later than 30 days after the day appointed for the return of writs	Constitution, s. 5

(*a*) Advice from the Attorney-General's Department, dated 15 March 1904, states that the dates fixed are reckoned exclusive of the day from which the time is reckoned; *and see Acts Interpretation Act 1901*, s. 36(1).

(*b*) A general election (or by-election) must therefore take place not less than 33 nor more than 58 days after the issue of writ(s).

Close of electoral rolls

The electoral rolls close at 8 p.m. seven days after the date of the writ. This cut-off applies both to alterations and new enrolments. Amendments to the Commonwealth Electoral Act were made in 2006 closing the electoral rolls three working days after the date of the writ and stopping the processing of new enrolments at 8 p.m. on the day of the writ.[111] These provisions operated for the 2007 general election but in 2010 were declared by the High Court to be invalid.[112]

Nomination of candidates

To contest an election to the House of Representatives a person must be nominated by at least 100 electors in the division he or she is to contest, or by the registered officer of the party endorsing him or her as a candidate. A candidate who is a 'sitting independent'

108 *Commonwealth Electoral Act 1918*, s. 152. Form B of Schedule 1 to the Act prescribes the form in which writs are issued.

109 E.g. Gazette S139 (20.7.2010) (issued by Administrator); Gazette C2013G01199 (6.8.2013).

110 Constitution, s. 32.

111 *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*.

112 *Rowe v. Electoral Commissioner* [2010] HCA 46.

Member needs nomination by only one elector.[113] Nominations are made to the Divisional Returning Officer and can be made at any time between the issue of the writ and the close of nominations. Candidates of registered political parties[114] may also be nominated in bulk for divisions of a State or Territory by the registered officer of the party. Bulk nominations must be made to the Australian Electoral Officer for the State or Territory no later than 48 hours prior to the close of nominations. For a nomination to be valid, it must have the candidate's consent and be accompanied by a declaration by the candidate that he or she is qualified under the Constitution and the laws of the Commonwealth to be elected as a Member of the House of Representatives. The declaration must also state that he or she will not be a candidate for any other election held on the same day, and give details of his or her Australian citizenship.[115]

A person who at the hour of nomination is a Member of a State Parliament or Territory Assembly may not be nominated.[116] Likewise a Member of the Senate or the House is required to resign to contest an election for the House of which he or she is not a Member.[117] There are constitutional prohibitions (outlined in the Chapter on 'Members') concerning persons who hold any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth. If unsuccessful, an Australian Public Service or Parliamentary Service employee who has resigned to contest an election must be reappointed to the service.[118] Officers of the Electoral Commission are not eligible for nomination.[119]

A deposit ($1000 for Member, $2000 for Senator), is required to be lodged with the nomination. The deposit is returned if the candidate is elected or polls at least four per cent of the total first preference votes polled in the division.[120] Candidates may withdraw their nominations up to the close of nominations but cannot do so after nominations have closed.[121] If one candidate only is nominated then he or she is declared duly elected without an election being necessary.[122]

Should a candidate die during the nomination period the hour of nomination is extended by 24 hours to allow time for the nomination of an alternative candidate.[123] If any candidate dies between the close of nominations and polling day, the election is deemed to have failed and a new writ for a supplementary election[124] is issued forthwith. These provisions are based on the principle that no political party should be disadvantaged at an election because of the death of its candidate. In the division of Hume for the 1972 general election an independent candidate died after the close of nominations and a new writ was issued setting a new date for nominations. The dates of the original writ for polling and the return of the writ were retained.[125] During the 1993

113 *Commonwealth Electoral Act 1918*, s. 166(1C). For the purpose of this section the candidate is a 'sitting independent' if he or she was not endorsed by a political party at the previous election and is contesting the same seat, s. 166(1E).

114 To be able to be registered, a party must have at least one member in Parliament or, if it has no parliamentary member, at least 500 party members. *Commonwealth Electoral Act 1918*, s.123.

115 *Commonwealth Electoral Act 1918*, s. 170. Qualification and disqualification requirements are outlined in the Ch. on 'Members'.

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

117 Constitution, s. 43 (the resignation needs to be made before nomination).

118 *Public Service Act 1999*, s. 32. *Parliamentary Service Act 1999*, s. 32.

119 *Commonwealth Electoral Act 1918*, s. 36.

120 *Commonwealth Electoral Act 1918*, ss. 170, 173.

121 *Commonwealth Electoral Act 1918*, s. 177.

122 *Commonwealth Electoral Act 1918*, s. 179(2). The last occasion of an uncontested election was in respect of the Northern Territory at the 1963 general election. In the 1955 general election 11 divisions were uncontested.

123 *Commonwealth Electoral Act 1918*, s. 156.

124 *Commonwealth Electoral Act 1918*, ss. 180, 181.

125 Gazette S112 (13.11.1972).

general election in the division of Dickson an independent candidate died shortly before the poll. A new writ was issued for a supplementary election, setting later dates for nominations, polling and the return of the writ.[126] Similarly, a supplementary election was held in 1998 for the division of Newcastle because of the death of a candidate prior to polling day.

Nominations are declared (publicly announced) at the office of the respective Divisional Returning Officer at 12 noon on the day following the day of the close of nominations,[127] and the order of candidates' names on the ballot paper then determined by lot.[128]

Electoral offences

In order to help ensure fair elections, the Commonwealth Electoral Act prohibits bribery, undue influence and a number of other practices, and provides for penalties for these offences.[129] On 16 February 1976 a case against a former Minister (Hon. R. V. Garland) and a former Senator (Mr G. H. Branson) was brought by the Attorney-General alleging a breach of the bribery provisions of the Commonwealth Electoral Act.[130] As a result of the proposed action Mr Garland had resigned his commission as a Minister on 6 February 1976.[131] The magistrate dismissed the charge, ruling that although a prima facie case had been established, a jury, properly directed, would not convict the defendants.[132]

Polling day

Each voter is required to mark the ballot paper preferentially (*see* page 97) and secrecy of voting is assisted by the provision of private voting compartments. Since the introduction of compulsory voting in 1925, over 90 per cent of enrolled voters have voted at general elections for the House of Representatives.[133]

Scrutineers

Scrutineers may be appointed by candidates to represent them at polling places during the election,[134] and at pre-poll voting offices,[135] in order to observe the proceedings of the poll and satisfy the candidate that the poll is conducted strictly in accordance with the law. Each candidate may also appoint scrutineers at each place where votes are being counted.[136]

126 Gazette S78 (9.3.1993).
127 *Commonwealth Electoral Act 1918*, ss. 175, 176.
128 Using a method of double randomisation in which an initial draw of numbered balls assigns a number to each candidate and a second draw determines the order in which candidates appear on the ballot paper, *Commonwealth Electoral Act 1918*, s. 213. Form F of Schedule 1 to the Act contains a sample ballot paper. (Before 1984 candidates were listed on the ballot paper in alphabetical order.)
129 *Commonwealth Electoral Act 1918*, Part XXI.
130 *Commonwealth Electoral Act 1918*, s. 326.
131 Gazette S28 (9.2.1976).
132 Case unreported; but see 'Australia: Alleged breach of Electoral Act', *The Parliamentarian*, LVII, 4, 1976, p. 253.
133 Turnout at the general election which preceded the introduction of compulsory voting was just less than 60%.
134 *Commonwealth Electoral Act 1918*, s. 217.
135 *Commonwealth Electoral Act 1918*, s. 200DA.
136 *Commonwealth Electoral Act 1918,* s. 264.

Counting

Counting commences in the presence of the scrutineers as soon as practicable after the poll closes.[137] An initial count of first preference votes and a two candidate preferred count is carried out. The purpose of the two candidate preferred count is to provide on election night an indication of the candidate most likely to be elected. After polling day a fresh count is made and preferences are distributed (*see* page 97). Informal (i.e. invalid) ballot papers are not included in the count.[138] In recent years the number of informal votes cast at general elections for the House of Representatives has varied between 2.1 and 6.3 per cent of the total votes cast.[139] In 2016 this figure was 5.05 per cent.

Recount

At any time before the declaration of the result of an election, the officer conducting the election may, at the written request of a candidate, or of his or her own volition, recount some or all of the ballot papers.[140] A recount is generally undertaken only where the final result is close and specific grounds for a recount can be identified. If a recount confirms a tied election, the officer must advise the Electoral Commissioner that the election cannot be decided.[141] In such circumstances the Electoral Commission must file a petition disputing the election with the Court of Disputed Returns, which must within three months declare either a candidate elected or the election void.[142]

Declaration of the poll

The result of the election is declared as soon as practicable after it has been ascertained that a candidate has been elected—in some divisions this may be a week or more after the election. In a House of Representatives election the declaration of the poll is generally made at the office of the respective Divisional Returning Officer.[143] Because the time for counting will vary from division to division, declarations of the various polls do not necessarily occur on the same day. The poll may be declared, notwithstanding that all ballot papers have not been received or inquiries completed, if the Returning Officer is satisfied that the votes recorded on the ballot papers concerned could not possibly affect the result.[144]

Return of writs

A writ is both the authority for an election to be held and the authority by which the successful candidate is declared elected. When all polls in a State or Territory have been declared at a general election or when the poll has been declared for a division subject to a by-election, the Electoral Commissioner certifies the name of the successful candidate for each division or the division, and forwards the writ to the Governor-General or Speaker, as the case may be.[145] Writs are returnable on or before the date fixed for their return. The date on which a writ is returned is the date on which the endorsed writ comes into the actual physical possession of the person authorised to act upon it (that is, the

137 *Commonwealth Electoral Act 1918*, s. 265.
138 *Commonwealth Electoral Act 1918*, s. 268.
139 Figures for elections from 1977 to 2016 inclusive.
140 *Commonwealth Electoral Act 1918*, s. 279.
141 *Commonwealth Electoral Act 1918*, s. 274(9C).
142 *Commonwealth Electoral Act 1918*, ss. 357(1A), 367A.
143 *Commonwealth Electoral Act 1918*, s. 284. It is possible for another place to be determined, s. 284(1).
144 *Commonwealth Electoral Act 1918*, s. 284.
145 *Commonwealth Electoral Act 1918*, s. 284.

Governor-General or the Speaker).[146] All writs for a general election are returnable by the same day and all writs are forwarded together by the Governor-General's Official Secretary to the Clerk of the House. The issuing authority may extend the time for holding an election or for returning the writs.[147] An error in a writ may be remedied by proclamation.[148]

Meeting of a new Parliament

After a general election the House must meet not later than 30 days after the day fixed for the return of the writs.[149] However, the House may meet as soon as the writs are returned and in recent Parliaments it has not been unusual for the House to meet before the date fixed for the return of writs.[150]

On the first meeting of a new Parliament, returns to the eight writs for the general election are presented to the House by the Clerk and the Members are then sworn.[151]

PUBLIC FUNDING AND FINANCIAL DISCLOSURE

Public funding for elections

Responsibility for the operation of the system of public funding[152] is vested in the Electoral Commission.

Principal features of the provisions include:

- To be eligible for public funding political parties must be registered with the Commission.
- For each valid first preference vote received a specified amount is payable, which is adjusted half yearly in accordance with increases in the Consumer Price Index. For the 2016 general election the amount was 262.784 cents.
- No payment is made in respect of candidates or groups who do not receive at least four per cent of the eligible votes polled (that is, valid first preference votes).[153]
- Funding for candidates endorsed by a party may be shared between the relevant State branch and the Federal secretariat of the party.[154]

A bill was introduced in December 2017 to limit public electoral funding to demonstrated electoral expenditure.[155]

Financial disclosure

The Commonwealth Electoral Act requires political parties, candidates and other persons involved in the electoral process to submit returns, either following elections or

146 Letter from Electoral Commissioner to Clerk of House 17.3.94 (citing advice from the Attorney-General's Department).

147 *Commonwealth Electoral Act 1918*, s. 286. Gazette 26 (30.4.1910) 973.

148 *Commonwealth Electoral Act 1918*, s. 285. VP 1998–2001/3 (10.11.1998) (Governor-General's proclamation rectifying errors in certificates on writs presented). Other kinds of error in the election process may also be remedied under this provision—in the 2004 general election the times for the return of postal votes in Queensland were extended by proclamation after it had been found that a number of electors had not received postal voting materials.

149 Constitution, s. 5.

150 *See* Appendix 12.

151 S.O. 4; and *see* Ch. on 'The parliamentary calendar'.

152 Public funding was introduced by the *Commonwealth Electoral Legislation Amendment Act 1983* (effective 1984).

153 The Joint Standing Committee on Electoral Matters has recommended that successful candidates below the threshold also receive funding. *Report on the funding of political parties and election campaigns*, Nov. 2011.

154 *Commonwealth Electoral Act 1918*, ss. 294–302, 321.

155 Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

annually, to the Electoral Commission disclosing electoral expenditure and detailing political donations received and given. Returns are made available for public inspection on the Electoral Commission website.

In summary, returns are required from candidates,[156] political parties and associated entities, third parties who have incurred or authorised electoral expenditure, and donors. Government departments and agencies must also provide information in their annual reports on payments made to advertising agencies, and market research, polling, direct mail and media advertising organisations.[157]

The requirements for returns are complex. Up-to-date information on disclosure requirements is available on the Electoral Commission website.

Disclosure threshold

Political donations and receipts above the disclosure threshold must be individually identified in returns. The disclosure threshold was set at $10 000 in 2006, the amount to be indexed annually to the consumer price index. From July 2016 to June 2017 the amount was $13 200.

Unlawful gifts and loans

It is unlawful to receive gifts of a value greater than the disclosure threshold where either the names or addresses of the donors are unknown at the time the gift is received. Loans of more than the disclosure threshold may not be received other than from a financial institution unless details of the source and conditions of the loan are recorded. The amount or value of a gift or loan received in breach of these provisions is payable to the Commonwealth.[158]

A bill was introduced in December 2017 to ban political entities from receiving foreign gifts over $250 or any money transferred from foreign accounts, and from using foreign money for their political expenditure.[159]

Offences

It is an offence punishable by a fine to fail to make a return if required to do so, to make an incomplete return, to knowingly provide a return containing false or misleading information, or to fail to retain records relating to matters which are or could be required to be set out in a return.[160] It is also an offence to fail or refuse to comply with notices relating to investigations authorised by the Electoral Commission, or to provide false or misleading information to such investigations.[161]

Failure to provide required returns does not invalidate the election of a candidate.[162]

DISPUTED ELECTIONS AND RETURNS

At the commencement of the Commonwealth, any question concerning the qualification of a Member or Senator, a vacancy in either House, or a disputed election to

156 Most candidates in fact submit 'nil returns', as in practice donations are received and electoral expenditure is incurred by political parties and the details shown in the relevant periodic returns.

157 E.g. payments over the disclosure threshold to advertising, market research or polling organisations, *Commonwealth Electoral Act 1918*, s. 311A.

158 *Commonwealth Electoral Act 1918*, ss. 306, 306A.

159 Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017.

160 *Commonwealth Electoral Act 1918*, ss. 315.

161 *Commonwealth Electoral Act 1918*, ss. 316.

162 *Commonwealth Electoral Act 1918*, s. 319.

either House was to be determined by the House in which the question arose.[163] Under this original procedure three petitions were presented to the House of Representatives disputing the election of Members.[164] The petitions were referred to the Committee of Elections and Qualifications.[165] In each case the committee's report, adopted by the House, did not support a change in the election result.[166] In 1902 legislation was enacted which provided for the validity of any election or return to be disputed by petition addressed to the High Court sitting as the Court of Disputed Returns.[167] In 1907 legislation was enacted providing that the relevant House could refer to the Court of Disputed Returns any question respecting the qualifications of a Member or a Senator to sit in Parliament or respecting a vacancy in either House.[168]

Under current legislation the validity of any election or return may be disputed only by a petition addressed to the Court of Disputed Returns.[169] Such a petition must contain a form of words (called a prayer) setting out the relief the petitioner is seeking, set out the facts relied on to invalidate the election or return, be signed by either a candidate or person qualified to vote at the election and be attested by two witnesses. The petition must be filed within 40 days of the return of the writ, with a deposit of $500, in the Registry of the High Court.[170] The Electoral Commissioner may also file a petition disputing an election, on behalf of the Commission, and is obliged to do so if the election cannot be decided because of a tie.[171]

The petition is heard by the High Court sitting as the Court of Disputed Returns or is referred by the High Court for trial by the Federal Court of Australia, which in such cases has all the powers and functions of the Court of Disputed Returns. In either court these powers may be exercised by a single justice or judge.[172] When the court finds that any person has committed an 'illegal practice', this fact is reported to the responsible Minister.[173]

The Chief Executive and Principal Registrar of the High Court sends a copy of the petition to the Clerk of the House of Representatives immediately after it has been filed, and after the hearing sends the Clerk a copy of the order of the court. A copy of the order is also sent to the issuer of the writ (that is, the Governor-General or the Speaker).[174] The Clerk presents the petition and order of the court to the House at the earliest opportunity either separately or together.[175] Related documents have also been tabled—for example, an order of the High Court remitting a petition to the Federal Court.[176] The decision of

163 Constitution, s. 47.

164 VP 1901–02/59 (13.6.1901), 83 (5.7.1901), 419 (22.4.1902). See Appendix 13.

165 Until 1987, the Senate at the commencement of each Parliament appointed a Committee of Disputed Returns and Qualifications but it did not function from 1907.

166 VP 1901–02/61 (14.6.1901), 87 (10.7.1901), 441 (29.5.1902).

167 *Commonwealth Electoral Act 1902*, ss.192–206. (This legislation did not apply to the election of a Member to fill a vacancy in the House of Representatives during the 1st Parliament.)

168 *Disputed Elections and Qualifications Act 1907*, s. 6 (later repealed and its provisions incorporated in the *Commonwealth Electoral Act 1918*).

169 *Commonwealth Electoral Act 1918*, s. 353.

170 *Commonwealth Electoral Act 1918*, ss. 355–6.

171 *Commonwealth Electoral Act 1918*, s. 357(1A). *See* Gazette C2013G01703 (18.12.2013) for Electoral Commissioner's petition disputing election of Senators for Western Australia.

172 *Commonwealth Electoral Act 1918*, s. 354.

173 *Commonwealth Electoral Act 1918*, s. 363.

174 *Commonwealth Electoral Act 1918*, s. 369; VP 1929–31/91–2 (12.3.1930).

175 E.g. VP 2010–13/174 (15.11.2010).

176 E.g. VP 2008–10/133 (11.3.2008).

the court is final and no appeals are permitted.[177] A person whose election has been challenged continues to serve pending the outcome of the hearing.

Any person returned who is declared by the court not to have been duly elected ceases to be a Member of the House of Representatives—in fact the decision means that the person has not been a Member. Any person not returned who is declared to have been duly elected following consideration of an election petition may take his or her seat in the House of Representatives. If any election of any Member is declared absolutely void, then a new election is held.[178]

Since the establishment of the Court of Disputed Returns there have been 50 cases of the court being petitioned in connection with a seat in the House of Representatives, including 13 of similar intent lodged after the 1980 general election.[179] The court has ruled the election absolutely void in six cases and the Speaker (or Acting Speaker) has issued writs for new elections to be held.[180] Following the 1993 general election petitions were lodged alleging irregularities in the conduct of a general election, against the Electoral Commission, and challenging the election of all Members elected, rather than challenging the election of specified Members. The cases were dismissed.[181]

In 1920 a Member (Mr McGrath) was elected at a second election after the first election had been declared void. The House agreed to a motion that compensation be paid to him because he had been compelled to contest two elections as a result of official errors and had thus been involved in much unnecessary but unavoidable expenditure.[182]

The House of Representatives may, by resolution, refer any question concerning the qualifications of a Member or a vacancy in the House to the Court of Disputed Returns.[183] The Speaker sends to the court a statement of the question together with any documents possessed by the House relating to the question.[184] The court has the power to declare any person not qualified or not capable of being chosen or of sitting as a Member of the House of Representatives, and to declare a vacancy in the House of Representatives. The Chief Executive and Principal Registrar of the High Court sends a copy of the order or declaration of the Court of Disputed Returns to the Clerk of the House, as soon as practicable after the question has been determined.[185] There have been two instances of the House of Representatives referring a question concerning the qualifications of a Member or a vacancy in the House to the Court of Disputed Returns,[186] and several cases have occurred in the Senate.[187]

For further coverage of Members' qualifications and disqualifications and challenges to membership of the House *see* Chapter on 'Members'.

177 *Commonwealth Electoral Act 1918*, s. 368.
178 *Commonwealth Electoral Act 1918*, s. 374.
179 *See* Appendix 13—(figures to end 2016).
180 VP 1904/25–6 (15.3.1904), 43–4 (19.4.1904); VP 1907–8/3–4 (3.7.1907); VP 1920–21/189–90 (1.7.1920); VP 1990–92/1907 (25.11.1992), 1921–3 (26.11.1992) (by-election not held due to general elections in March 1993); VP 1996–98/428–30 (11.9.1996), 489 (16.9.1996).
181 VP 1993–96/176–7 (19.8.1993), 1106 (27.6.1994).
182 VP 1920–21/468 (25.11.1920).
183 *Commonwealth Electoral Act 1918*, s. 376.
184 *Commonwealth Electoral Act 1918*, s. 377.
185 *Commonwealth Electoral Act 1918*, s. 380.
186 To December 2017: VP 2016–18/ 958 (14.8.2017), 1274–5 (6.12.2017). These cases and unsuccessful motions to refer matters are covered under 'Challenges to membership' in Ch. on 'Members'.
187 S*ee Odgers*, 6th edn, pp. 172–4; 14th edn, p. 172.

4
Parliament House and access to proceedings

THE PARLIAMENT BUILDINGS

Meetings in Melbourne and provisional Parliament House in Canberra

The first Commonwealth Parliament was opened in the Exhibition Building, Melbourne, on 9 May 1901 by the Duke of Cornwall and York, later King George V, the Constitution having provided that the Parliament would sit at Melbourne until it met at the seat of Government of the Commonwealth which was to be determined later by the Parliament.[1] The Commonwealth Parliament continued to meet in Melbourne for 26 years using the State's Parliament House.[2] The Parliament of Victoria met in the Exhibition Building during this period.[3]

The seat of Government which, under the Constitution, was to be in New South Wales but not within 100 miles[4] of Sydney, was finally determined in 1908 to be in the Yass-Canberra district[5] and the Federal Capital Territory came into being on 1 January 1911.[6] In that year a competition for the design of the new capital took place and was won by the American architect Walter Burley Griffin. Work on the capital progressed slowly. In July 1923 the House agreed to a motion requesting the Governor-General to summon the first meeting of the 10th (next) Parliament at Canberra.[7] In the same month the House further resolved that a provisional building (with an estimated life of 50 years) be erected, rather than the nucleus of a permanent Parliament House.[8] The first sod was turned on the site on 28 August 1923. The provisional building was the design of John Smith Murdoch, Chief Architect of the Department of Works and Railways and built by that Department. It was opened on 9 May 1927 by the Duke of York, later King George VI.

The Parliament met in the provisional Parliament House for 61 years. To accommodate Ministers and their staff and increases in the numbers of parliamentarians and staff the building was extended and altered over the years but nevertheless by 1988 it had been grossly overcrowded for a long period. A description of the provisional building

1 Constitution, s. 125. VP 1901–02/1–9 (9.5.1901).

2 The two Houses met in Melbourne again on 9 and 10 May 2001 to mark the centenary of the first meetings: resolutions of House, VP 1998–2001/1576 (26.6.2000), 2104 (27.2.2001); joint meeting with Senate in Exhibition Building, VP 1998–2001/2259–60 (9.5.2001); sitting of House in Victorian Legislative Assembly Chamber, VP 1998–2001/2261–2 (10.5.2001).

3 Between December 1902 and April 1903 the State Parliament met in Parliament House while the Commonwealth Parliament was prorogued.

4 Approx. 161 km.

5 *Seat of Government Act 1908*. The Act repealed the *Seat of Government Act 1904* which had determined an area near Dalgety. This choice however proved to be unacceptable to the Government of New South Wales and the matter was reconsidered. The results of the final ballots in each House were influenced by the State Government's indicated willingness to cede land in the Yass–Canberra district. H.R. Deb. (8.10.1908) 936–40; S. Deb. (6.11.1908) 2100–8. The land was ceded by the *Seat of Government Surrender Act 1909* (NSW).

6 By proclamation of the Governor-General pursuant to the *Seat of Government Acceptance Act 1909*. The agreement was later varied (to correct an error and make a survey adjustment) by the *Seat of Government Acceptance Act 1922*.

7 VP 1923–24/74 (12.7.1923); H.R. Deb. (28.6.1923) 460–85, (12.7.1923) 1048–61.

8 VP 1923–24/96 (26.7.1923); H.R. Deb. (26.7.1923) 1668–78.

is given in chapter 6 of the first edition. The last sitting at the provisional Parliament House took place on 3 June 1988.

The permanent Parliament House

A Joint Standing Committee on the New and Permanent Parliament House, appointed in 1975 to act for and represent the Parliament as the client in the planning, design and construction of a new Parliament House, recommended that stage one of a new building be ready for occupation by the 1988 bicentenary of European settlement in Australia.[9] On 28 August 1980 the House approved the construction on Capital Hill of a new and permanent Parliament House.[10] The new Parliament House was opened on 9 May 1988 by Queen Elizabeth II. The first sittings in the new building took place on 22 August 1988.[11]

The layout of the building

The building occupies 7.5 hectares and has an area of some 240 000 square metres, covering four levels, including one below ground level. An 81 metre high flag mast rises over the centre of the building. The House of Representatives entrance is on the eastern side of the building.

The main public and ceremonial entry to Parliament House is from the forecourt through the Great Verandah and the Foyer. Directly beyond the Foyer is the Great Hall, the venue of parliamentary ceremonies and receptions, occasions of national significance and other functions. Beyond the Great Hall is the Members' Hall, centrally located between the Chambers and at the intersection of the north-south and east-west axes of the building.

Unlike the situation in many Parliaments following the Westminster model, Ministers' main offices are in Parliament House rather than in the principal buildings of the executive departments they administer. Originally an historical accident (a shortage of suitable office accommodation in Canberra when the provisional Parliament House was first occupied) the presence of substantial ministerial offices in Parliament House became the accepted practice over the years and was institutionalised in the new Parliament House, where offices for the Prime Minister, Ministers and ministerial staff and other government employees are consolidated into a clearly defined zone of the building with its own identity and entrance. Accommodation of the Canberra representatives of a number of media organisations within Parliament House has, for similar historical reasons, been accepted by the Parliament, despite the fact that much of the work of these persons and organisations does not relate directly to the proceedings of the Parliament.

Consistent with the concept of the building as a 'people's building' considerable attention has been given to providing facilities and services for visitors and tourists. A large proportion of the first floor is devoted to the public circulation system from which visitors have access to the galleries of the Great Hall, the Members' Hall and the Chambers. From the first floor the public also has access to the committee rooms, and to public facilities at the front of the building, comprising a theatrette, exhibition areas, post office and cafeteria. A book and souvenir shop is situated in the Foyer near the main entrance.

9 VP 1977/98 (3.5.1977); H.R. Deb. (3.5.1977) 1445–6; PP 69 (1977).
10 VP 1978–80/1604 (28.8.1980); H.R. Deb. (28–29.8.1980) 970–1.
11 More detail on the site, design, construction and layout of the building is given in earlier editions (4th edn, pp. 106–8).

THE CHAMBER

The Chamber, like the Chamber of the British House of Commons and the Chamber of the provisional Parliament House, is furnished predominantly in green. The derivation of the traditional use of green is uncertain.[12] The shades of green selected for the Chamber in the permanent building were chosen as representing the tones of native eucalypts.

Facing the main Chamber entrance from the Members' Hall is the Speaker's Chair and the Table of the House of Representatives.[13] High on the Chamber wall above the Speaker's Chair is the Australian Coat of Arms. Four Australian national flags are mounted high in each corner of the Chamber, and an additional two flags flank the main entrance.

The Speaker's desk has monitors on it to enable the occupant of the Chair to be connected into the parliamentary computer network and to view a range of online services. Immediately in front of the Speaker's Chair are chairs for the Clerk of the House and the Deputy Clerk. Set into the Clerk's desk is a button which enables the bells to be activated with associated flashing green lights in rooms and lobbies of the building. A similar system operates from the Senate using red lights. The bells are rung for five minutes before the time fixed for the commencement of each sitting[14] and before the time fixed for the resumption of a sitting after a suspension. Before any division or ballot is taken, the Clerk rings the bells for the period specified by the standing orders, as timed by the sandglasses kept on the Table for that purpose.[15] For most divisions a four-minute sandglass is used; a one-minute sandglass is used when successive divisions are taken and there is no intervening debate after the first division.[16] The bells are also rung to summon Members to the Chamber for the purpose of establishing a quorum.[17]

Electronic speech timing clocks are set on the walls below each side gallery. There are two clocks on each side of the Chamber, one analogue and one digital. The hand or digital display is set by remote control by the Deputy Clerk to indicate the number of minutes allowed for a speech.[18] The clocks automatically count down to zero as a Member speaks. A small warning light is illuminated on each clock face one minute before the time for the speech expires. Electronic display screens on stands at each side of the Chamber show the current item of business and question before the Chair.

Microphones in the Chamber are used for the broadcast[19] of the proceedings of the House and for sound reinforcement purposes. The radio broadcast announcements are made from a booth at the rear of the Chamber. Control of the radio broadcast also occurs there with the control of the telecast and webcast taking place in a basement production control room. Amplifiers are provided in the Chamber in order that speeches may be heard by Members. The Chamber floor is equipped with facilities for hearing-impaired persons wearing hearing aids.

12 J. M. Davies, 'Red and Green', *The Table* XXXVII, 1968, pp. 33–40. The article argues that green appears to have been the predominant colour in the decoration of the Palace of Westminster when it was constructed in the 13th century, including the locations where the House of Commons was to later meet. The choice of red specifically for the chamber where the Lords met was a later development.

13 The original Speaker's Chair, described in detail in the first edition, remained in its place in the provisional building.

14 S.O. 54.

15 S.O.s 129(a), 136(b).

16 S.O. 131(a).

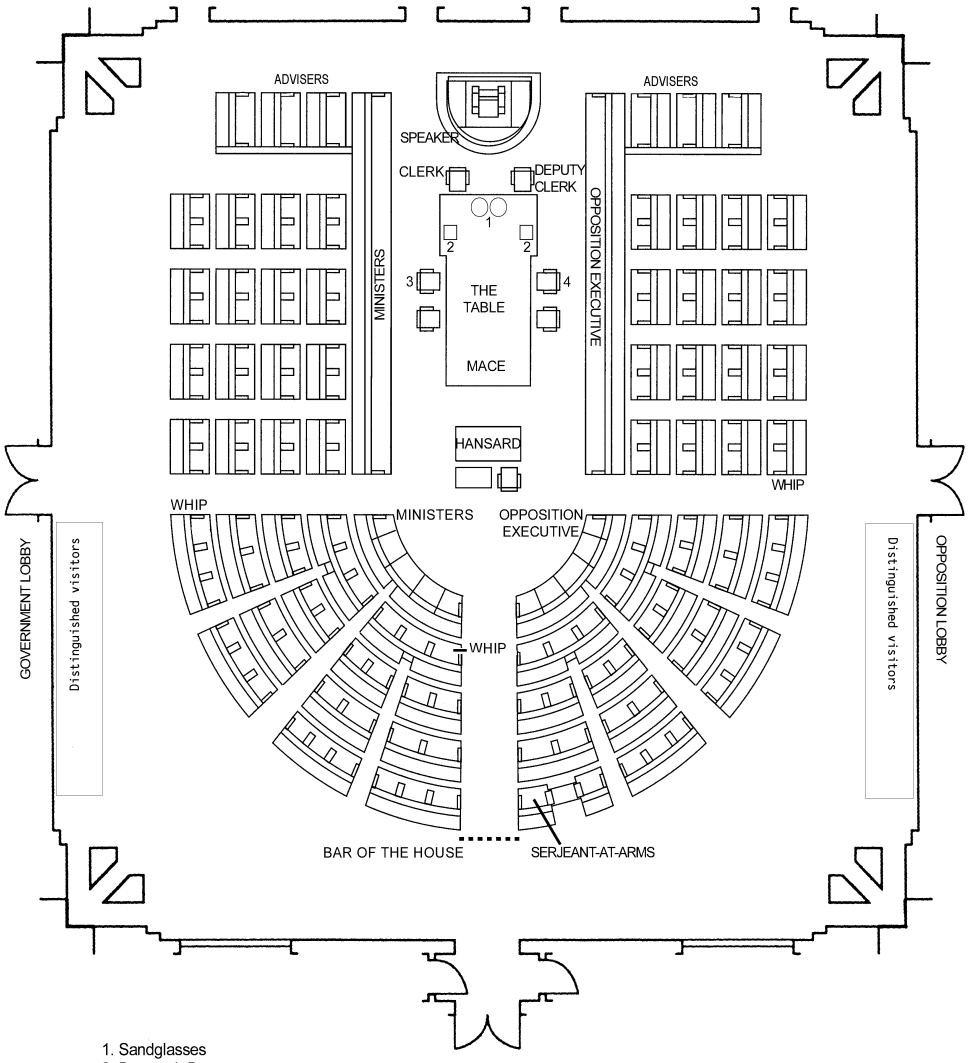
17 S.O. 56(a).

18 S.O. 1 (time limits for speeches).

19 Proceedings are broadcast on radio, television and the internet.

The House of Representatives Chamber

Plan for the 45th Parliament



1. Sandglasses
2. Despatch Boxes
3. Prime Minister or Minister in charge of business
4. Leader of the Opposition or Member of the Opposition Executive

Proceedings of both Houses are relayed to rooms throughout the building. Only the microphone of the Speaker is live all the time. The nearest microphone to a Member is switched on when he or she is making a speech.

Connections to the parliamentary computer network are provided to each desk and at the Table for Members' laptop computers. Wireless connectivity is also available. The Chamber has been designed to accommodate electronic voting.[20]

Two despatch boxes, with elaborate silver and enamel decorations, are situated on the Table in front of the Clerk and Deputy Clerk, respectively. These were a gift from King George V to mark the opening of the provisional Parliament House in Canberra in 1927 and the inauguration of the sittings of the Parliament in the national capital.[21] The despatch boxes, which are purely ornamental, are exact replicas of those which lay on the Table at Westminster prior to their loss when the Commons Chamber was destroyed by bombs in 1941. They are a continuing link between the House of Commons and the House of Representatives. The Prime Minister, Ministers and members of the opposition executive speak 'from the despatch box'. The origin of the boxes is obscure, the most accepted theory being that in early times Ministers, Members and the Clerk of the House of Commons carried their papers in a box and, thus, one or more boxes were generally deposited on the Table.

The Chamber of the House of Representatives is used only by the House itself, for some joint meetings or sittings of the House and Senate, and for the occasional major international parliamentary conference.

The Mace

A mace was originally a weapon of war similar to a club. During the 12th century the Serjeants-at-Arms of the King's bodyguard were equipped with maces, and over time the Serjeants' maces, stamped on the butt with the Royal Arms, developed from their original function as weapons to being symbols of the King's authority. Towards the end of the 14th century Royal Serjeants-at-Arms were assigned to duties in the House of Commons. The powers of arrest of the Royal Serjeants came to be identified as the powers of arrest of the House of Commons.

This authority is associated with the enforcement of parliamentary privilege, the exercise of which had depended in the first instance on the powers vested in a Royal Serjeant-at-Arms. The Mace, which was the Serjeant's emblem of office, became identified with the growing privileges of the House of Commons and was recognised as the symbol of the authority of the House and hence the authority of the Speaker.

The House of Representatives adopted the House of Commons' practice of using a Mace on the first sitting day of the Commonwealth Parliament on 9 May 1901, and it is now accepted that the Mace should be brought into the Chamber before the House meets.[22] However, there was no such acceptance in respect of the first Mace used by the House of Representatives. It was not considered essential for the Mace to be on the Table for the House to be properly constituted during the period when the Mace lent by the Victorian Legislative Assembly was in use (*see below*), and during this time there were

20 *See* 'Electronic voting' in Chapter on 'Order of business and the sitting day'.

21 VP 1926–28/349 (9.5.1927).

22 For a detailed description of the House of Representatives' Mace and the history of its use *see* A. R. Browning, *The Mace*. AGPS, Canberra, 1970.

periods (1911–13, 1914–17, 1929–31) when the Mace was removed from the Chamber completely (on the instructions of the Speaker).[23]

Current standing orders require that, once the newly elected Speaker has taken the Chair, the Mace, which until then remains under the Table, is placed on the Table.[24] This is the only mention of the Mace in the standing orders. In practice the Mace is placed on the Table by the Serjeant-at-Arms when the Speaker takes the Chair at the commencement of each sitting and it remains there until the Speaker leaves the Chair at the adjournment of the sitting. The Mace remains on the Table if the sitting is suspended for a short time, but the current practice is for it to be removed for safekeeping during an overnight suspension.

The Mace used by the House of Representatives from 1901 to 1951 was lent to the House of Representatives by the Victorian Legislative Assembly. The current Mace was presented to the House of Representatives, at the direction of King George VI, by a delegation from the House of Commons on 29 November 1951 to mark the Jubilee of the Commonwealth Parliament,[25] and was, by Australian request, designed to resemble the Mace in use in the House of Commons. It is made from heavily gilded silver and embodies much symbolic ornamentation, including symbols of the Australian Commonwealth and States and numerous representations which illustrate Australian achievement.

The Mace traditionally accompanies the Speaker on formal occasions, such as his or her presentation to the Governor-General after election, when the House goes to hear the Governor-General's speech opening Parliament, and on the presentation of the Address in Reply to the Governor-General at Government House. As the Mace is also a symbol of royal authority, it is not taken into the presence of the Crown's representative on these occasions but is left outside and covered with a green cloth, the symbol being considered unnecessary in the presence of the actual authority. When the Queen arrived to open Parliament in 1954, 1974 and 1977 she was met on the front steps of the provisional Parliament House by the Speaker. The Serjeant-at-Arms, accompanying the Speaker, did not carry the Mace on these occasions.[26]

Seating

The Chamber is designed to seat up to 172 Members with provision for an ultimate total of 240 to be accommodated. Should additional seats be required, for example, as in the case of a joint sitting or joint meeting of the two Houses, temporary seating can be added around the Chamber perimeter. Seats are also provided on the floor of the Chamber for the Serjeant-at-Arms and for a number of government and opposition officials and advisers.[27] The Chamber has a horseshoe shaped seating arrangement. It therefore differs from many other legislative chambers which provide for their members to sit either on opposite sides of the room directly facing one another or in seats arranged in a fan-shaped design around a central dais or rostrum.

Members of the governing party or parties sit on the right of the Chair and the Members of the Opposition on the left. The two chairs on the right of the Table are, by

23 Speakers McDonald and Makin (the latter declaring the Mace 'a relic of barbarism'), *see* Browning, *The Mace*, pp. 6–7.
24 S.O. 12(c).
25 H.R. Deb. (29.11.1951) 3091.
26 Browning, *The Mace*, p. 12.
27 Senators have been seated in the seats reserved for officials, e.g. H.R. Deb. (16.12.1992) 3919–20.

practice, reserved for the Prime Minister and the Deputy Prime Minister but are also occupied by other Ministers or Parliamentary Secretaries when they are in charge of the business before the House. Similarly, the two chairs on the left of the Table are reserved for the Leader and Deputy Leader of the Opposition but may be occupied by Members leading for the Opposition in the business before the House. The separate small table and two seats at the end of the main Table are used by Hansard reporters. The front benches on the right of the Speaker are reserved for Ministers.[28] Members of the opposition executive sit on the front benches on the Speaker's left. Other Members have allotted seats. Standing order 24 allows Members to retain the seats they occupied at the end of the previous Parliament unless there has been a change of government. Any question arising regarding the seats to be occupied by Members is determined by the Speaker.[29]

At floor level, at the right and the left of the rear of the Chamber, are Distinguished Visitors Galleries to which access is by invitation of the Speaker only. Seats in these galleries are available to Senators, although a number of seats are provided for them in the central first floor gallery (*see* page 114).

The 'area of Members' seats' is defined in the standing orders as the area of seats on the floor of the Chamber reserved for Members only. It does not include seats in the advisers' box or special galleries, but does include the seat where the Serjeant-at-Arms usually sits.[30]

Bar of the House

Situated at the back row of Members' seats at the point of entry to the Chamber from the main entrance facing the Speaker's Chair is the Bar of the House, consisting of a cylindrical bronze rail which can be lowered across the entrance. It is a point outside which no Member may speak to the House or over which no visitor may cross and enter the Chamber unless invited by the House. In parliamentary history, the Bar is the place to which persons are brought in order that the Speaker may address them on behalf of the House or at which they are orally examined.

A witness before the House is examined at the Bar unless the House otherwise orders.[31] In theory a person may be brought to the Bar of the House to receive thanks, to provide information or documents, to answer charges or to receive punishment. Neither the standing orders nor the practice of the House allow an organisation or a person as of right to be heard at the Bar.

The only occasion when persons have appeared at the Bar of the House of Representatives was in 1955 when Mr Raymond Fitzpatrick and Mr Frank Browne, having been adjudged by the House to be guilty of a serious breach of privilege, were ordered to attend at the Bar. On 10 June 1955 accompanied by the Serjeant-at-Arms each was heard separately at the Bar 'in extenuation of his offence' and later that day, again accompanied by the Serjeant-at-Arms bearing the Mace, appeared and received sentences of imprisonment for three months.[32] During the examination of Mr Browne, who addressed the House at length, the Speaker ordered him to take his hands off the Bar.[33]

28 S.O. 23.
29 S.O. 24(b). H.R. Deb. (30.8.2000) 19666–7.
30 S.O. 2. The definition is relevant to the location of Members during divisions—Members must be within the defined area for their vote to be counted, and if calling for the division must remain within that area (S.O.s 128, 129).
31 S.O. 255(b).
32 VP 1954–55/269–71 (10.6.1955). For full details of this case *see* Ch. on 'Parliamentary privilege'.
33 H.R. Deb. (10.6.1955) 1625.

In 1921 the Prime Minister put forward a proposal that the House grant leave to a Senate Minister to address the House on the administration of his Department and that he be heard from the floor of the House. The point was then made that, if the proposal was agreed to, the Senator should address the House from the Bar. The Speaker stated:

> . . . I know no authority whatsoever which will permit anyone who is not a member of this Chamber to address honourable members from the floor of the House. It is competent for anyone, with the permission of honourable members, to address the House from the Bar . . .[34]

Following debate on the matter the Prime Minister did not proceed with the proposal. On two occasions proposals that persons be brought or called to the Bar have been unsuccessful.[35]

A number of witnesses have appeared before the Senate, some at the Bar and some being admitted into the Chamber.[36]

Galleries

There are open galleries on all four sides of the Chamber on the first floor from which proceedings can be observed. The gallery facing the Speaker's Chair and the side galleries are visitors' galleries which can seat 528 persons. There is also special provision for disabled persons to be accommodated. The seats in the first row of the central gallery are known as the Special Visitors' Gallery, and are reserved for special visitors and diplomats. The seats in the second and third rows of the central gallery are known as the Speaker's Gallery. Apart from the four seats in the front row on the right hand side (viewed from the Speaker's Chair) which are reserved for Senators, the Speaker alone has the privilege of admitting visitors (although in practice Members make bookings through the Speaker's office for guests in this gallery). The remainder of the seats in the three visitors' galleries form the public galleries. Members of the public are able to obtain admission cards to the public galleries from the booking office in the Members' Hall, booking in advance through the Serjeant-at-Arms' Office. Members may book seats in the galleries for their guests.

Admission to the galleries is a privilege extended by the House and people attending must conform with established forms of behaviour and, for security reasons, are subject to certain conditions of entry (*see* page 128). People visiting the House are presumed to do so to listen to debates, and it is considered discourteous for them not to give their full attention to the proceedings. Thus, visitors are required to be silent and to refrain from attempting to address the House, interjecting, applauding, conversing, reading, eating, and so on.[37] An earlier prohibition on note-taking in the public galleries was lifted in 1992. Visitors are not permitted to take photographs in the Chamber when the House is sitting nor are they allowed to display signs or banners,[38] or wear clothing designed to draw attention.[39] Successive Speakers of the House have upheld these rules.

The Press Gallery, seating 102 persons, is located behind the Speaker's Chair. This gallery may be used only by journalists with Press Gallery passes.

34 H.R. Deb. (2.12.1921) 13585.
35 VP 1967–68/308 (8.11.1967); VP 1970–72/465 (9.3.1971).
36 *See Odgers*, 6th edn, pp. 817–8, 878–9, 850–4.
37 H.R. Deb. (14.5.1952) 324; H.R. Deb. (21.4.1955) 79; H.R. Deb. (14.5.1969) 1748; H.R. Deb. (6.4.2000) 15453; H.R. Deb. (27.5.2003) 15038; H.R. Deb. (1.4.2004) 27990–91; H.R. Deb. (15.9.2005) 80. And see 'Disorder and disturbances' at p. 128.
38 H.R. Deb. (20.5.1975) 2513.
39 H.R. Deb. (15.9.2005) 80–1.

At second floor level on the three sides of the Chamber above the visitors' galleries are enclosed soundproof galleries which can seat some 150 people. These galleries enable the operations of the Chamber to be described to visitors without disturbing the proceedings, and are mainly used by school groups.

Strangers and visitors

'Stranger' was the term traditionally given to any person present in the Chamber (including the galleries) who was neither a Member nor an employee of the House of Representatives performing official duties. Parliamentary reporting staff, as employees of the Parliament, were not normally regarded as strangers. The use of the word 'stranger' to describe people within the parliamentary precincts who are not Members or staff of the Parliament is commented on by Wilding and Laundy:

> The official use of the word 'stranger' is yet another symbol of the ancient privileges of Parliament, implying as it does the distinction between a member and a non-member and the fact that an outsider is permitted within the confines of the Palace of Westminster on tolerance only and not by right.[40]

When the standing orders were revised in 2004 the word 'stranger' was replaced by 'visitor', then defined as 'a person other than a Member or parliamentary official'. In 2016 standing orders were amended to provide that a visitor does not include an infant being cared for by a Member.[41] The Speaker may admit visitors into the lower galleries, and may admit distinguished visitors to a seat on the floor of the Chamber.[42] While the House or the Federation Chamber is sitting no Member may bring a visitor into that part of the Chamber or that part of the room where the Federation Chamber is meeting which is reserved for Members.[43] Officials in the advisers' boxes must behave appropriately. It is highly disorderly for any such person to interject or to otherwise seek to interfere in proceedings,[44] and they must not display items regarded as props.[45] If a visitor or person other than a Member disturbs the operation of the Chamber or the Federation Chamber, the Serjeant-at-Arms can remove the person or take the person into custody.[46] If a visitor or other person is taken into custody by the Serjeant-at-Arms, the Speaker must report this to the House without delay.[47]

Strangers ordered to withdraw

Visitors (then referred to as 'strangers') have been ordered to leave the House of Representatives for special reasons, the last occasion being in 1942. On three occasions the House's power to exclude visitors was used to allow the House to deliberate in private session. This has only happened in wartime—*see below*. Visitors have also been refused access to the galleries to prevent proceedings from being interrupted by potential disturbances. On 28 July 1920 a large number of people gathered outside Parliament House, Melbourne. The Deputy Speaker, in the absence of the Speaker, issued an instruction that, while there was any probability of a disturbance outside, all strangers should be excluded from the galleries of the Chamber.[48]

40 N. Wilding and P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 729.
41 S.O. 257(d).
42 S.O. 257(a).
43 S.O. 257(b).
44 E.g. H.R. Deb. (16.2.2012) 1657–8.
45 H.R. Deb. (5.2.2013) 10.
46 S.O. 96(a).
47 S.O. 96(b).
48 H.R. Deb. (29.7.1920) 3078–9.

In the past the motion 'That strangers be ordered to withdraw' (without expectation that it would be agreed to) was frequently moved as a delaying or disruptive tactic.[49] The standing orders no longer explicitly provide for such a motion, although there is nothing to prevent an equivalent motion being moved, and there remains provision for a Member to call attention to the unwanted presence of visitors.[50]

WARTIME PRIVATE MEETINGS

On three occasions during World War II strangers were ordered to withdraw[51] to enable the House to discuss in private certain matters connected with the war. On the first of these occasions in committee, the Chairman of Committees stated that he did not regard Senators as strangers.[52] However, on the next occasion the Speaker ruled that Senators would be regarded as strangers but that the House could invite them to remain and a motion that Senators be invited to remain was agreed to. The Speaker then informed the House that members of the official reporting staff were not covered by the resolution excluding strangers, whereupon a motion was moved and agreed to 'That officers of the Parliamentary Reporting Staff withdraw', and the recording of the debate was suspended.[53]

Also during World War II, joint secret meetings of Members and Senators were held in the House of Representatives Chamber and strangers were not permitted to attend, although certain departmental heads were present. The Clerks and the Serjeant-at-Arms remained in the Chamber.[54]

Senators

Senators are technically visitors, but recognised as having preferential access to observe the proceedings of the House. On rare occasions they may be present in the advisers' gallery. Senators have the privilege of being admitted into the Senators' gallery or the Distinguished Visitors' Gallery on the floor of the Chamber without invitation. When present in the Chamber or galleries Senators must observe the Speaker's instructions regarding good order.[55] The same requirement applies when Senators are invited onto the floor of the Chamber as guests on the occasion of an address by a visiting head of state.

In 1920 the Senate proposed a change in the standing orders of both Houses to enable a Minister of either House to attend the other House to explain and pilot through any bill of which he had charge in his own House.[56] The proposal lapsed at prorogation in 1922 without having been considered by the House of Representatives.

In 1974 the Standing Orders Committee recommended that, subject to the concurrence of the Senate, and for a trial period, Ministers of both Houses be rostered to attend the other House for the purpose of answering questions without notice.[57] The House was dissolved without the report having been considered.

49 Pursuant to former S.O. 314.
50 S.O. 66(d).
51 VP 1940–43/72 (12.12.1940), 123 (29.5.1941), 166 (20.8.1941); H.R. Deb. (29.5.1941) 55; H.R. Deb. (20.8.1941) 11–12.
52 VP 1940–43/72 (12.12.1940).
53 VP 1940–43/166 (20.8.1941); H.R. Deb. (20.8.1941) 12–14.
54 VP 1940–43/275 (20.2.1942), 393 (3.9.1942), 441 (8.10.1942).
55 S.O. 257(c).
56 VP 1920–21/163 (13.5.1920).
57 Standing Orders Committee, *Report*, PP 63 (1974) 5–6.

In 1982 the matter of the attendance of Senate Ministers to answer questions in the House was referred to the Standing Orders Committee,[58] but the committee did not report before the 32nd Parliament was dissolved. In 1986 the Standing Committee on Procedure considered the rostering of Ministers between the Houses during its inquiry into the rules and practices which govern the conduct of Question Time. In its report[59] the committee stated that it did not support the proposal, being of the opinion that all Ministers should be Members of and responsible to the House of Representatives. The committee noted that the standing orders and practices of both Houses had complementary provisions for Members and Senators to appear before the other House or its committees as witnesses but stated its belief that, as far as the accountability of Ministers at Question Time was concerned, Ministers who were Members of the House should be responsible to the Parliament and the people through the House of Representatives only.

Distinguished visitors invited to the floor of the House

Distinguished visitors to the House, such as parliamentary delegations, may be invited by the Speaker to be seated at the rear of the Chamber on seats provided for such visitors, in the Distinguished Visitors' Gallery, the first floor Special Visitors' Gallery or the Speaker's Gallery. When such visitors are present Speakers have sometimes adopted the practice of interrupting the proceedings and informing Members of the presence of the visitors, who are then welcomed by the Chair on behalf of the House.

Other distinguished visitors, such as foreign heads of state or government and visiting presiding officers, may be invited by the Speaker to take a seat on the floor of the House.[60] Such an invitation is regarded as a rare honour. It is customary for the Speaker to exercise this right only after formally seeking the concurrence of Members. The practice on these occasions is for the Speaker to inform the House that the visitor was within the precincts and, with the concurrence of Members, to invite the visitor to take a seat on the floor. The Serjeant-at-Arms escorts the visitor to a chair provided immediately to the right of the Speaker's Chair. A private citizen, Captain Herbert Hinkler, a highly distinguished Australian aviator, was accorded the honour in 1928 after his record breaking flight from England to Australia.[61] The only other recorded invitation to a private citizen was in 1973 when the Australian writer, Patrick White, who had been awarded the Nobel Prize for Literature, was invited to take a seat on the floor of the House in recognition of his achievement. Mr White wrote to the Speaker declining the invitation.[62]

Only once[63] have visitors been invited to address the House from the floor. This was on 29 November 1951 when a delegation from the UK House of Commons presented a new Mace to the House to mark the Jubilee of the Commonwealth Parliament. The Speaker, with the concurrence of Members, directed that the delegation, which consisted of three Members and a Clerk, be invited to enter the Chamber and be received at the Table. Members of the delegation were provided with seats on the floor of the House at the foot of the Table. The Speaker welcomed the visitors and invited members of the

58 VP 1980–83/748 (25.2.1982).
59 PP 354 (1986) 25.
60 S.O. 257(a), e.g. VP 1970–72/31 (11.3.1970); VP 2002–04/1653 (1.6.2004).
61 VP 1926–28/512 (15.3.1928).
62 H.R. Deb. (7.11.1973) 2882; H.R. Deb. (29.11.1973) 4081.
63 General D. MacArthur is sometimes reported as having addressed the House during World War II. However, while he was invited to take a seat on the floor of the House, VP 1940–43/307 (26.3.42), his address to members of the Parliament occurred outside the Chamber (on the same day in the parliamentary dining room).

delegation to address the House. The Mace was presented by the delegation and was laid on the Table. The Speaker acknowledged the gift and the Prime Minister moved a motion of thanks which was supported by the Leader of the Opposition, and agreed to by all Members present rising in their places. The delegation then withdrew from the Chamber.[64]

In recent years foreign heads of state or government have been invited to address the Parliament. Initially such addresses were to formal meetings of both Houses in the House of Representatives Chamber, but more recently to sittings of the House to which Senators have been invited as guests.[65]

ACCESS TO PROCEEDINGS

Parliament conducts its business, with the rarest exceptions, in public. This is now taken for granted but it has not always been the case over the long history of Parliament. In the 18th century the UK House of Commons declared the publication of any of its debates a breach of privilege and exercised its power to imprison those who committed such breaches. The House of Commons at first was seeking, among other things, to maintain its independence by keeping its debates secret from the monarch. By the 18th century its motive was possibly reluctance to be held accountable to public opinion. It also had cause for concern because of the notorious inaccuracy of reports of its debates which were based on notes taken by reporters, contrary to the orders of the House. However, reports persisted and by the end of the 18th century they were openly tolerated.[66]

In Australia the transcript of proceedings has always been publicly available. The parliamentary debates—generally known as Hansard—are described in the chapter on 'Documents'. People may view the proceedings of the House from the public galleries (*see* page 114). Many thousands of people visit the House of Representatives public galleries during the sittings each year, although mostly as tourists making single visits. In recent years the House itself has endeavoured to make itself more accessible to the public through its publications and web site (*see* page 124). For most people however, the important sources of information about events in the House are reports by the media; and radio and television coverage of proceedings.

Relations with the media

Important and useful though they may be, broadcasts and Hansard reports of parliamentary proceedings reach a relatively small proportion of the population. Undoubtedly most people rely on media reports for information about proceedings in the Parliament, and about the actions and policies of the Government. The effectiveness of parliamentary democracy is therefore in large part dependent on fair and accurate reporting.

Since its establishment the Commonwealth Parliament has acknowledged the importance of the media. This recognition is exemplified in the setting aside of galleries from which members of the Federal Parliamentary Press Gallery may view parliamentary

64 VP 1951–53/242 (29.11.1951); H.R. Deb. (29.11.1951) 3088–93.

65 For details *see* 'Addresses to both Houses by foreign heads of state' in Ch. on 'Order of business and the sitting day'.

66 Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 96; *see also* A. Wright and P. Smith, *Parliament past and present*, Hutchinson, London, 1903, pp. 221–30.

proceedings and the provision of office space and access to other facilities in Parliament House. Because, with some exceptions, newspaper and television organisations do not maintain offices in Canberra other than those provided in Parliament House, their staff operate from Parliament House on a full-time basis for the reporting of Canberra and district news, parliamentary or otherwise. Ministers as well as Members also work principally from their Parliament House offices when in Canberra. The result of this proximity, which is unusual in other Parliaments, is a degree of formal and informal interaction.

The Presiding Officers have the right to control access to Parliament House by media representatives. Although the Parliament has facilitated media access, this access is ultimately conditional on the observation of rules or guidelines approved by the Presiding Officers that members of the Press Gallery are expected to observe. As well as covering broadcasting, filming and photography, discussed in more detail later in this chapter, the rules define areas where media related activity such as photography is not permitted and dress standards in the press galleries, among other things.[67]

The Presiding Officers' control of media access was demonstrated in the House in 1980 when members of the Press Gallery, in the context of an industrial dispute involving journalists, declared certain journalists not to be members of the Federal Parliamentary Press Gallery and asked for their passes to be withdrawn. The Speaker stated that he held the view that the democratic process required that the House be available for observation by all who could fit into the public galleries and by all who could come into the media gallery for the purpose of reporting its proceedings: under no circumstances would he take action to prevent any media representative whom he judged to be qualified and competent to report the proceedings of the House from coming there to report them.[68] Misconduct by members of the Press Gallery has resulted in passes being withdrawn.[69] For example, in 1971 a serious disturbance was caused by a journalist who interjected from the Press Gallery with the words 'you liar' while the Prime Minister was speaking. The Leader of the Opposition later moved for the suspension of standing orders to enable him to move a motion to bring the offender before the Bar. The Prime Minister having received an apology, the motion was withdrawn. The Speaker stated that he had ordered the journalist's removal from the Press Gallery and the withdrawal of his pass. The Speaker later reported that he had received a letter from the journalist apologising for his conduct and that his pass had been restored.[70]

Breaches of the rules by media personnel outside the Chamber may also lead to the withdrawal of press passes (*see* page 124).

Broadcasting of proceedings

Radio broadcasts

The radio broadcasting of proceedings commenced on 10 July 1946 in the House of Representatives. The Parliament of Australia was the second national Parliament of the Commonwealth to introduce the broadcasting of its proceedings, the radio broadcast of proceedings in New Zealand having commenced in 1936.

67 *Rules for media related activity in Parliament House and its precincts*, November 2016.
68 H.R. Deb. (14.5.1980) 2694.
69 H.R. Deb. (23.4.1931) 1274; J 1940–43/211 (2.6.1942); H.R. Deb. (3.6.1942) 2187; H.R. Deb. (29.5.1973) 2738.
70 VP 1970–72/465, 467 (9.3.1971); H.R. Deb. (9.3.1971) 687, 689–92, 739.

Compulsory radio broadcasts are made and controlled under the *Parliamentary Proceedings Broadcasting Act 1946*, which directs the Australian Broadcasting Corporation (ABC) to broadcast the proceedings of the House of Representatives or the Senate, or of a joint sitting pursuant to section 57 of the Constitution or to any Act. In November 1988 a network was established to carry the broadcast of proceedings and related material only. In 1994 the content of the network was expanded into a 24 hour news service on which the parliamentary broadcast has priority.[71]

In addition to the official ABC radio broadcast, since November 1988 all radio stations or networks have been permitted to broadcast recorded excerpts from proceedings, subject to conditions determined by the Broadcasting Committee (*see below*).

JOINT COMMITTEE ON THE BROADCASTING OF PARLIAMENTARY PROCEEDINGS

A Joint Committee on the Broadcasting of Parliamentary Proceedings is appointed in each Parliament pursuant to the *Parliamentary Proceedings Broadcasting Act 1946*. The Act provides for the committee to:

- consider and specify in a report to each House the general principles upon which there should be determined the days upon which, and the periods during which, the proceedings of the Senate and the House should be broadcast;
- determine the days upon which, and the periods during which, the proceedings of either House should be broadcast, in accordance with the general principles specified by the committee and adopted by each House; and
- determine the days upon which, and the periods during which, the proceedings of a joint sitting should be broadcast.

The committee also determines the conditions under which re-broadcasts may be made of excerpts of proceedings.

The general principles and standing determinations relating to radio broadcasting and the conditions for broadcasting of excerpts are accessible on the committee's website.

The committee has a limited role in relation to the televising of proceedings, as the Act covers televising of joint sittings only.[72] The committee may:

- require the ABC to televise, in whole or in part, the proceedings of a joint sitting; and
- determine the conditions applying to a telecast of a recording of the proceedings of a joint sitting.

The committee has also provided informal advice to the Presiding Officers on rules for media related activity in Parliament House and the precincts.

Televising

Access to the proceedings of the House for televising has been permitted since 1991.[73] The televised proceedings of the House and the Federation Chamber, as well as some of the public hearings of parliamentary committees, are broadcast live on ParlTV[74] within Parliament House (and externally to government departments) and over the internet.[75]

71 Formerly the Parliamentary and News Network (PNN), now called NewsRadio.

72 Although the House in 1991, VP 1990–93/1084–5 (16.10.1991), declared in principle support for the amendment of the *Parliamentary Proceedings Broadcasting Act 1946* to make statutory provision for televising, no legislative action was taken.

73 Access was originally for a trial period, VP 1990–93/491–2 (12.2.1991); continuing approval, VP 1990–93/1084–5 (16.10.1991); conditions amended, VP 1993–96/387–9 (20.10.1993).

74 The in-house television and radio distribution systems previously known as the House Monitoring Service.

75 Accessible through the Parliament's web site <http://www.aph.gov.au/>. The ParlView service provides access to archived parliamentary audio-visual records.

This official broadcast is also available for the use of the television networks. The live proceedings are currently broadcast nationally by A-PAC (Australia's Public Affairs Channel).[76] Question Time is televised live by the ABC.[77]

Resolution on broadcasting of proceedings

On 9 December 2013 the House adopted the following resolution authorising and setting conditions for the broadcasting and re-broadcasting of proceedings:[78]

1 Provision of broadcast

(a) The House authorises the broadcast and re-broadcast of the proceedings and excerpts of proceedings of the House, its committees and of the Federation Chamber in accordance with this resolution.

(b) The House authorises the provision of sound and vision coverage of proceedings of the House, its committees, and of the Federation Chamber, including records of past proceedings, through the House Monitoring Service and through the Parliament of Australia website.

(c) Access to the House Monitoring Service sound and vision coverage of the proceedings of the House, its committees and the Federation Chamber is provided to persons and organisations as determined by the Speaker, on terms and conditions determined by the Speaker which must not be inconsistent with this resolution.

(d) The Speaker shall report to the House on persons and organisations in receipt of the service and on any terms and conditions determined under paragraph 1(c).

(e) Use of sound and vision coverage of proceedings of the House, its committees and the Federation Chamber, including records of past proceedings, published on the Parliament of Australia website is subject to conditions of use determined by the Speaker.

2 Broadcast of House of Representatives and Federation Chamber proceedings—House Monitoring Service

Access to proceedings provided through the House Monitoring Service is subject to compliance with the following conditions:

(a) Only the following broadcast material shall be used:

(i) switched sound and vision feed of the House of Representatives, its committees and the Federation Chamber provided by the Parliament that is produced for broadcast, re-broadcast and archiving; and

(ii) official broadcast material supplied by authorised parliamentary staff.

(b) Broadcast material shall be used only for the purposes of fair and accurate reports of proceedings, and shall not be used for:

(i) political party advertising or election campaigns; or

(ii) commercial sponsorship or commercial advertising.

(c) Reports of proceedings shall be such as to provide a balanced presentation of differing views.

(d) Excerpts of proceedings which are subsequently withdrawn may be broadcast only if the withdrawal is also reported.

(e) The instructions of the Speaker or his or her delegates, which are not inconsistent with these conditions or the rules applying to the broadcasting of committee proceedings, shall be observed.

3 Broadcast of committee proceedings

The following conditions apply to the broadcasting of committee proceedings:

(a) Recording and broadcasting of proceedings of a committee is subject to the authorisation of the committee;

(b) A committee may authorise the broadcasting of only its public proceedings;

(c) Recording and broadcasting of a committee is not permitted during suspensions of proceedings, or following an adjournment of proceedings;

76 A-PAC is funded by pay television networks.

77 Or rebroadcast later at night on those days when Senate Question Time is televised live.

78 VP 2013–16/182–3 (9.12.2013). The resolution consolidated earlier rules, replacing several related resolutions dating back to 1988.

(d) A committee may determine conditions, not inconsistent with this resolution, for the recording and broadcasting of its proceedings, may order that any part of its proceedings not be recorded or broadcast, and may give instructions for the observance of conditions so determined and orders so made. A committee shall report to the House any wilful breach of such conditions, orders or instructions;

(e) Recording and broadcasting of proceedings of a committee shall not interfere with the conduct of those proceedings, shall not encroach into the committee's work area, or capture documents (either in hard copy or electronic form) in the possession of committee members, witnesses or committee staff;

(f) Broadcasts of proceedings of a committee, including excerpts of committee proceedings, shall be for the purpose only of making fair and accurate reports of those proceedings, and shall not be used for:

(i) political party advertising or election campaigns; or

(ii) commercial sponsorship or commercial advertising;

(g) Where a committee intends to permit the broadcasting of its proceedings, a witness who is to appear in those proceedings shall be given reasonable opportunity, before appearing in the proceedings, to object to the broadcasting of the proceedings and to state the ground of the objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to permit broadcasting of the proceedings notwithstanding the witness' objection, the witness shall be so informed before appearing in the proceedings.

4 Radio broadcast of parliamentary proceedings by the Australian Broadcasting Corporation—general principles

The House adopts the following general principles agreed to by the Joint Committee on the Broadcasting of Parliamentary Proceedings on 19 March 2013:

(a) Allocation of the broadcast between the Senate and the House of Representatives

The proceedings of Parliament shall be broadcast live whenever a House is sitting. The allocation of broadcasts between the Senate and the House of Representatives will be in accordance with the standing determinations made by the Joint Committee on the Broadcasting of Parliamentary Proceedings. It is anticipated that over time, the coverage of each House will be approximately equal.

(b) Re-broadcast of questions and answers

At the conclusion of the live broadcast of either House, questions without notice and answers thereto from the House not allocated the broadcast shall be re-broadcast.

(c) Unusual or exceptional circumstances

Nothing in these general principles shall prevent the Joint Committee on the Broadcasting of Parliamentary Proceedings from departing from them in unusual or exceptional circumstances.

5 This resolution shall continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament.

Legal aspects

Members are covered by absolute privilege in respect of statements made in the House, whether or not the House is being broadcast. Absolute privilege also attaches to those persons authorised to broadcast or re-broadcast the proceedings by the *Parliamentary Proceedings Broadcasting Act 1946*, which provides that:

> No action or proceeding, civil or criminal, shall lie against any person for broadcasting or re-broadcasting any portion of the proceedings of either House of the Parliament or of a joint sitting.

The Act does not cover television broadcasts, apart from those of joint sittings made pursuant to the Act. However, it is considered that the televising of House proceedings would be protected by section 10 of the Parliamentary Privileges Act if the broadcast is a 'fair and accurate report of proceedings'.

Only qualified privilege may be held to attach to the broadcast of excerpts of proceedings, and it may be considered that this situation is appropriate given the fact that those involved in the broadcasting of excerpts act essentially on their own initiative,

whereas those involved in the official radio broadcast and re-broadcast of proceedings have no discretion in the matter, being required to perform these functions by the law.

Photographs and films of proceedings

Visitors and members of the public are not permitted to take cameras into the galleries during proceedings. Only parliamentary staff are authorised to film proceedings in the Chamber. In 1992, following the decision by the House to authorise the live televising of its proceedings, the Speaker approved access to certain proceedings for still photography. With the establishment of the Main Committee (now Federation Chamber), similar access was given to its proceedings. Access generally is limited to photographers who are members of the Press Gallery or AUSPIC (the Government Photographic Service). Other photographers require special approval to photograph proceedings. Photographers' activities are subject to rules issued by the Speaker[79] and access to the gallery by the photographer and/or the media organisation concerned may be withdrawn for non-compliance with the rules.

In 2000 some photographers were banned for two sittings when they photographed events in the public gallery in defiance of express instructions to the contrary. In 2004 photographers from several newspapers were suspended from the galleries for seven sitting days for a similar breach.[80] In 2016 representatives of a news bureau were also banned from the building for a sitting week. All cases involved photographs of disturbances, which the guidelines or rules expressly prohibited (*see below*).

The use of cameras, including mobile phone cameras,[81] on the floor of the House is not permitted during proceedings.

Televising, recording and photographs of committee proceedings

Generally speaking, committee proceedings may be recorded for broadcasting or televising, and filmed or photographed, with the permission of the committee concerned. This topic is covered in more detail in the Chapter on 'Committee inquiries'.

Public hearings in Parliament House are regularly televised on ParlTV[82] and webcast on the Parliament's web site. The signal is available to the networks for re-broadcast.[83]

Photography, filming, etc inside Parliament House

Approval for the taking of photographs or filming in Parliament House rests finally with either or both Presiding Officers. Earlier restrictions on the taking of photographs and filming have been relaxed by the Presiding Officers, the view having been taken that the general viewing, screening, publication and distribution of photographs and films of the Parliament, properly administered and supervised, may lead to a better public understanding of its activities and functioning.

Photography and filming in Parliament House is subject to the rules issued by the Presiding Officers referred to earlier.[84] Visitors to the building are permitted to film in public areas provided the film is for private purposes and is not to be published. However,

79 *Rules for media related activity in Parliament House and its precincts*, November 2016.
80 H.R. Deb. (16.2.2004) 24758, VP 2002–04/1432 (16.2.2004).
81 *See* 'Use of electronic devices' in Chapter on 'Members'.
82 ParlTV has audio coverage of those hearings that are not televised.
83 Currently transmitted nationally by A-PAC.
84 *Rules for media related activity in Parliament House and its precincts*, November 2016.

filming is not permitted of security arrangements, nor in the Chambers during proceedings.

Any breach of the rules is determined by the Presiding Officers on a case by case basis and may result in the withdrawal of press gallery accreditation. In 1976 the accreditation of a press gallery photographer was withdrawn for two weeks because he photographed the Leader of the Opposition in his office after the Leader of the Opposition had given instructions that no photographs were to be taken.[85]

Approval may be granted by the Speaker for official photographs of the Chamber, or other areas of the building under the Speaker's control, to be used in a publication provided that the source of the photograph is acknowledged. Under no circumstances may photographs or films taken in the Chamber or elsewhere in the building be sold to be used to promote any commercial product through newspaper, television or other advertising media without approval; permission is not normally given.[86]

Promoting community awareness

The Department of the House of Representatives now devotes significant resources to promoting understanding of the role of the House and public awareness of its activities. Educational and promotional activities include:

- shared funding of the Parliamentary Education Office (*see below*);
- school visits to Parliament House program;
- the House of Representatives web site (*see below*);
- the *About the House* e-newsletter on House activities and committee inquiries;
- an electronic media alert service;
- social media channels, such as a Facebook page, Twitter news feed,[87] and YouTube channel;[88]
- *About the House* video programs;[89]
- publications, including a series of Infosheets[90] and a guide to procedures;[91]
- seminar programs on the work of the House;
- advertising to encourage public input to committee inquiries; and
- employment of media liaison staff.

Internet access to the House

Modern technology has given members of the public far easier access to the House and its proceedings than was possible in the past, when information about the House, although public, was not so readily available. The House web site[92] provides access to a wide range of information, including:

- information about Members, and links to Members' home pages;

85 VP 1976–77/77–8 (18.3.1976); H.R. Deb. (18.3.1976) 781–2; J 1976–77/74–5 (18.3.1976).

86 *See also* Committee of Privileges, *Advertisement in the* Canberra Times *and other Australian newspapers on 18th August, 1965*, PP 210 (1964–66).

87 @AboutTheHouse.

88 <https://www.youtube.com/user/athnews>.

89 Broadcast on A-PAC (Australia's Public Affairs Channel).

90 *House of Representatives Infosheets* <http://www.aph.gov.au/infosheets>.

91 *House of Representatives—Guide to procedures*, 6th edn, Canberra, Department of the House of Representatives, 2017. <http://www.aph.gov.au/gtp>.

92 <http://www.aph.gov.au/house>

- the program of business and details of bills before the House;
- information about committee inquiries and reports;
- the Hansard record of debates, and the official documents of the House—Votes and Proceedings and Notice Paper;
- the 'Live Minutes' of proceedings;[93]
- the full range of Department of the House of Representatives publications, such as those noted above, and procedural texts including *House of Representatives Practice* and the Standing Orders;
- the live video broadcast of House and Federation Chamber proceedings, and selected public committee hearings; and
- video and audio recordings of recent proceedings.

Parliamentary Education Office

The Parliamentary Education Office (PEO) was established in 1988 with the objective of increasing the awareness, understanding and appreciation of the significance, functions and procedures of the Australian Parliament. The PEO is administered by the Department of the Senate, with the Department of the House of Representatives making a contribution to its funding.

Through the Education Centre in Parliament House (which includes a committee room modified to represent a parliamentary chamber), the PEO runs a role-play program for visiting students based on simulations of House and Senate chamber and committee proceedings.

The PEO also manages a comprehensive website;[94] produces an extensive range of resources for teachers; undertakes outreach activities around Australia; and supports Senators and Members through the provision of education materials and advice.

PARLIAMENTARY PRECINCTS AND THE EXERCISE OF AUTHORITY

The parliamentary precincts

The question of the extent of the precincts of the permanent Parliament House was resolved definitively with the passage of the *Parliamentary Precincts Act 1988*[95] which provides as follows:

- The boundary of the parliamentary precincts is the approximately circular line comprising the arcs formed by the outer edge of the top of the retaining wall near the inner kerb of Capital Circle, and in places where there is no retaining wall, arcs completing the circle. [Where there is no retaining wall, the circle is indicated by markers—*see* map at Schedule 1 of the Act.]
- The parliamentary precincts consist of the land on the inner side of the boundary, and all buildings, structures and works, and parts of buildings, structures and works, on, above or under that land.

93 The draft record of the proceedings of the House of Representatives as they occur (subject to revision).
94 <http://www.peo.gov.au>
95 The main provisions commenced, by proclamation, on 1 August 1988.

- If the Presiding Officers certify in writing that specified property is required for purposes of the Parliament, regulations may declare that the property shall be treated as part of the parliamentary precincts for the purposes of the Act.[96]
- The precincts are under the control and management of the Presiding Officers who may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.
- In respect of the ministerial wing in Parliament House, the powers and functions given to the Presiding Officers are subject to any limitations and conditions agreed between the Presiding Officers and the responsible Minister.

The parliamentary zone

A parliamentary zone was declared by the Parliament when it passed the *Parliament Act 1974*, which not only determined Capital Hill as the site for the permanent Parliament House but also defined the parliamentary zone within which no building or other work could be erected without the approval of both Houses of Parliament.[97] The zone comprises the area bounded by State Circle, Commonwealth and Kings Avenues and the southern edge of Lake Burley Griffin.[98] The parliamentary zone is also a designated area for which land use planning, development and construction proposals must be approved by the National Capital Authority.[99] The Authority briefs the Joint Standing Committee on the National Capital and External Territories on work which needs parliamentary approval.[100]

The Parliament does not claim authority over the streets surrounding the parliamentary precincts although it does claim the right of access for its Members to attend the Parliament. In 1975 a judgment in the Supreme Court of the Australian Capital Territory on an appeal against a conviction for a parking offence held that:

> Parliament enjoys certain privileges designed to ensure that it can effectively perform its function and there are some aspects of conduct concerning the operation of Parliament into which the courts will not inquire. Certain courtesies are customarily observed. Parliament, through the President of the Senate and the Speaker of the House of Representatives, and the officers of the Parliament, controls the use of the buildings which it has for its purposes. Doubtless, it can also control the use of the immediate precincts of those buildings, but arrangements about such matters are made in a sensible and practical way, bearing in mind the reasonable requirements of Parliament. The fact is that there is no general abrogation of the ordinary law. It is not necessary for the effective performance by Parliament of its functions that there be any such abrogation. On the contrary, it must be very much in the interests of members, in their corporate and individual capacities, that the ordinary law should operate.
>
> . . . The fact is that the law respecting the privileges of Parliament is itself part of the ordinary law. Part of that law is found in the Bill of Rights 1688. In a well-known passage, Stephen J. said (in *Bradlaugh v. Gossett* (1884) 12 QBD271 at 283): "I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice".[101]

96 The Parliamentary Precincts Regulations 2011 provide the mechanism for this, allowing the legal framework for the control and management of the parliamentary precincts to be quickly applied to an alternative location in the event that Parliament House is unavailable.

97 *Parliament Act 1974*, s. 5. E.g. VP 2002–04/420 (19.9.2002). Within the zone, the Presiding Officers are responsible for works inside the parliamentary precincts, and in these cases the relevant approval motion is moved in the House by the Speaker, VP 2013–16/1243 (26.3.2015); VP 2016–18/428 (1.12.2016), or by a Minister on the Speaker's behalf, e.g. *see* H.R. Deb. (13.8.2009) 7765; H.R. Deb. (24.6.2015) 7384.

98 *See* map at Schedule 3 of the Parliamentary Precincts Act.

99 *Australian Capital Territory (Planning and Land Management) Act 1988,* s. 12.

100 For discussion of the respective roles of the Authority and the committee *see* Joint Standing Committee on the National Capital and External Territories, *The way forward: inquiry into the role of the National Capital Authority*, 2008.

101 *See Rees v. McCay* [1975] 7 ACT R7.

Within the building, the Presiding Officers determine matters in relation to the overall allocation and use of space.[102] The Speaker alone has the authority to determine such matters as the allocation of seats in the Chamber and office suites to Members and the order of priority for the acceptance of bookings for House of Representatives committee rooms.

The security of the parliamentary precincts

Responsibility for security in the parliamentary precincts is vested by the Parliamentary Precincts Act in the Presiding Officers. Before the passage of the Act this jurisdiction was based on custom and practice and the inherent powers of the Presiding Officers to maintain proper arrangements for the functioning of Parliament.

Security brings into conflict two principles basic to Parliament's traditions and usage. On the one hand, there is the undeniable right of people in a parliamentary democracy to observe their Parliament at work and to have reasonable access to their representatives. On the other hand, Members and Senators must be provided with conditions which will enable them to perform their duties in safety and without interference. This is basic to the operation of Parliament and a balance must be struck between these two important principles.

In 1978 some Members and Senators expressed concern that the security arrangements might become excessively elaborate and that the rights of Members, Senators and the public to gain access to, and to move freely within, Parliament House might be unnecessarily restricted. In a report later that year the Senate Committee of Privileges emphasised the view that an effective protection system was necessary for Parliament House and its occupants. It stressed that security measures implemented earlier in 1978 provided the basis for an effective system and were not, in the committee's opinion, in any way inconsistent with the privileges of Members of the Senate.[103]

The safety of people who work in Parliament House, or who visit it on legitimate business or simply to see it in operation, is an important consideration. Some Members and Senators are prepared to accept that public office brings with it increased personal risk and perhaps are not easily convinced of the need for special arrangements for their own security. However, the need to ensure the safety of others in the parliamentary precincts is recognised and this consideration has been important to successive Presiding Officers.

A Security Management Board, consisting of the Serjeant-at-Arms, the Usher of the Black Rod, the Secretary of the Department of Parliamentary Services, and a Deputy Commissioner of the Australian Federal Police (AFP),[104] is the high level advisory and oversight body responsible for the security of the precincts. In 2014 the Presiding Officers authorised the AFP to be the lead agency for operational security at Parliament House. A consequential Memorandum of Understanding (MOU) was signed between the AFP and the Department of Parliamentary Services in that year which established the operational security and response arrangements for Parliament House.

The AFP Manager, Parliament House is responsible for overall operational security and, in accordance with the MOU, day to day security is overseen by the AFP Security

102 H.R. Deb. (28.8.1952) 692; *see also* Ch. on 'The Speaker, Deputy Speakers and officers'.
103 PP 22 (1978).
104 Established pursuant to s. 65A of the *Parliamentary Service Act 1999*.

Controller. The AFP Security Controller also has command, control and coordination of all operational security and response activity within the precincts. The MOU gives the AFP Security Controller responsibility for the control and coordination of Department of Parliamentary Services security staff and AFP personnel during both day to day security and security response operations.

The parliamentary security staff are responsible primarily for security within the building—that is, the operation of electronic security screening devices, the physical checking of people entering the building and general corridor surveillance. The AFP has exclusive responsibility for physical security of the external precincts. The Serjeant-at-Arms and the Usher of the Black Rod are involved in operational matters if they impact on the House wing and Members or the Senate wing and Senators respectively.

A pass system controls entry into the non-public areas of Parliament House. Members and Senators are not required to wear a pass. Other persons are not permitted to enter the non-public areas without a pass. People permanently employed in the building and others who need to enter Parliament House regularly are issued with photographic identity passes. Visitors granted entry to the non-public areas must be accompanied and must present photo identification to be issued with day passes, or passes covering specified periods, as the need arises. Passes must be worn by the pass holders. At times the main doors, or parts of the building that are normally open to the public, may be closed for security reasons.

Entry to Parliament House and galleries

Goods, mail and baggage brought into the building are checked by electronic means. On entering Parliament House all persons, including Members and Senators, must pass through electronic detection equipment similar to that used at airports and further screening is carried out of people seeking to enter the public galleries of the two chambers. It is a condition of entry to the building and the public galleries that any person desiring to enter shall submit to a search of his or her person or effects if so required.

Visitors displaying political slogans on their clothing may be denied entry to the galleries on the basis that the galleries should not be used as a place for protest action[105]—there are other areas set aside for such activities (*see* page 131).

Disorder and disturbances

To perform its functions the House must be protected from physical disruption, disturbance and obstruction and there is no doubt that the House has the power to protect itself from such actions. However, such actions, although they may technically constitute contempt, are in practice usually dealt with either through administrative action under the authority of the Presiding Officers or by remitting the matter to the authorities for criminal proceedings.

105 H.R. Deb. (11.2.2003) 11432–3.

Visitors who misconduct themselves in that part of Parliament House controlled by the Speaker may be taken into custody by the Serjeant-at-Arms.[106] In the Chamber visitors are under the control of the Serjeant-at-Arms. If a visitor or person other than a Member disturbs the operation of the Chamber or the Federation Chamber, the Serjeant-at-Arms can remove the person or take the person into custody.[107] Such disturbances have included persons standing up, interjecting, applauding, holding up signs or placards, dropping or throwing objects into the Chamber, chaining or gluing themselves to railings and jumping onto the floor of the Chamber.[108]

On the authority of the Serjeant-at-Arms, Usher of the Black Rod or authorised persons, persons creating a disturbance may be detained and interviewed, or ejected from Parliament House. Persons considered to pose a threat to the Parliament, for example, because of a history of attempts to disrupt proceedings, have been barred from entry to the Chamber or the building for a period of time by order of the Speaker or both Presiding Officers.

Application of the law in Parliament House

Although the ordinary criminal law applies within Parliament House, the actual charging of people creating a disturbance inside the building has in the past been difficult. For example, doubt had existed as to whether the Chambers were Commonwealth premises for the purposes of the *Public Order (Protection of Persons and Property) Act 1971* and therefore protected against disturbances that caused no damage or injury. In 1965 a police constable arrested a person in King's Hall (of the provisional Parliament House) and a conviction was recorded against the person for using insulting words in a public place. Although it seemed doubtful that King's Hall was in fact a public place for the purposes of the Police Offences Ordinance, the Speaker stated that 'the constable acted properly, and with authority, in protection of the Parliament and its members'.[109] A person who jumped from the main public gallery onto the floor of the Chamber in September 1987 was not charged. In 2004 a person who jumped from the first floor northern gallery onto the floor of the Chamber was subsequently charged and convicted of related offences.

The *Parliamentary Privileges Act 1987* made the legal position clearer by declaring 'for the avoidance of doubt' that a law in force in the Australian Capital Territory applies, subject to section 49 of the Constitution, 'according to its tenor in and in relation to any building in the Territory in which a House meets, except as otherwise provided by that law or by any other law'.

The *Parliamentary Precincts Act 1988* further clarified the situation by providing that the Public Order (Protection of Persons and Property) Act applies to the precincts as if they were Commonwealth premises within the meaning of that Act. The Parliamentary Precincts Act also provides that the functions of the Director of Public Prosecutions in respect of offences committed in the precincts shall be performed in accordance with

106 S.O. 96.

107 S.O. 96(a). In practice parliamentary security staff perform this function under the overall direction of the Serjeant-at-Arms.

108 On occasion, proceedings have been suspended while demonstrators have been removed from the public galleries: H.R. Deb. (14.7.1920) 2683; H.R. Deb. (11.6.1970) 3361; H.R. Deb. (7.9.1971) 853; H.R. Deb. (30.11.2016) 4945. Other significant or unusual recorded incidents when the House has been disturbed, and the action taken by the Chair, were summarised at page 128 of the 4th edition.

109 H.R. Deb. (19.11.1965) 2989.

general arrangements agreed between the Presiding Officers and the Director of Public Prosecutions.

The *Australian Capital Territory (Self Government) Act 1988* provides that either House may declare by resolution that an ACT law enacted following self government does not apply to that House or its members, or in the parliamentary precincts.

Powers of police in Parliament

For most practical purposes, Parliament House is regarded as the only place of its kind and one in which the two Houses through their Presiding Officers have exclusive jurisdiction. Thus in Parliament House the police are subject to the authority of the Speaker and President and their powers are limited by the powers and privileges of the respective Houses.[110] Such limitations are not based on any presumed sanctity attached to the building as such, but on the principle that the Parliament should be able to conduct its business without interference or pressure from any outside source.[111] At the same time, the public interest in the administration of justice is given due weight.

It is established practice that police do not conduct investigations, make arrests, or execute any process in the precincts without consultation with and the consent of the Presiding Officers, which is in practice conveyed through the Serjeant-at-Arms or the Usher of the Black Rod to the Australian Federal Police Security Controller. An exemption to this is the standing approval for the police to perform traffic operations in the precincts which may result in arrest or investigation or, more usually, issuance of infringement notices.

There are a number of precedents of consent being granted in the case of police wishing to interview Members. In commenting on one such incident the Speaker stated:

> To avoid any misunderstanding as to the powers of the police in this building, I draw to the attention of the House that it is accepted as part of the Parliament's privileges and immunities that the police do not have a right to enter the Parliament building without the prior knowledge and consent of the President and/or the Speaker. The police officers who visited the honourable member yesterday sought my permission to do so before coming to the building. I gave that approval on two bases: First, yesterday was not a sitting day; and second, the honourable member . . . had indicated agreement to receiving the police officers.[112]

The Parliament House offices of a Member and a Senator have been searched under the authority of a warrant.[113] In 2005 a Memorandum of Understanding between the Presiding Officers and the Attorney-General and Minister for Justice set out guidelines to be followed in the execution of search warrants in relation to premises used or occupied by Members and Senators, including their offices in Parliament House. In the cases of offices in Parliament House the agreement requires that the relevant Presiding Officer be contacted before the search is executed. Material has been seized under a search warrant executed on the Department of Parliamentary Services at Parliament House.[114]

Police officers with protection duties at Parliament House carry arms.

The Parliamentary Precincts Act provides that where, under an order of either House relating to the powers, privileges and immunities of that House, a person is required to be

110 Advice of Attorney-General's Department, concerning powers of police within the precincts of Parliament House, 1967; *and* opinion of Solicitor-General, dated 30 September 1926.

111 Advice of Attorney-General's Department, concerning powers of police within the precincts of Parliament House, 1967. *And see Parliamentary Precincts Act 1988.*

112 VP 1978–80/1662 (16.9.1980); H.R. Deb. (16.9.1980) 1293.

113 *And see Crane v. Gething* (2000) FCA 4.

114 *See* 'Execution of search warrants where parliamentary privilege may be involved' in Chapter on 'Parliamentary Privilege'.

arrested or held in custody, the person may be arrested or held by a member or special member of the Australian Federal Police in accordance with general arrangements agreed between the Presiding Officers and the Minister administering the *Australian Federal Police Act 1979*.

Demonstrations

In 1988 the Presiding Officers approved guidelines to be observed by the Australian Federal Police in managing demonstrations. The guidelines, incorporated in Hansard, include the provision that demonstrations by groups and persons shall not be permitted within the area of the parliamentary precincts bounded by and including Parliament Drive, provisions circumscribing the behaviour of demonstrators, the provision that any breach of the guidelines may be subject to police intervention and a map showing the 'authorised protest area'.[115] The guidelines have since been amended to cover the use of sound amplification by participants in any gathering within the precincts and to limit further the area where demonstrations may be held within the precincts to the area bounded by Parliament Drive and Federation Mall. The Parliament Act empowers the Australian Federal Police to remove structures erected by demonstrators without a permit in the parliamentary zone, including the area in front of Parliament House outside the precincts.

115 H.R. Deb. (2.3.1989) 328–9.

5
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 Ch. 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 have been two instances of the House referring a matter to the Court,[17] although other motions to do so have been debated and negatived.[18] 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.[19]

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 that, although naturalised Australian citizens, they were each, by virtue of their holding

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 To end 2017: cases of Mr Joyce, *see* p. 138, and Mr Feeney, *see* p. 139.

18 Cases of Mr Entsch, *see* p. 142, and Mr Baume, *see* p. 143.

19 Case of Mr Entsch, *see* p. 142.

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.[20]

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.[21]

In July 2017 Mr Scott Ludlam (W.A.) and Ms Larissa Waters (Qld) resigned as Senators, having discovered that they were disqualified on grounds of dual nationality. The Senate referred these cases and that of Senator Matthew Canavan (Qld) to the Court of Disputed Returns, and later also referred the cases of Senator Malcolm Roberts (Qld), Senator Fiona Nash (Qld) and Senator Xenophon (S.A).[22] During these events the House referred the case of the Member for New England, the Hon. Barnaby Joyce MP (Leader of the National Party and Deputy Prime Minister), to the Court of Disputed Returns when Mr Joyce announced he had been advised that, although born in Australia, he was considered by New Zealand law to be a New Zealand national by descent.[23] The Court heard these seven references together. Matters raised in submissions included the possibly different status in relation to s. 44(i) of foreign citizenship by birth and foreign citizenship by descent and the operation of s. 44(i) when a person is unaware of their foreign citizenship.

In its reasons for judgement the Court noted that s. 44(i) draws no distinction between foreign citizenship by place of birth, by descent or by naturalisation. The Court summarised the proper construction of s. 44(i) as follows:

> Section 44(i) operates to render "incapable of being chosen or of sitting" persons who have the status of subject or citizen of a foreign power. Whether a person has the status of foreign subject or citizen is determined by the law of the foreign power in question. Proof of a candidate's knowledge of his or her foreign citizenship status (or of facts that might put a candidate on inquiry as to the possibility that he or she is a foreign citizen) is not necessary to bring about the disqualifying operation of s 44(i).
>
> A person who, at the time that he or she nominates for election, retains the status of subject or citizen of a foreign power will be disqualified by reason of s 44(i), except where the operation of the foreign law is contrary to the constitutional imperative that an Australian citizen not be irremediably prevented by foreign law from participation in representative government. Where it can be demonstrated that the person has taken all steps that are reasonably required by the foreign law to renounce his or her citizenship and within his or her power, the constitutional imperative is engaged.[24]

In regard to the seven cases, the Court ruled that:

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

21 *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*.

22 J 2016–18/1599 (8.8.2017), 1630 (9.8.2017), 1788, 1789 (4.9.2017).

23 VP 2016–18/958 (14.8.2017). This was the first time the House had referred a question on the qualifications of a Member to the Court.

24 *Re Canavan* [2017] HCA 45.

- the Court could not be satisfied, on the evidence before it, that Senator Canavan had been an Italian citizen at the date of nomination;
- Senator Xenophon's status at the date of nomination as a British Overseas Citizen (which did not bestow the rights or privileges of a citizen) did not make him a subject or citizen of the United Kingdom for the purposes of s. 44(i);
- in the other five cases, the persons involved had held foreign citizenship at the date of nomination[25] and had been incapable of being chosen or sitting as a Senator or Member by reason of s. 44(i), and the places for which they had been returned were therefore vacant;
- the vacant Senate places were to be filled by special counts[26] of the 2016 ballot papers, and a by-election was to be held for the division of New England.[27]

After the Court's decision an additional three Senators and a Member resigned, having found that they that they were also disqualified on grounds of dual nationality.[28]

CITIZENSHIP REGISTER

Following the above cases, Members were required by a resolution of the House to provide a statement to the Registrar of Members' Interests in relation to their Australian citizenship and any possible citizenship of another country. Information to be supplied included the birth and citizenship details of the Member, their citizenship at the date of nomination for the 45th Parliament, and steps taken to renounce any other citizenship. Birth details of parents, grandparents and spouse were also required.[29]

SUBSEQUENT REFERRALS

After the Citizenship Register was made public two further cases were referred to the Court of Disputed Returns, both involving renunciation of UK citizenship by descent. In the case of the Member for Batman, Mr D. Feeney, no evidence of renunciation of UK citizenship was available to be produced, and he resigned before the court considered his position. Later the court ruled his seat to be vacant by reason of s. 44(1).[30] In the case of Senator K. Gallagher, the Senator had taken action to renounce her UK citizenship before nomination but, because of the time taken to process the matter in the UK, the renunciation had not become effective until after election. The Court ruled that Senator Gallagher was incapable of being chosen or of sitting as a Senator by reason of s. 44(i) of the Constitution when she nominated for election, and there was a vacancy in the Senate for the place for which she was returned.[31] The Court held that the exception provided by the constitutional imperative referred to in *Re Canavan* (*see* extract at page 138) did not apply to Senator Gallagher's situation under British law.[32]

25 Waters, Canada; Ludlam, Joyce, New Zealand; Roberts, Nash, United Kingdom. All had renounced their foreign citizenship prior to court proceedings.

26 That is, with the votes cast for the disqualified candidate being given to the candidate next in the order of the voter's preference.

27 Having renounced his other citizenship Mr Joyce stood again and was elected.

28 Each held British citizenship by descent: Senator S. Parry (Tas.) (President of the Senate); Senator J. Lambie (Tas.); Senator S. Kakoschke-Moore (S.A.); Member for Bennelong, Mr J. Alexander. Mr Alexander was elected at the ensuing by-election.

29 VP 2016–18/1235 (4.12.2017). A similar resolution was agreed to by the Senate, J 2016–18/2179–80 (13.11.2017).

30 Referred by House, VP 2016–18/1274–5 (6.12.2017); Mr Feeney's personal explanation, H.R. Deb. (5.12.2017) 12731; he resigned on 1.2.2018; High Court order dated 23.2.2018, VP 2016–18/1398–9 (26.2.2018).

31 Referred by Senate, J 2016–18/2471–2 (6.12.2017). *Re Gallagher* [2018] HCA 17. Following the ruling on 9 May 2018 four Members in comparable circumstances, having held dual British citizenship at the date of their nomination, resigned their seats: Member for Braddon, Ms J. Keay; Member for Fremantle, Mr J. Wilson; Member for Longman, Ms S. Lamb; Member for Mayo, Ms R. Sharkie.

32 The Court held that the constitutional imperative is engaged when *both* of two circumstances are present. First, the foreign law must operate irremediably to prevent an Australian citizen from participation in representative government. Secondly, that person must have taken all steps reasonably required by the foreign law and within his or her power to free himself or herself of the foreign nationality.

Section 44(ii) of the Constitution

In 2016 the Senate referred the qualification of Mr Rodney Culleton as a Senator for Western Australia to the Court of Disputed Returns. Prior to his nomination for election Mr Culleton had been convicted in his absence in the Local Court of New South Wales for the offence of larceny, making him liable to be sentenced for a maximum term of two years. The court later granted an annulment of the conviction.

The Court of Disputed Returns ruled on 3 February 2017 that, at the date of the 2016 election, Mr Culleton was a person who had been convicted and was subject to be sentenced for an offence punishable by imprisonment for one year or longer, and that the subsequent annulment of the conviction had no effect on that state of affairs. It followed that Mr Culleton was incapable of being chosen as a Senator, and that there was a vacancy in the Senate for the place for which he had been returned.[33]

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 a Senator. 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 because he had not resigned from an office of profit under the Crown.[34] The motion was defeated and Senator Field was sworn in.[35] A writ was served on Senator Field on 1 October 1975 challenging his eligibility.[36] The Senate then granted him leave of absence for one month.[37] The Senate was dissolved on 11 November and the matter did not come to court.

On 11 April 1992 Mr Philip Cleary was elected at a by-election for the division of Wills. Mr Cleary, a teacher, had been on leave without pay at the time of nomination and polling, but had resigned from his teaching position before the declaration of the poll. A petition to the Court of Disputed Returns disputed the election on the ground that Mr Cleary had held an office of profit under the Crown by reason, inter alia, of his being an officer of the Education Department of Victoria. The Court ruled on 25 November 1992 that Mr Cleary had not been duly elected and that his election was absolutely void. In its reasons for judgment the Court found unanimously that, as a permanent officer in the teaching service, Mr Cleary had held an office of profit under the Crown, that it was irrelevant that he was on leave without pay, and that the section applied to State as well as Commonwealth officers. The majority judgment of the Court was that the word 'chosen' in section 44(iv) related to the whole process of being elected, which commenced from and included the day of nomination, and that Mr Cleary was therefore 'incapable of being chosen'.[38] 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

33 *Re Culleton [No 2]* [2017] HCA 4.
34 J 1974–75/905–6; S. Deb. (9.9.1975) 603.
35 J 1974–75/905–6.
36 *Odgers*, 6th edn, pp. 152–3.
37 J 1974–75/928.
38 *Sykes v. Cleary* (1992) 109 ALR 577. VP 1990–92/1907 (25.11.1992).

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.[39] A new election was held for the division 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.[40]

In November 2017 Ms H. Hughes, who had been identified by special count as the candidate to fill the Senate place for which Senator Nash was ineligible under section 44(i) (*see* page 138), was found ineligible under section 44(iv). After the election she had been employed as a part-time member of the Administrative Appeals Tribunal. The High Court found that because of the disqualification of Senator Nash, the process of choice for the election of a Senator remained incomplete. By choosing to accept the appointment during this period Ms Hughes had forfeited the opportunity to benefit in the future from any special count of the ballot papers.[41]

In February 2018 the High Court ruled that Mr S. Martin, Councillor of the Devonport City Council and Mayor of Devonport, was not incapable (by holding these offices) of being chosen or of sitting as a Senator by reason of section 44(iv).[42]

The view has been expressed that a person who accepts an office of profit under the Crown is disqualified from the date of appointment to and acceptance of the office rather than from the time he or she commences duties or receives a salary.[43]

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'.[44]

Section 44(v) of the Constitution

In 1975 a witness before the Joint Committee on Pecuniary Interests alleged that Senator Webster (a member of the committee) was disqualified from sitting as a Senator under section 44(v), as he was a director, manager, secretary and substantial shareholder in a company which had had contracts with Commonwealth government departments.[45] The chair of the committee wrote to the President of the Senate informing him of the allegation.[46] The President read the letter to the Senate[47] which agreed to a resolution

39 *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.

40 For further details and discussion *see Odgers*, 14th edn, pp. 168–9.

41 *Re Nash [No 2]* [2017] HCA 52.

42 *Re Lambie* [2018] HCATrans 7 (6 February 2018).

43 Opinion of Solicitor-General relating to appointment of Senator Gair as Ambassador to Ireland, dated 4 April 1974—*see* S. Deb. (3.4.1974) 638–9; *and see Odgers*, 6th edn, pp. 56–7.

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

45 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.

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

47 J 1974–75/597 (15.4.1975).

referring the following questions to the Court of Disputed Returns: whether Senator Webster was incapable of being chosen or of sitting as a Senator; and whether Senator Webster had become incapable of sitting as a Senator.[48]

The two questions referred to the Court were answered in the negative.[49] 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.[50]

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 negatived.[51]

Mr Robert Day resigned as Senator for South Australia on 1 November 2016. On 7 November the Senate referred his qualification as a Senator to the Court of Disputed Returns. The Court ruled on 5 April 2017 that, prior to and at the date of the 2016 federal election, Mr Day was a person who had an indirect pecuniary interest in an agreement with the Public Service of the Commonwealth. Premises leased by the Commonwealth for use by Mr Day as his electorate office had been owned by a company indirectly associated with Mr Day and the company had directed on 26 February 2016 that rental payments be made to a bank account owned by Mr Day. By reason of s. 44(v) of the Constitution, Mr Day was therefore incapable of sitting as a Senator on and after that date, being a date prior to the dissolution of the 44th Parliament. Mr Day was incapable of being chosen as a Senator in the 45th Parliament, and there was therefore a vacancy in the Senate for the place for which he had been returned.[52]

In 2017 a suit was brought in the High Court against the Hon. Dr D. Gillespie, MP, under the *Common Informers (Parliamentary Disqualifications) Act*, in relation to his ownership of a shop leased to an outlet of Australia Post, a government-owned corporation. However, the question of Dr Gillespie's qualification under section 44(v) was not considered by the court under these proceedings (*see* page 159).

48 J 1974–75/628–9 (22.4.1975).
49 J 1974–75/821 (9.7.1975).
50 *In re Webster* (1975) 132 CLR 270.
51 VP 1998–2001/594–607 (10.6.1999); 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.
52 *Re Day [No 2]* [2017] HCA 14.

Section 45(ii) of the Constitution

The interpretation and application of section 45(ii) arose 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.[53]

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 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 did not come within the scope of section 45(ii), and stated that the deed executed by Mr Baume was not a deed of arrangement within the meaning of the Bankruptcy Act, not being a deed executed by him as a debtor under the Act as a deed of arrangement. On the question of whether Mr Baume had received benefits under the Bankruptcy Act as a result of deeds executed by other members of the firm, the opinions were to the effect that while benefits had been conferred, these were not the benefits to which section 45(ii) refers, and that the provision applies where a debtor takes benefits as a party to a transaction, as distinct from receiving benefits as a non-participant. The Attorney-General argued that 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.[54]

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;

53 H.R. Deb. (5.5.1977) 1598–1610; VP 1977/108–12 (5.5.1977).
54 H. R. Deb. (5.5.1977) 1598–1608. *See also* PP 131 (1981) 33–4.

- 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.[55]

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.[56] Following a recount the court declared Ms I. P. Dunn, of the same party as Mr Wood, to be the elected candidate.[57]

SWEARING-IN

The Constitution provides that every Member of the House of Representatives, before taking his or her seat, must make and subscribe an oath or affirmation of allegiance before the Governor-General or some person authorised by the Governor-General.[58] 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.[59]

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.[60]

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.[61] 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.[62]

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

55 S. Deb. (16.2.1988) 3–16.
56 *In re Wood* (1988) 167 CLR 145.
57 J 1987–90/845 (22.8.1988).
58 Constitution, s. 42.
59 Constitution, Schedule.
60 Advice of Attorney-General's Department, dated 16 February 1962. The choice of oath or affirmation is not a sure indicator of religious views; some strongly religious Members have chosen to affirm—*see* Deirdre McKeown, *Oaths and affirmations made by the executive and members of the federal parliament since 1901*, Parliamentary Library research paper, 2013–14: pp 4–6.
61 *See also* Ch. on 'The parliamentary calendar'.
62 E.g. VP 2013–16/2 (12.11.2013).

electoral division.[63] A Member may not take part in any proceedings of the House until sworn in.[64] 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.[65] Those Members elected at by-elections during the course of a Parliament are also sworn in by the Speaker. In the case of a vacancy in the Speakership and the election of a new Speaker another commission is provided. A new Member elected at a by-election has been sworn in by an Acting Speaker, an authority for him or her to administer the oath or affirmation during any absence of the Speaker having been issued by the Governor-General.[66] 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,[67] although this practice may not be strictly necessary.[68]

In the event of the demise of the Crown, the UK House of Commons meets immediately and Members again take the oath.[69] This practice is not followed in Australia.[70]

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.[71] This procedure has often taken place at the beginning of a day's proceedings, immediately after Prayers,[72] but 2 p.m. has been used with increasing frequency.[73]

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

63 S.O. 4(e).

64 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 (4.8.1954).

65 E.g. VP 2013–16/7 (12.11.2013).

66 E.g. VP 1987–88/771 (17.10.1988).

67 E.g. VP 2008–10/517 (15.9.2008).

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

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

70 VP 1934–36/511–12 (10.3.1936); VP 1951–53/255 (6.2.1952), 257 (7.2.1952).

71 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 2008–10/513 (15.9.2008), 532 (17.9.2008).

72 E.g. VP 1993–96/1613 (5.12.1994).

73 E.g. VP 2008–10/575–6 (25.9.2008).

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'.[74]

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,[75] 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.[76] 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,[77] and without limitation of time.[78]

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.[79] 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 choosing'.[80] 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 interjection[81] or interruption, and the Chair will normally draw the attention of the House to the fact that a Member is making a first speech.[82] 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.[83] It has also been customary not to make other than kindly references to the first speech of a Member,[84] 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.[85]

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.

74 *May*, 24th edn, p. 374.
75 That is, first ever election—election to a different seat is not counted.
76 E.g. VP 2008–10/452–3 (26.8.2008).
77 VP 2002–04/708 (6.2.2003).
78 VP 2013–15/1636 (13.10.2015).
79 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.
80 H.R. Deb. (9.5.1990) 83; H.R. Deb. (17.5.1990) 746.
81 H.R. Deb. (23.2.1950) 91.
82 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.
83 H.R. Deb. (25.3.1976) 1046; H.R. Deb. (26.11.1980) 99.
84 H.R. Deb. (13.4.1954) 364.
85 H.R. Deb. (16.5.1967) 2166–72; VP 1967–68/116 (16.5.1967).

VALEDICTORY SPEECH

Members who do not intend to stand for re-election at the end of a Parliament, and Members resigning during a Parliament, are traditionally given the opportunity to make valedictory remarks to the House. Generally, these are made as statements by indulgence of the Speaker,[86] although on occasion Members have made valedictory speeches while technically speaking on the second reading of a bill.[87]

Since 2010 Members who have stood for re-election but not been elected, not having had the opportunity to make valedictory remarks, have been given the opportunity to provide a written statement in lieu of a speech. Since 2016, Members who have not recontested a general election, whether or not they have made valedictory remarks in the House, have also been given the opportunity to provide a written statement. A booklet *Statements of thanks and appreciation by former Members of the [previous] Parliament* has been presented to the House early in the new Parliament.[88]

PECUNIARY INTEREST

In the House of Representatives matters to do with the pecuniary interests of Members[89] 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 141 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.

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.[90] 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

86 The time is not limited. Between 2013 and 2016 a limit of 20 minutes was specified, but not strictly enforced.

87 The rules of relevance have not been enforced on such occasions, and points of order not taken, e.g. H.R. Deb. (24.6.2010) 6540, 6545, 6561.

88 E.g. VP 2016–18/509 (9.2.2017).

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

90 S.O. 134(b).

> 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'.[91]

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.[92]

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

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.[93]

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.[94]

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.[95]

In 1948 the Chair in ruling on a point of order stated that 'the honourable Members referred to are interested financially in the ownership of certain commercial broadcasting stations, but only jointly and severally with other people. Therefore, they are entitled to vote on the measure now before the House'.[96] 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.[97]

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

92 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.

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

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

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

96 H.R. Deb. (24.11.1948) 3470.

97 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.

In 1957[98] and 1958,[99] 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.[100]

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.[101] 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.[102] Members of course are still free to make such a declaration, and from time to time do so.[103]

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.[104]

For summaries of the recommendations of the Joint Committee on Pecuniary Interests of Members of Parliament (1974–5),[105] and the (government) Committee on Public Duty and Private Interest (1978–9)[106] *see* earlier edition.[107]

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 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'.)

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

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

100 H.R. Deb. (2.11.2006) 60.

101 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 (1.12.1998).

102 VP 1983–84/945–6 (8.10.1984); *Report relating to the need for oral declarations of interests by Members*, PP 261 (1988) 8; VP 1987–90/961 (30.11.1988).

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

104 *See May*, 24th edn, pp. 80–2.

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

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

107 At pp. 146–7 of the 4th edition.

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.[108] 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.[109] The Speaker ruled that the resolution was binding on all Members, excepting the Attorney-General when appearing in court on behalf of the Commonwealth.[110] 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.[111]

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.[112]

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.

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,

108 H.R. Deb. (25.10.1950) 1391–405; H.R. Deb. (26.10.1950) 1546–56.
109 *May*, 24th edn, p. 257.
110 H.R. Deb. (8.3.1951) 175; VP 1950–51/323 (13.3.1951); H.R. Deb. (13.3.1951) 329–30.
111 VP 1951–53/65–6, 68–70 (10.7.1951); H.R. Deb. (10.7.1951) 1211–12.
112 VP 1954–55/133–4 (28.10.1954), 246 (2.6.1955); H.R. Deb. (28.10.1954) 2467–8.

including Ministers, to do so, by means of any speech, Question, Motion, introduction of a Bill, or amendment to a Motion or Bill.[113]

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 147). 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' Interests[114] 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.[115] 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.
- 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, indicating the location and the purpose for which it is owned;

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

114 Prior to 2008 the Committee of Members' Interests was separate from the Committee of Privileges.

115 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*.

- 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 institutions 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.[116] 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.[117]
- The Register of Members' Interests is required to be available for inspection by any person under conditions laid down by the committee.[118] [Since the start of the 43rd 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.[119]

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

116 Commonly the Deputy Clerk.

117 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 (17.3.2008).

118 VP 1983–84/945–6 (18.10.1984); H.R. Deb. (9.10.1984) 1876–9.

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

- 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.*[120] 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.[121] 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.[122]

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.[123] The committee presented its work on the inquiry as a discussion paper in November 2011.[124]

MEMBERS' REMUNERATION AND EXPENSES

Salaries

The authority for payment of salaries to Members of Parliament and Ministers was expressly provided for in the Constitution,[125] 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.[126] 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 determined by the Remuneration Tribunal, pursuant to the *Parliamentary Business Resources Act 2017*. The remuneration includes an annual allowance known as 'base

120 H.R. Deb. (21.6.1995) 1983–4.
121 H.R. Deb. (23.10.2008) 10184.
122 H.R. Deb. (4.12.2008) 12725.
123 VP 2010–13/236 (23.11.2010).
124 Standing Committee of Privileges and Members' Interests, *Draft code of conduct for Members of Parliament, discussion paper*, November 2011. The text of the draft code was reproduced in the sixth edition, pp. 148–9.
125 Constitution, ss. 48, 66 (in s. 48 the payment to Members and Senators is referred to as an allowance).
126 *May*, 24th edn, p. 52.

salary' payable for the purposes of section 48 of the Constitution, an electorate allowance, and in the case of an office holder, an office holder's salary.[127] There are three rates of electorate allowance, depending on the size of a Member's electorate. The office holder's salary is the additional salary paid to holders of a number of parliamentary offices,[128] including the Presiding Officers and their Deputies, Opposition 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.[129] Ministers also receive an additional salary, as well as the basic parliamentary salary and electorate allowance.[130] As part of their remuneration Members may be provided with a vehicle, or an allowance in lieu of a vehicle, and an allowance or expenses in relation to internet or telephone services at their private residence.[131] Information on the current rates of remuneration can be found on the Remuneration Tribunal's website.[132]

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.[133]

127 *Parliamentary Business Resources Act 2017,* s. 14.

128 *Parliamentary Business Resources Act 2017,* s. 7.

129 *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.

130 The *Parliamentary Business Resources Act 2017* sets the total annual sum payable under section 66 of the Constitution for ministerial salaries (s. 55) which amount may be varied by regulation, (s. 61). The Remuneration Tribunal advises the Government on, but does not determine, the additional salary payable to Ministers, *Parliamentary Business Resources Act 2017,* s. 44. *See* section on 'Ministerial salaries' in Ch. on 'House, Government and Opposition'.

131 *Parliamentary Business Resources Act 2017,* s. 14(4).

132 <www.remtribunal.gov.au>.

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

Parliamentary work expenses framework

In 2015 a review committee to consider an independent parliamentary entitlements system was established by the Government. Following the committee's report in 2016[134] the Government announced that it accepted all the committee's recommendations in principle.[135]

Parliamentary Business Resources Act

The *Parliamentary Business Resources Act 2017* established a new framework for remuneration, business resources and travel resources for current and former members of the federal Parliament in a single legislative authority.

Consequential amendments were made to relevant legislation, including the repeal of the *Parliamentary Entitlements Act 1990* and the *Parliamentary Allowances Act 1952*, and the repeal of provisions in the *Ministers of State Act 1952*, *Remuneration Tribunal Act 1973*, and the *Remuneration and Allowances Act 1990*.[136]

Independent Parliamentary Expenses Authority

In 2017 the Independent Parliamentary Expenses Authority (IPEA) was established to audit and report on parliamentarians' work expenses, provide advice, and monitor and administer claims for travel expenses and allowances by parliamentarians and their staff.[137]

Work expenses and use of public resources

Members are personally responsible and accountable for, must be prepared to publicly justify, and must act ethically and in good faith in using and accounting for, their use of public resources for conducting their parliamentary business.[138] Members must not claim expenses, an allowance or any other public resources unless the expenses are incurred, or the allowance or resources are claimed, for the dominant purpose of conducting a Member's parliamentary business.[139] Members must ensure that expenses incurred, or allowances or resources claimed, provide value for money.[140]

Members are paid travel expenses and allowances, and other work expenses, and provided with public resources, as prescribed by regulations or as determined by the Minister for Finance.[141] Rates of travel allowance are determined by the Remuneration Tribunal.[142] Travel 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 amount depending on the size of electorate. Travel allowance is also payable, on a limited basis, for meetings of a Member's parliamentary party and for meetings of

134 Review Committee, *An independent parliamentary entitlements system*, Report, 22 February 2016.
135 Minister for Finance, *Media release*, 23 March 2016.
136 *Parliamentary Business Resources (Consequential and Transitional Provisions) Act 2017*.
137 *Independent Parliamentary Expenses Authority Act 2017*.
138 *Parliamentary Business Resources Act 2017*, s. 25.
139 *Parliamentary Business Resources Act 2017*, s. 26.
140 *Parliamentary Business Resources Act 2017*, s. 27.
141 *Parliamentary Business Resources Act 2017*, s. 33.
142 *Parliamentary Business Resources Act 2017*, s. 45.

party committees. Former Prime Ministers have limited entitlements to travel at government expense after they cease to be Members of Parliament.[143]

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. Electorate staff are employed under the *Members of Parliament (Staff) Act 1984*.

Compensation for Members in the event of death or injury in connection with official business is covered by a parliamentary injury compensation scheme which provides similar benefits to those received by Commonwealth employees under the *Safety, Rehabilitation and Compensation Act 1988*.[144]

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 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*.[145]

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.[146] Under the *Crimes (Superannuation Benefits) Act 1989* a similarly restricted entitlement may apply to a Member convicted of certain offences committed while a Member, including a Member so convicted after resignation.[147]

143 *Parliamentary Retirement Travel Act 2002,* (entitlements for other former parliamentarians were abolished in 2017).

144 *Parliamentary Business Resources Act 2017,* s. 41. Prior to 2016 compensation was by means of ex gratia cover.

145 *See* 4th edn, pp. 151–2. However, the Remuneration Tribunal can determine that a proportion of a current salary is not to be counted for the purposes of the 1948 Act.

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

147 Under the Act: for a superannuation order to be applied for the person must be convicted and sentenced to a term of imprisonment longer than 12 months (s. 17); sentence does not include a sentence that is wholly suspended (s. 2). The provision was relevant in respect of Mr A. Theophanous, a former Member convicted of corruption committed while a Member (on 22.5.2002).

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.[148] 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.[149] 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 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 158.

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.[150] Leave is usually granted for reasons such as parliamentary or public business overseas, ill health or maternity/paternity.[151] A further motion may be moved to extend the period of leave.[152] During both World Wars leave for long periods was granted to several Members who were serving in the Armed Forces. There have been 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.[153]

A Member 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.[154] Another Member may be appointed to a committee to serve in the place of a Member granted leave of absence.[155] Service of the House means attendance in the Chamber,[156] 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, including by teleconference. A committee chair granted maternity leave has continued to serve as chair and participate in committee business, for example by editing and approving a draft report. She did not attend committee meetings which were chaired by the Deputy Chair in her absence.

148 S.O. 25.
149 S.O. 27(c). The entry also indicates if an absent Member has been granted leave.
150 S.O. 26(a).
151 E.g. VP 2004–07/142 (8.2.2005) (maternity/paternity); VP 2010–13/1828 (19.9.2012) (parliamentary business overseas); VP 2013–16/410 (24.3.2014) (ill health). 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. (18.7.1906) 1430–31.
152 E.g. VP 2004–07/648 (10.10.2005).
153 VP 1943–44/29 (8.10.1943); VP 1944–45/21 (1.9.1944); VP 1945–46/37 (23.3.1945); VP 1945–46/260 (26.9.1945).
154 S.O. 26(b).
155 VP 1948–49/13 (3.9.1948).
156 S.O. 2.

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.[157] If the Speaker is absent from the Commonwealth, or there is no Speaker, the Governor-General in Council may issue the writ.[158] The writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence.[159]

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.[160] 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.[161] 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 or scanned copy of a Member's letter of resignation, the Speaker having been satisfied as to its authenticity by contact with the Clerk, has been accepted as complying with the requirements—that is, the Speaker must be able to be satisfied that the writing is what it purports to be, namely, the resignation of the Member in question.[162] A resignation by telegram has been held not to be effective.[163] A resignation that is in writing signed by another person at the direction of the Member, where the Member is physically unable to sign the resignation personally but is mentally capable of understanding the nature of the resignation and of authorising that other person to sign it on his or her behalf, would meet the constitutional requirements regarding resignation, provided these facts 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.[164]

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.[165] This constitutional requirement is not met by attendance at a committee of the House, including the Federation Chamber.[166] It could be interpreted that the phrase 'attend the House' means attend the House when it is sitting,[167] but in order that the position of

157 E.g. VP 1977/261 (8.9.1977); VP 1998–2001/1610 (29.6.2000); VP 2008–10/447 (26.8.2008); VP 2013–16/310 (24.2.2014).
158 Constitution, s. 33; *see also* Ch. on 'Elections and the electoral system'.
159 S.O. 18(a). E.g. VP 1996–98/489 (16.9.1996).
160 Constitution, s. 37. *See* VP 1980–83/77 (24.2.1981) for examples of both methods.
161 Advice of Attorney-General's Department, dated 19 May 1964.
162 Advice of Attorney-General's Department, dated 4 March 1981.
163 Advice of Attorney-General's Department, dated 26 February and 9 March 1960.
164 Opinion of Attorney-General, dated 3 August 1977.
165 Constitution, s. 38.
166 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.
167 Opinion of Solicitor-General, dated 13 September 1935.

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.[168] On occasion the motion has been debated.[169]

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.[170] The Serjeant-at-Arms, who records the attendance of Members in the House, advises the whip of the relevant party when a Member has been absent for about six weeks. The leader of the Member's party normally either moves for the House to grant the Member leave of absence[171] 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 136.

Penalty for sitting while ineligible

Section 46 of 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 141) prompted the enactment of the *Common Informers (Parliamentary Disqualifications) Act 1975*, which fixed a maximum 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.

Proceedings under the Common Informers Act are limited to the imposition and recovery of penalty. Whether the Member concerned is disqualified must first be determined pursuant to section 47 of the Constitution or section 376 of the Electoral

168 VP 1978–80/1694 (18.9.1980).
169 E.g. VP 2010–13/2206 (21.3.2013).
170 J 1903/211 (13.10.1903).
171 In practice a seconder is not called for the party leader's motion.

Act—that is, by the relevant House or by the Court of Disputed Returns pursuant to a referral by that House.[172]

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 noted '. . . 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.'[173]

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. 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.[174]

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 Senator[175] but may do so in respect of a Senate Minister.

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

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

In December 1967 Prime Minister Holt was presumed to have died by drowning, although his body was never found. The joint report of the Commonwealth and Victoria police satisfied the Attorney-General and the Secretary of the Attorney's Department that there was overwhelming evidence that Mr Holt had died by drowning.[176] 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.[177]

172 High Court ruling in *Alley v. Gillespie* [2018] HCA 11, the first, and so far only, suit pursuant to the Act (*see* p. 142). The court ordered the plaintiff's proceedings be stayed until the question whether the defendant was incapable of sitting was determined.

173 *Vardon v. O'Loghlin* (1907) 5 CLR 201 at 208.

174 The most recent references to deaths of sitting Members are: Hon. R. F. X. Connor, VP 1977/235 (23.8.1977); Hon. F. E. Stewart, VP 1979/747 (1.5.1979)—House adjourned to next day of sitting; Hon. E. L. Robinson, VP 1980–83/77–8 (24.2.1981); Mr G. S. Wilton, VP 1998–2001/1531 (19.6.2000); Mr P. E. Nugent, VP 1998–2001/2261 (10.5.2001), 2263–4 (22.5.2001)—death announced at the special sitting in Melbourne, condolences when House next met in Canberra; Mr D. J. Randall, VP 2013–16/1472 (10.8.2015). *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'.

175 E.g. VP 2005–07/1833 (8.5.2007).

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

177 VP 1968–69/2 (12.3.1968).

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.[178] After the motion of expulsion was agreed to, a further motion was moved declaring the seat vacant which was agreed to on division.[179] Mr Mahon stood for re-election in the resulting by-election but was not successful.

MEMBERS' TITLES

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 1901[180]—a decision which has since been reaffirmed in 1951[181] and in 1965.[182] 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 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.[183] 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

178 VP 1920–21/431–2 (11.11.1920); H.R. Deb. (11.11.1920) 6382–3.
179 VP 1920–21/433 (11.11.1920).
180 H.R. Deb. (24.7.1901) 2939.
181 H.R. Deb. (6.7.1951) 1134.
182 H.R. Deb. (21.10.1965) 2058.
183 *Members of 1st Parliament of the Commonwealth—Title of 'Honourable'*, PP 21 (1904).

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.[184] Parliamentary Secretaries also have the title 'Honourable' when, as has been the recent practice, they have been appointed to the Executive Council.[185] 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.

It has been 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.[186] However, Speaker Harry Jenkins, elected in 2008, did not use the title 'Honourable'.

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.[187]

Academic and other titles

The use of academic and other titles, where appropriate, in House documents was considered by the Standing Orders Committee in 1972.[188] The House agreed with the committee's recommendation that the title 'Doctor' or 'Reverend' or a substantive military, academic or professional title could be used by Members in House documents.[189]

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 had no functions attached to it. At the commencement of the 45th Parliament in 2016 the Hon. K. J. Andrews had the longest continuous service of any Member, having been elected in 1991 and serving continuously since then. 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,[190] 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'.[191] 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

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

185 Since 2000 Parliamentary Secretaries have been technically 'Ministers of State' for constitutional purposes and thus automatically appointed.

186 *See* earlier editions for further detail.

187 If they so chose—Members of the Australian Labor Party generally did not become Privy Councillors and the practice was not reintroduced 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.

188 PP 20 (1972).

189 VP 1970–72/1013 (18.4.1972).

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

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

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.[192] 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.[193] 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;[194] that it was acceptable for Members to wear tailored 'safari' suits without a tie;[195] and that Members were permitted to wear hats in the Chamber but not while entering or leaving[196] or while speaking.[197]

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.[198] Members may not smoke in the Chamber[199] and refreshments (apart from water) may not be brought into, or consumed in, the Chamber.[200]

The Chair has also ruled that:[201]

- a Member may keep his hands in his pockets while speaking;[202]
- the beating of hands on[203] or kicking[204] of Chamber desks is disorderly;
- a Member may distribute books to other Members in the Chamber;[205]
- a Member may not distribute apples to other Members in the Chamber;[206]
- climbing over seats is not fitting behaviour;[207]
- a Member should not sit on the arm of a seat;[208] and

192 H.R. Deb. (11.3.1999) 3787–88, VP 1998–2001/396 (11.3.1999).
193 H.R. Deb (13.9.2005) 16–17.
194 H.R. Deb. (26.2.1959) 318.
195 H.R. Deb. (17.2.1977) 172.
196 H.R. Deb. (23.3.1950) 1197–8.
197 H.R. Deb. (10.3.1926) 1476.
198 H.R. Deb. (6.11.1973) 2791.
199 H.R. Deb. (24.10.1952) 3742. Smoking is these days prohibited inside Parliament House.
200 E.g. H.R. Deb. (18.6.2007) 33.
201 For general rules for Members' conduct in, and manner and right of, debate *see* Ch. on 'Control and conduct of debate'.
202 H.R. Deb. (8.6.1939) 1530.
203 H.R. Deb. (25.3.1997) 2881.
204 H.R. Deb. (28.11.1951) 2832.
205 H.R. Deb. (4.5.1950) 2227–8.
206 H.R. Deb. (1.6.2004) 29652–4.
207 H.R. Deb. (8.6.1955) 1561.
208 H.R. Deb. (25.7.1974) 695–6.

- a Minister who had tossed papers onto the Table was required to retrieve them.[209]

Use of electronic devices

Mobile phones must not be used for 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.[210] 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.[211] The use of cameras, including mobile phone cameras,[212] and iPods[213] on the floor of the House is not permitted.

In 2015 the House adopted the following resolution on the use of electronic devices:

(1) The House permits Members' use of electronic devices in the Chamber, Federation Chamber and committees, provided that:
  (a) use of any device avoids interference or distraction to other Members, either visually or audibly, and does not interfere with proceedings—in particular, phone calls are not permitted and devices should be operated in silent mode;
  (b) devices are not used to record the proceedings (either by audio or visual means);
  (c) communication on social media regarding private meetings of committees or in camera hearings will be considered a potential breach of privilege; and
  (d) the use of devices is as unobtrusive as possible and is directly related to the Members' parliamentary duties; and

(2) The House notes that:
  (a) communication via electronic devices, whether in the Chamber or not, is unlikely to be covered by parliamentary privilege; and
  (b) reflections on the Chair by Members made on social media may be treated as matters of order just as any such reflections made inside or outside the Chamber.[214]

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:

- National Archives of Australia Advisory Council (one Member)—for a period as is fixed by the House, not exceeding three years;[215]
- Council of the National Library of Australia (one Member)—for a period as is fixed by the House, not exceeding three years;[216] and
- Parliamentary Retiring Allowances Trust (two Members)—while remaining a Member.[217]

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

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

210 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.

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

212 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.

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

214 VP 2013–16/1243–4 (26.3.2015). The resolution was in response to the Procedure Committee report, *Use of electronic devices in the Chamber and Federation Chamber*, PP 201 (2014).

215 *Archives Act 1983*; VP 2013–16/338 (3.3.2014).

216 *National Library Act 1960*; VP 2013–16/485 (26.5.2014).

217 *Parliamentary Contributory Superannuation Act 1948*; VP 2013–16/311 (24.2.2014). 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.

6
The Speaker, Deputy Speakers and officers

THE OFFICE OF SPEAKER

Origins

The office of Speaker is an essential feature of the parliamentary system, and of all the Westminster parliamentary traditions the Speakership has proved to be among the most durable. The office is an ancient one with its beginnings going back to the origins of the British Parliament. The first Speaker to be so designated was Sir Thomas Hungerford, appointed in 1377, who became the first in a continuing line of identifiable Speakers. In early times Speakers were variously described as 'Parlour' (mouth), 'Prolocutor' (chairman) and 'Procurator' (agent). Essentially each acted as mouthpiece or spokesman and hence 'Speaker' on behalf of the House in communicating its resolutions to the sovereign.

The office of Speaker was central to the centuries long battle for supremacy between Parliament and the monarchy. Historically the role of the Speaker has been an unenviable one. The chequered history of the Speakership shows that a number of Speakers died violent deaths by way of execution or murder while others were imprisoned, impeached or expelled from office. This record is reflected in the custom of a newly elected Speaker showing a token resistance on being escorted to the Chair. As Laundy states in *The office of Speaker:*

> The custom had its origin in the genuine reluctance with which early Speakers accepted the office, for the rôle of spokesman for an emerging body of legislators bent on opposing the royal will was a dangerous occupation . . . Until discontinued by Speaker Onslow in 1728 it was the custom for the Speaker-elect to struggle with his proposer and seconder, resisting every inch of the way to the Chair with the result that he was literally dragged to it.[1]

Today in the House of Representatives the custom is maintained by the Speaker-elect being escorted to the Chair by his or her proposer and seconder.

The fascinating historical development of the Speakership has been well recorded by Laundy.[2] For the purposes of this text it is sufficient to say that it is an office of great importance not only in its significant and onerous duties but particularly for what it is held to represent. The following comments by more recent Speakers serve to illustrate this:

> . . . it may fairly be said that as an institution Parliament has proved its enduring worth through the test of time; secondly, Parliament's past helps us to understand more fully its modern role and present-day organisation. To a large extent, the same holds true of the Speakership of the House of Commons, an office almost as old as Parliament itself.[3]

1 Philip Laundy, *The office of Speaker*, Cassell, London, 1964, p. 16.
2 Laundy, *The office of Speaker*.
3 George Thomas, 'The Speakership, House of Commons, Westminster', *The Parliamentarian* LIX, 1, 1978, pp. 1–7.

> . . . the Speaker represents, in a very real sense, the right of freedom of speech in the Parliament, which was hard won from a monarchical Executive centuries ago. The Parliament must constantly be prepared to maintain its right of . . . freedom of speech, without fear or favour.[4]

By the time of the election of the first Speaker of the House of Representatives the Speakership of the House of Commons, fundamentally the same as we know it today, had already evolved. However the Speakership in Australia differs in some respects from current Westminster practice as its development during the 20th century followed different lines.

The Speaker today

The following statement of the House of Commons practice states succinctly the principal functions attaching to the office of Speaker which apply equally in the House of Representatives:

> The Speaker . . . is the representative of the House itself in its powers, proceedings and dignity. The Speaker's functions fall into three main categories. First, the Speaker is the spokesman or representative of the House in its relations with the Crown, the House of Lords and other authorities and persons outside Parliament. Second, the Speaker presides over the debates of the House . . . and enforces the observance of all rules for preserving order in its proceedings. Third, the Speaker has administrative responsibilities . . .[5]

The Speaker is a Member of the House and upon election to office becomes its principal officer.[6] He or she is supported and assisted by the elected Deputy Speaker and Second Deputy Speaker who act as Speaker in the Speaker's absence and relieve in the Chair as Deputy Speaker whenever requested to do so. The Speaker appoints a number of Members to the Speaker's panel and the Speaker or Deputy Speaker may call on any one of them to take the Chair as Deputy Speaker.

The Speaker has the constant support and advice of the staff of the House, including the Clerk of the House, the Deputy Clerk, the Clerks Assistant and the Serjeant-at-Arms, who in turn have the support of staff in the areas for which they are responsible.

The Speaker is commonly referred to as the Presiding Officer, his or her counterpart in the Senate being the President. While Speaker, a Member is entitled to be termed 'Honourable'. In the Commonwealth order of precedence the Speaker is ranked directly after the Governor-General, State Governors, the Prime Minister, and a Premier within that Premier's State. If the President of the Senate has served in office an equal or greater period of time, then the President also precedes the Speaker. If the Speaker has served for a longer period in office, then he or she precedes the President.[7]

In the Chamber and for ceremonial occasions the formal Speaker's dress was traditionally a black Queen's Counsel gown, full bottomed judge's wig and lace accessories. Speakers from the non-Labor parties used to wear the full formal dress. However, Speaker Halverson, elected in 1996, wore the gown of a Queen's Counsel but did not wear the wig, and subsequent Speakers, until 2007, wore an academic gown only, without accessories. Speaker Slipper, elected in 2011, wore a Queen's Counsel gown.

4 Speaker Snedden, H.R. Deb. (27.5.1976) 2598.

5 *May*, 24th edn, p. 59.

6 The Speaker, Deputy Speaker, Second Deputy Speaker and members of the Speaker's panel are correctly titled Officers of the House, not office holders, as they are elected by the House or nominated on behalf of the House to serve the interests of the whole House. The distinction is that Ministers, and office holders such as the Leader of the Opposition, whips, etc., may be seen as serving, in the first instance, the interests of a section of the House only. *See* Ch. on 'House, Government and Opposition'.

7 Gazette S21 (17.2.1977); S206 (5.10.1982).

Speakers Bishop and Smith, elected in 2013 and 2015 respectively, did not wear a gown. Speakers from the Australian Labor Party have not worn wig or gown.[8]

The role the Speaker plays by virtue of the office requires the position to be filled by a dedicated, senior and experienced parliamentarian. The qualities required in a Speaker have been described in the following ways:

> It is parliamentary rather than legal experience which is the first requirement of a Speaker. He must have an intimate understanding of parliamentary life, of the problems of Members collectively and individually, of the moods and foibles of the House; an experience which can be acquired only through many years spent on the benches of the House itself. He must have a deep-seated reverence for the institution of Parliament, an understanding of what lies behind the outward ceremony and a faith in democratic government.[9]

> A newspaper writer once commented . . . 'The office of Speaker does not demand rare qualities. It demands common qualities in a rare degree' . . . A good Speaker is not necessarily an extraordinary person, therefore; he is an ordinary person, but an ordinary person of the highest calibre.[10]

There has been no general tendency to appoint lawyers as Speakers in the House of Representatives and, since Federation, only six Speakers have been members of the legal profession, namely, Speakers Groom, Nairn, Snedden, Sinclair, Slipper and Bishop.[11]

Traditionally the Speaker in the House of Representatives has been a person of considerable parliamentary experience. Speakers have mostly come from the back bench without ministerial or party leadership experience. Speakers who had had prior ministerial experience in the House of Representatives were Speakers Watt, Groom, Cameron, Snedden, Sinclair and Bishop. Due to the exceptional circumstances created by World War II Speaker Rosevear continued his duties as Controller of Leather and Footwear following his election as Speaker in 1943, and was Chairman of the Post-War Planning Committee of Leather and Footwear Industries between 1944 and 1945. These were not Cabinet appointments. Speaker Snedden had previously been a Minister, Leader of the House and Leader of the Opposition, experience he regarded as important in occupying the Speakership.[12] Speaker Sinclair had previously been a Minister, a party leader and Leader of the House. Speaker Makin became a Minister nine years after he ceased to be Speaker in 1932 and Speaker Scholes became a Minister in 1983, some seven years after ceasing to be Speaker. Speakers Martin, Slipper and Smith had previously been Parliamentary Secretaries. Speakers Salmon, McDonald, Bell, Scholes, Jenkins, Child, and McLeay previously held the office of Chairman of Committees, and Speaker Harry Jenkins,[13] Speaker Slipper and Speaker Burke the office of Deputy Speaker.

Impartiality of the Chair

One of the hallmarks of good Speakership is the requirement for a high degree of impartiality in the execution of the duties of the office. According to *May*:

> Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate either in the House or in committee. He votes only when the voices are equal, and then

8 Tradition started by first Labor Speaker (McDonald), H.R. Deb. (13.7.1910) 364.
9 Philip Laundy, *The office of Speaker*, Cassell, London, 1964, p. 26.
10 ibid., p. 30.
11 For a list of Speakers since 1901 *see* Appendix 2.
12 Sir Billy M. Snedden, 'The Speaker of the Australian House of Representatives', *The Parliamentarian* LIX, 4, 1978, pp. 205–10.
13 The son of Dr H. A. Jenkins, Speaker from 1983 to 1985.

> only in accordance with rules which preclude an expression of opinion upon the merits of a question.[14]

This important characteristic of office has been developed over the last two centuries to a point where in the House of Commons the Speaker abandons all party loyalties and is required to be impartial on all party issues both inside and outside the House. In concert with this requirement the principle has been well established that the Speaker continues in office, regardless of a change of government, until ceasing to be a Member of the House.

In contrast, practice in the House of Representatives has been to change the Speaker with a change of government (for exceptions *see* page 169). This provides a Speaker who is politically affiliated but who is required to be impartial in the Chair, rather than a Speaker who is both independent and seen to be independent. Historically, the Speaker has not been required to sever his or her connection with the governing party. Speakers have attended party meetings and have not, of necessity, refrained from election campaigning. As a rule, however, the Speaker does not participate in the actual debating and law-making processes of the House (*but see* page 180).

Notwithstanding the foregoing and the fact that the Speakership has long been regarded as a political appointment, Australian Speakers have striven to discharge their duties with impartiality. The degree of impartiality achieved depends on the occupant but, as a rule, Speakers have been sufficiently detached from government activity to ensure what can be justly claimed to be a high degree of impartiality in the Chair.

During his term in office (1976–83) Speaker Snedden advocated the adoption in Australia of conventions applying to the Speakership in the House of Commons. On the first sitting day of the 33rd Parliament, when there had been a change of Government and after a new Speaker had been elected, in informing the House of his decision to resign as a Member, Sir Billy noted that as Speaker he had endeavoured to apply 'such of the features of the conventions as were consistent with reality', that he had rarely attended party meetings and that he had confined his attendance to occasions when major issues of principle were to be discussed. He went on to say that, consistent with House of Commons practice, he would resign as a Member forthwith.[15]

The Speaker must show impartiality in the Chamber above all else. A Speaker should give a completely objective interpretation of standing orders and precedents, and should give the same reprimand for the same offence whether the Member is of the Government or the Opposition.

Experience has shown that the Speaker uses his or her discretion in such a manner as to ensure adequate opportunities for all sections to participate in the deliberations of the House. As a rule Speakers make themselves freely available outside the Chamber to give advice to or discuss matters with Members. Members are entitled to expect that, even though politically affiliated, the Speaker will carry out his or her functions impartially. Likewise a Speaker is entitled to expect support from all Members regardless of their party.

The Speaker embodies the dignity of the nation's representative assembly. The office is above the individual and commands respect. The degree of respect depends to some extent on the occupant but it is fair to say that the office, despite isolated incidents, has been shown to be respected on both sides of the House.

14 *May*, 24th edn, p. 61.
15 H.R. Deb. (21.4.1983) 5–6.

In recognition of the need to show respect for the office, certain conventions are observed in the practices and procedures of the House:

- on entering or leaving the Chamber Members acknowledge the Speaker by a bow (S.O. 62(b));
- a Member must not pass between the Speaker and any Member who is speaking (S.O. 62(d));
- Members addressing the House do so through the Speaker (S.O. 65(a));
- Members resume their seats immediately the Speaker stands and the House shall be silent so that the Speaker may be heard without interruption (S.O. 61(a));
- when the Speaker is putting a question no Member may walk out of or across the Chamber (S.O. 61(b)); and
- when the House has been adjourned, no Member should leave the House before the Speaker.

(*See also* Chapter on 'Control and conduct of debate').

It is unquestionably of great importance that, as a contribution towards upholding the impartiality of the office, the House chooses a candidate who has the qualities necessary for a good Speaker.

Period in office

The Speaker is elected by vote of the House and must be re-elected after each general election. Speaker John (later Sir John) McLeay (1956–1966) holds the record term of office of ten years.

Party

In the House of Commons, if the previous Speaker is still a member of the House on the meeting of a new Parliament, and is available, there has been a practice that he or she will be re-elected under what is known as the continuity principle, regardless of a change of government, until he or she resigns or retires (usually during the Parliament).

This practice has not been followed by the House of Representatives, where, since the early years after Federation, the Speaker has generally been a member of the governing party, and a change in the Government has brought a change in the Speaker.[16]

However, special circumstances have sometimes applied, and on occasion, when numbers have been very close (in the context that the Speaker normally has no vote) a non-government Member has been elected or has continued as Speaker. When the Liberal Government was elected to office in May 1913, Prime Minister Cook invited Speaker McDonald who had been Speaker in the previous Labor Government to remain as Speaker. Filling the Speaker's position was significant for both parties due to the almost equal numbers in the House. Mr McDonald declined[17] and, when the 5th Parliament met on 9 July 1913, Mr Johnson, a candidate from the government party, was elected Speaker.[18]

16 The reasons for this are in part historical and partly electoral and political. The comparatively small size of the House means that a single seat may be vital in determining a governing majority. For example, after the 1961 and 2016 general elections the Government had a floor majority of only one. After the 2010 election no party or coalition had a majority of Members, and the Government held office with minor party and independent support.

17 *Double dissolution—Correspondence between the late Prime Minister (the Right Honourable Joseph Cook) and His Excellency the Governor-General*, PP 2 (1914–17) 3.

18 VP 1913/4 (9.7.1913).

A non-government Member has been Speaker of the House of Representatives in the following instances:

- On 9 May 1901 Mr Holder, formerly Premier of South Australia, was unanimously elected as the first Speaker of the House of Representatives. Mr Holder was the only candidate for the Speakership at that time and on the two subsequent occasions he was re-elected as Speaker.[19] Speaker Holder remained in office until his death on 23 July 1909. During the period of his Speakership, there were six changes of Prime Minister and five changes in the governing party.
- In November 1916 a group led by Mr Hughes broke away from the governing party to form a coalition Government with those who had been in opposition. Speaker McDonald remained in office until the House was dissolved in March 1917.
- Speaker Watt, elected Speaker in 1923, was not a member of the governing coalition parties, but was a member of a party which supported the Government and was the governing parties' nominee for the position of Speaker.[20]
- On 20 November 1940 Mr Nairn was elected, unopposed, as Speaker[21] during the term of the Menzies United Australia Party–Country Party coalition Government. On 8 October 1941 Prime Minister Curtin informed the House of the formation of a new Australian Labor Party Government[22] but Speaker Nairn, a member of the now opposition United Australia Party, remained in office until he resigned on 21 June 1943. On 22 June 1943 Mr Rosevear, a member of the governing Labor Party, was elected Speaker, unopposed.[23]
- On 11 November 1975 the Governor-General withdrew the commission of Prime Minister Whitlam (Australian Labor Party) and commissioned Leader of the Opposition Fraser (Liberal–Country Party coalition) to form a 'caretaker' Government. Speaker Scholes continued in the Chair for the remainder of the sitting under the new Government,[24] and remained as 'deemed' Presiding Officer, under the Presiding Officers Act, until Speaker Snedden, who was a member of the governing coalition parties, was elected when the next Parliament met on 17 February 1976.[25]
- On 24 November 2011 Deputy Speaker Slipper, a member of the opposition Liberal Party, was elected Speaker, unopposed, following the resignation of Speaker Jenkins earlier the same day.[26] After his election, Speaker Slipper resigned from the Liberal Party and sat as an independent.

ELECTION OF SPEAKER

The Constitution expressly provides that the House shall, before proceeding to the despatch of any other business, choose a Member to be the Speaker of the House, who

19 VP 1901–02/8 (9.5.1901); VP 1904/6 (2.3.1904); VP 1907/4 (20.2.1907). It appears that a second prospective candidate for the Speakership in the 1st Parliament withdrew before the time for the election of Speaker, H.R. Deb. (9.5.1901) 21–2.
20 H.R. Deb. (28.2.1923) 17–23.
21 VP 1940–43/4 (20.11.1940).
22 VP 1940–43/195 (8.10.1941).
23 VP 1940–43/549 (22.6.1943).
24 VP 1974–75/1123–7 (11.11.1975).
25 VP 1976–77/6 (17.2.1976).
26 VP 2010–13/1137, 1144–5 (24.11.2011).

'shall cease to hold his office if he ceases to be a Member'.[27] The procedure for electing the Speaker is laid down in detail in the standing orders.[28]

The election is conducted by the Clerk acting as chair.[29] A prospective Speaker is proposed by a Member, who is traditionally a private Member of the government party or parties,[30] moving that the Member proposed 'do take the Chair of this House as Speaker'. The motion is required to be seconded, again traditionally by a private Member. The mover and seconder may speak for up to five minutes each in support of their nominated candidate. The Member nominated, who must be present, is required to inform the House whether he or she accepts the nomination.[31]

After each proposal the Clerk asks if there is any further proposal. If there are no further proposals, the Clerk informs the House that the time for proposals has expired and no further nominations may be made. If a nominee is unopposed,[32] the Clerk immediately, without putting the question, declares the Member so proposed and seconded to have been elected. The Speaker-elect is then conducted to the Chair by the proposer and seconder.

If there is more than one nomination, Members who have not yet spoken may speak on the election, but debate must be relevant to the election. No Member may speak for more than five minutes but there is no limitation on the length of the debate. At any time during the debate a Minister may move without notice 'That the ballot be taken now', which is, in effect, a closure. This question must be put immediately and be resolved without amendment or debate.[33] If on division the numbers are equal, the question is negatived and debate may continue.

After debate concludes, the division bells are rung for four minutes and the House proceeds to a ballot whereby Members write on ballot papers the name of the nominee for whom they wish to vote. The standing order is silent on the detail of the distribution and collection of ballot papers. During an election for the Deputy Speaker in 2011, a paper which had not been placed in a box when papers were being collected, but which had been handed in a short time later, was counted, the Clerk being satisfied that there had been a strict control on the number of papers distributed.[34] The votes are counted by the Clerks at the Table and, if there are only two nominees, the one with the greater number of votes is declared by the Clerk to have been elected.[35]

Since the ballot procedure was introduced in 1937 there has been no instance of there being more than two nominees. Ballots continue if there are more than two nominees and no nominee has a majority of votes. In this case the name of the Member with the smallest number of votes is excluded and a fresh ballot taken. This process continues until a nominee has the required majority. Procedures are provided to meet the situation when, by reason of an equality of votes, a ballot is inconclusive. A nominee may, between ballots, withdraw his or her name from the election which then proceeds as if he or she

27 Constitution, s. 35.
28 S.O.s 10–12.
29 S.O. 10(b).
30 Exceptionally, Speaker Bishop was proposed by the Prime Minister and seconded by the Leader of the House.
31 In 1909 and 1943 candidates were proposed but declined to accept nomination, *see* VP 1909/61 (28.7.1909); VP 1940–43/549 (22.6.1943). In 2011, after an initial nomination, 9 additional Members were nominated, but each declined, VP 2010–13/1144–5 (24.11.2011).
32 About 50% of elections for Speaker have been unopposed.
33 E.g. VP 1996–98/2754 (4.3.1998) (division held).
34 H.R. Deb. (24.11.11) 13795.
35 E.g. VP 2013–16/6–7 (12.11.2013).

had not been nominated. If a withdrawal leaves only one nominee, that person is immediately declared elected.

The Clerk's duties during the election are to deal only with what might be described as the 'mechanical' aspects. The standing orders include the obligation to draw attention to the fact that a Member's speech time has expired and to put the question if the closure is moved. The Clerk calls on a Member to speak using the name of the Member's electorate, for example, 'the honourable Member for . . .'. There is no instance of the Clerk having intervened in debate on the ground of irrelevancy. However the Clerk has been called on to rule on a point of order that a Member's remarks were not relevant,[36] and has drawn attention to the correct procedure.[37] Members have recognised that such matters can place the Clerk in a difficult position and have not persisted with points of order.[38]

It is considered that the Clerk would be obliged to accept a motion for some relevant purpose, and should put a question and declare what, in the Clerk's opinion, the result was. A motion concerning an unrelated matter (including a motion to suspend standing orders) could not be considered. It is doubtful if the Clerk has the power to name a Member. For instance, the Clerk would probably have a duty to ask for the withdrawal of an unduly offensive expression but, if the request were denied by the Member, any further action would be a matter for the House after the election of a Speaker.

Some questions as to the role of the Clerk remain undetermined but in the case of grave disorder the Clerk would probably have to appeal to the House to act to preserve order and its own dignity. If the disorder were to continue, the Clerk may have no alternative but to suspend the sitting for a period.

On 27 July 1909 the Clerk announced to the House that Speaker Holder had died at Parliament House on 23 July. Prime Minister Deakin moved a condolence motion which was put by the Clerk, by direction of the House. The Clerk then, again by direction of the House, put the question for the adjournment of the House, proposed by the Prime Minister.[39]

The House met the next day for the election of a new Speaker. Four candidates were proposed, but one of them declined. Debate continued on the proposals until a Member moved that the debate be adjourned. The House divided and the motion was negatived 36 votes to 32.[40] The debate continued until another Member moved that the debate be adjourned. The House divided and the result of the division was 'Ayes' 31, 'Noes' 31:

> And the numbers being equal the Clerk stated that he would not take the responsibility of stopping the debate, and therefore gave a casting vote with the 'Noes'—
>
> And a point of order being raised that the Clerk could not vote, the Clerk, as Chairman, ruled that if he had not a casting vote as Chairman, nevertheless the motion for adjournment, not having received a majority of votes, had not been agreed to.[41]

In explanation the Clerk said that he was acting under the authority of the standing order which, prior to the election of the Speaker, enabled the Clerk to act as chair of the House.[42] The important point was that the motion had not been carried and it was with

36 The ruling was that the Member could continue. H.R. Deb. (29.8.1989) 471.
37 H.R. Deb. (16.11.2004) 5.
38 H.R. Deb. (24.11.2011) 13786.
39 VP 1909/59 (27.7.1909).
40 VP 1909/61 (28.7.1909).
41 VP 1909/62 (28.7.1909).
42 Then S.O. 6. H.R. Deb. (28.7.1909) 1704.

hindsight unnecessary for the Clerk to have purported to give a casting vote which clearly he did not have. The debate continued and Speaker Salmon was eventually elected by 37 votes to 29.[43] During the adjournment debate the Prime Minister on behalf of all Members thanked the Clerk for 'the able manner in which he discharged his duties under extremely trying conditions, which it was impossible for him to foresee, and prepare for'.[44]

On the next day a Member moved as a matter of privilege that the Votes and Proceedings of the House of Representatives, page 62, dated 28 July 1909, be amended by the omission of the entries quoted above.[45] The motion was debated for two hours and most speakers acknowledged that the Clerk had been placed in an extremely difficult situation.[46] The motion was negatived, on division, 32 votes to 20.[47]

In 1934, while the motion that Mr Bell take the Chair of the House as Speaker was being debated,[48] a Member moved the closure of the Member addressing the House (Mr Gander). The Clerk ruled that the motion was in order, as during the election of Speaker the House was operating under its standing orders. The Clerk put the question on the closure and a division being called for, the bells were rung. When the Clerk appointed tellers, a Member objected that he had no authority to order a division and appoint tellers. Mr Gander then nominated himself for the position of Speaker. The tellers for the 'Noes' refused to act and so the Clerk immediately declared the question on the closure of the Member resolved in the affirmative. As Mr Bell was the only Member proposed, he was then conducted to the Chair by his proposer and seconder without question being put. Mr Gander also approached the Chair but despite interruption and interjection Mr Bell was able to express his acknowledgments and accept congratulations.[49] The present standing orders provide that the closure in this situation can only be moved by a Minister,[50] and it has been successfully moved on several occasions.[51]

On 15 February 1956 a ballot being held to decide between two candidates for the Speakership, a Member said:

> Mr Clerk, I would like a ruling. Would it be in order to nominate scrutineers while the ballot is in progress. I think each candidate should have a scrutineer.

The Clerk, in effect, gave a ruling by saying 'There is no provision in the standing orders for the appointment of scrutineers'.[52]

Following his or her election, and having been conducted to the Chair, the Speaker thanks the House for the honour it has conferred.[53] The Speaker then takes the Chair, and the Mace, which prior to this time has been placed under the Table, is placed in the brackets on the Table. The Prime Minister, the Leader of the Opposition, other party leaders (where appropriate) and other Members then formally congratulate the Speaker. When a Speaker is elected on opening day, a Minister, usually the Prime Minister, informs the House of the time at which the Governor-General will receive the Speaker

43 VP 1909/62 (28.7.1909).
44 H.R. Deb. (28.7.1909) 1727–8.
45 VP 1909/67 (29.7.1909).
46 H.R. Deb. (29.7.1909) 1808–22.
47 VP 1909/67 (29.7.1909).
48 Under present standing orders no debate can take place if only one Member is proposed, S.O. 11(f).
49 VP 1934–37/4–5 (23.10.1934); H.R. Deb. (23.10.1934) 27–8.
50 S.O. 11(h).
51 VP 1946–48/5 (6.11.1946); VP 1951–53/5 (12.6.1951); VP 1956–57/5 (15.2.1956); VP 1976–77/6 (17.2.1976); VP 1996–98/2754 (4.3.1998).
52 H.R. Deb. (15.2.1956) 14.
53 S.O. 12, e.g. H.R. Deb. (28.9.2010) 11.

and the sitting of the House is suspended until that time when the Speaker, accompanied by other Members, proceeds to meet the Governor-General. This may also occur when a Speaker is elected during the course of a Parliament, but it is not a requirement of the standing orders.[54] On return to the House the Speaker reports to the House that he or she has presented himself or herself to the Governor-General and received the Governor-General's congratulations on election to the office. In the event of the Governor-General being absent from Australia or unable to attend the Parliament, the Speaker presents himself or herself to the Administrator.[55]

In 1909 the newly elected Speaker did not immediately present himself to the Governor-General. The Prime Minister informed the House that the Governor-General would fix a time for receiving the Speaker.[56] In 1946 the newly elected Speaker did not suspend the sitting but left the Chamber to present himself to the Governor-General immediately.[57] In 1934 Speaker Bell ruled that no business could be transacted until the Speaker had been presented to the Governor-General.[58] On that occasion the Speaker had been elected on the opening day of the Parliament. Where a Speaker is elected during the life of a Parliament, business is able to be transacted regardless of whether the presentation has taken place.[59]

POWERS, FUNCTIONS AND DUTIES

The Speaker's powers, functions and duties may be categorised as constitutional, traditional and ceremonial, statutory, procedural and administrative. In addition the Speaker has certain ex officio functions.

As a general point of principle the Speaker's authority is that which is derived from the House, and the foremost duty is to the House and its Members in upholding its dignity and protecting its rights and privileges. Accordingly, the authority of the House and the Speaker have been described as indivisible. The Speaker acts as the House might direct,[60] being the servant not the master. Just as the House elects a Speaker it may likewise vote a Speaker out of office.[61] Consistent with the view that the Speaker is answerable only to the House, the Speaker has declined an invitation to make a submission to the Senate Committee of Privileges to which the Senate had referred issues arising from joint meetings of the Houses in October 2003.[62]

Constitutional

As well as providing for the election of the Speaker, the Constitution prescribes certain powers and duties exercisable by the Speaker:[63]

54 E.g. VP 1996–98/2755 (4.3.1998) (occurred); VP 2010–13/1145 (24.11.2011) (did not occur).
55 VP 1956–57/259 (29.8.1956).
56 VP 1909/62 (28.7.1909).
57 VP 1946–48/5 (6.11.1946).
58 H.R. Deb. (23.10.1934) 30, 31.
59 VP 2010–13/1145–9 (24.11.2011).
60 VP 1974–75/1125–7 (11.11.1975). A practice reflected in the famous statement of Speaker Lenthall who is recorded as having said to Charles I who had entered the House of Commons Chamber in 1642: 'May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here; and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is pleased to demand of me'. (A. Wright & P. Smith, *Parliaments past and present*, London, 1903, p. 40, and N. Wilding and P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 430, punctuation taken from the latter.)
61 Constitution, s. 35.
62 VP 2002–04/1403 (10.2.2004).
63 Principal discussion on these matters is found elsewhere in the text.

- he or she is responsible for the issue of a writ for the election of a new Member whenever a vacancy occurs in the House of Representatives, that is, between general elections;[64]
- at the commencement of a new Parliament the Speaker is commissioned by the Governor-General to administer the oath or affirmation of allegiance to any Member not present at the opening of Parliament and to new Members elected during the course of a Parliament;[65]
- if the number of votes on a question before the House is equal, he or she exercises a casting vote;[66] and
- a Member who wishes to resign his or her place does so in writing addressed to the Speaker.[67]

The Constitution also makes provision for the procedure to be followed in the event of a vacancy in the office of Speaker and in the absence of the Speaker[68] (*see* page 184).

Ceremonial and traditional

The most traditional of the Speaker's duties is as the sole representative of the House in its relations with the Crown's representative, the Governor-General. The Speaker is likewise the House's representative in communications with the Senate and outside persons in the transmission and receipt of messages, documents or addresses.

In the House of Commons, the Speaker-elect is not considered to be fully in office until the royal approbation has been received.[69] In the House of Representatives, once the Speaker is elected at the beginning of a Parliament, he or she is required by standing orders, before business is proceeded with, to present himself or herself to the Governor-General in order to inform the Governor-General that he or she is the choice of the House as its Speaker.[70] However, since 1904 when the 2nd Parliament met, the Speaker has not been required to seek the Governor-General's approval; the presentation is merely a courtesy. Likewise on presentation to the Governor-General the Speaker is not required to petition for the continuance of the privileges of the House as in the United Kingdom,[71] there being specific constitutional and legislative provisions dealing with the powers, privileges and immunities of the House.[72]

On the first sitting day of a new Parliament or a new session, the Governor-General summons Members of the House to hear the opening speech.[73] This summons is traditionally transmitted to the House by the Usher of the Black Rod. Upon receipt of the message, the Speaker calls on Members to accompany him or her and preceded by the Serjeant-at-Arms bearing the Mace,[74] accompanied by the Clerk, the Deputy Clerk and a Clerk Assistant, and followed by the party leaders and Members, proceeds to the

64 Constitution, s. 33.
65 In accordance with the Constitution, s. 42.
66 Constitution, s. 40.
67 Constitution, s. 37.
68 Constitution, ss. 35, 36.
69 This is symbolised by the practice that the Speaker is not preceded by the Mace when leaving the House during the interval between election and the receipt of the royal approval, *see May*, 24th edn, p. 151.
70 S.O. 4(h). The Speaker is preceded by the Serjeant-at-Arms bearing the Mace (at the start of the procession—the Mace is not brought into the presence of the Governor-General).
71 *May*, 24th edn, p. 151.
72 Constitution, s. 49 and specific legislation such as the *Parliamentary Privileges Act 1987*.
73 S.O. 5.
74 The Mace is left, covered, outside the Senate Chamber during the Governor-General's speech.

appointed venue (traditionally the Senate Chamber).[75] The Speaker is invited by the Governor-General to be seated. On conclusion of the Governor-General's speech, the Speaker is formally presented with a copy of the speech by the Governor-General's Official Secretary. The Speaker, in procession, then returns to the House of Representatives Chamber but, before the Speaker reports the Governor-General's speech to the House, it is necessary for the House to transact some formal business,[76] usually the introduction of a bill. This bill is known as the 'formal' bill or 'privilege' bill. Its presentation is taken to express the House's traditional right to conduct its own business without reference to the immediate cause of summons. The Prime Minister may also announce the Ministry at this time.

Later on during the sitting period, when the Address in Reply to the Governor-General's speech[77] is to be presented to the Governor-General, the Speaker suspends the sitting of the House and, accompanied by the Serjeant-at-Arms bearing the Mace, the Clerk, the Deputy Clerk and Members of the House, is driven to Government House. The Address in Reply is presented to the Governor-General and, on return to the House, the Speaker reports the Governor-General's reply to the Address.[78]

The Speaker's formal procession into the Chamber at the start of each sitting comprises the Speaker, preceded by the Speaker's attendant and the Serjeant-at-Arms bearing the Mace. The short procession starts in the Speaker's walkway close to the rear of the Chamber and enters the Chamber through the rear door.

The Serjeant-at-Arms, bearing the Mace on his or her right shoulder, precedes the Speaker into the Chamber and announces the Speaker to the House. As the Speaker takes the Chair, the Serjeant-at-Arms places the Mace on the Table. The Mace remains in the Chamber during any meal breaks and other shorter suspensions of the sitting, and is carried out of the Chamber by the Serjeant-at-Arms when the House adjourns. During the times when the Mace was not used, the Serjeant-at-Arms continued to precede the Speaker into the Chamber and announced him, and preceded him out of the Chamber on adjournment.

Statutory

In addition to constitutional functions the Speaker has specific functions and duties laid down in a number of Commonwealth Acts, some of the functions being exercised in an indirect or secondary manner. Acts in which the Speaker is given particular responsibilities or a particular role include the Commonwealth Electoral Act, the Parliamentary Allowances Act, the Parliamentary Papers Act, the Parliamentary Privileges Act, the Parliamentary Precincts Act, the Parliamentary Proceedings Broadcasting Act and the Parliamentary Service Act.

Any question regarding the qualifications of a Member of the House of Representatives, or a vacancy in the House, may be referred by the House to the Court of Disputed Returns.[79] The Speaker is responsible for sending to the court a statement of the

75 At the opening of the 30th Parliament on 17 February 1976 opposition Members did not attend the Senate Chamber to hear the Governor-General's speech.

76 S.O. 6(a).

77 *See* Ch. on 'The parliamentary calendar'.

78 S.O. 7.

79 *See also* Ch. on 'Members'.

question the House wishes to have determined and any associated documents which the House possesses relating to the question.[80]

The Auditor-General Act requires the Auditor-General to cause a copy of reports prepared under the Act to be presented to each House of the Parliament.[81] The reports are forwarded to the Speaker for presentation to the House. This is illustrative of the position of the Auditor-General as an officer responsible to Parliament, rather than to Government.

If, in an action concerning a publication, the Speaker or the Deputy Speaker (or the Clerk of the House) certifies that a document or evidence has been published under the authority of section 2 of the Parliamentary Papers Act, the court or judge must stay the action or prosecution.[82] Certificates given by the Speaker under section 17 of the Parliamentary Privileges Act in respect of certain matters relating to proceedings, are taken as evidence of these matters.

The Speaker is by statute a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings[83] which is appointed at the beginning of each Parliament. Any Member of the House of Representatives who is appointed to the committee, except the Speaker, may resign his or her seat on the committee by writing to the Speaker.[84] The Speaker has been elected chairman of the committee in all Parliaments except for the initial election in 1946.

The Speaker also has statutory responsibilities in connection with the administration of Parliament, described at page 181. The responsibilities of the Speaker in so far as electoral matters are concerned are described in detail in the Chapter on 'Elections and the electoral system'.

Procedural

The sources of procedural authority are described at page 190. The Speaker presides over the debates of the House and ensures that they are conducted according to the formal procedures, but does not normally participate in debates (*but see* page 180).

The duties performed in the Chair are probably the Speaker's most important and onerous. One of the duties is to ensure that the rules of parliamentary procedure as embodied in the standing orders and practice are accurately and correctly interpreted and applied. The Speaker interprets the standing orders, deals with points of order when they are raised and gives rulings when called upon to do so (*see* page 192). He or she calls upon Members wishing to speak. The standing orders provide a graduated code of disciplinary powers to enable the Speaker to maintain order. These powers are progressive in their severity and allow the Speaker to deal with various breaches of order in the most appropriate manner. The Speaker does not vote in the House except in the event of the numbers being equal, in which case he or she has a casting vote (*see* page 186). The Speaker may make statements or announcements to the House when necessary.[85]

It is the Speaker's duty to call the House together following an adjournment by resolution to a date and hour to be fixed.

80 *Commonwealth Electoral Act 1918*, s. 204.
81 *Auditor-General Act 1997*, ss. 15, 16, 17, 18, 25, 28.
82 *Parliamentary Papers Act 1908*, s. 4(2); *see also* Ch. on 'Documents'.
83 *Parliamentary Proceedings Broadcasting Act 1946*, s. 5(2).
84 *Parliamentary Proceedings Broadcasting Act 1946*, s. 7.
85 E.g. VP 2008–10/615 (16.10.2008).

At the commencement of each day's sitting, the Speaker, being satisfied that a quorum is present, reads the acknowledgement of country and prayers set out in the standing orders. The Speaker then starts proceeding, usually by calling the Clerk to call on the various items of business in the order set down on the Notice Paper.

Powers and functions under the standing orders

In addition to generally maintaining order in the Chamber and interpreting standing orders, the Speaker has specific powers and functions under the standing orders. These matters are described where appropriate elsewhere in the text.

It is considered that where the standing orders or practice of the House are silent on a matter, the Speaker may assume the authority to make a ruling or decision he or she thinks is appropriate. Naturally Members have the right to question such rulings or decisions, and the House itself is the ultimate authority in such matters.

Discretionary powers

The Speaker's powers are augmented by a number of discretionary powers, which include:[86]

- determining which is the most urgent and important matter of public importance, if more than one is proposed (S.O. 46);
- determining whether a prima facie case of breach of privilege has been made out (S.O. 51(d));
- referring a matter of privilege to the Committee of Privileges and Members' Interests, having determined that a prima facie case has been made out and that urgent action is required, when the House is not expected to meet within two weeks (actions which are subject to subsequent decisions by the House) (S.O. 52);
- determining, when there is a need for a quorum to be formed, a time he or she will resume the Chair (S.O. 57);
- allocating the call to the Member who in his or her opinion first rose in his or her place (S.O. 65(c));
- determining if a Member's arguments are irrelevant or tediously repetitive (S.O. 75);
- determining if discussion is out of order on the ground of anticipation (S.O. 77);
- determining if a motion is an abuse of the orders and forms of the House, or is moved for the purpose of obstructing business (S.O. 78);
- determining whether words used are offensive or disorderly (S.O. 92(b));
- directing the language of a question to be changed if it is inappropriate or does not otherwise conform with the standing orders (S.O. 101(a));
- determining the cut-off time for questions for the next Notice Paper (S.O. 102(c));
- amending or dividing notices (S.O. 109);
- disallowing any motion or amendment which he or she considers the same in substance as any question resolved in the same session (S.O. 114(b)); and
- giving an opinion as to whether the majority of voices were 'Aye' or 'No' (S.O. 125).

Standing order 30(c) permits the Speaker, when the House is not sitting, to set an alternative day or hour for the next meeting. However, it is the invariable practice for the

86 All of these powers are discussed in detail elsewhere in the text.

Speaker not to act on his or her own initiative in this respect, but to await a request from the Government. When the House has adjourned to a date and hour to be fixed, a Gazette notice has usually been published when the day of meeting is determined, indicating the date and hour of meeting.[87]

If the Speaker is absent from Australia when the Government requests that the House be reconvened, the Clerk informs the Speaker of the Government's request and seeks concurrence. If there was not time to seek the Speaker's concurrence, the Clerk would notify all Members and subsequently inform the Speaker of the action taken.

Normally the House can only be adjourned by its own resolution and the motion for the adjournment can only be moved by a Minister.[88] However, the Speaker may adjourn the House on his or her own initiative if there is no quorum or no quorum can be formed,[89] if grave disorder arises in the House,[90] or under the automatic adjournment procedures.[91]

The Speaker may suspend the sitting:

- for a meal break or in order to obtain a quorum;
- in the case of grave disorder, either on the floor of the Chamber or the galleries;[92]
- after election while he or she presents himself or herself to the Governor-General;[93]
- at the opening of a new Parliament, after the presentation of the Speaker to the Governor-General, until the time when the Governor-General will declare the causes of calling the Parliament together;[94]
- during the election of the Deputy Speaker and Second Deputy Speaker if there is an equality of votes in the special ballot procedures;[95]
- if requested to do so by the Leader of the House because no further business is available at that time;[96]
- if requested to do so while the House is waiting for a bill or message from the Senate (not uncommon towards the end of a sitting period);[97]
- for the formal presentation of the Address in Reply to the Governor-General's speech;[98]
- for special ceremonial occasions;[99] or
- on instruction by the House.[100]

Subject to certain conditions the Speaker is authorised by resolutions of the House to permit access to evidence taken by, or documents of, committees, and resolutions of each House confer such authority on the Speaker and the President in respect of records of joint committees.[101]

87 Gazette S8 (18.1.1991).
88 S.O. 32(a).
89 S.O. 57.
90 S.O. 95.
91 S.O. 31.
92 S.O. 95.
93 S.O. 4(h).
94 S.O. 4(i).
95 S.O. 11(l).
96 E.g. H.R. Deb. (17.3.1931) 279–80.
97 E.g. VP 1990–92/1625 (25.6.1992); H.R. Deb. (25.11.2010) 3884.
98 E.g. VP 2008–10/389 (17.6.2008).
99 VP 1974–75/25 (11.7.1974).
100 VP 1974–75/1127 (11.11.1975).
101 *See* 'Access to old evidence and documents' in Ch. on 'Committee inquiries'.

Participation in debate

In 2010 changes to the standing orders explicitly permitted the Speaker and Deputy Speaker to participate in private Members' business.[102] It is otherwise unusual for a Speaker to participate in a debate.[103] Although there is no standing order which prohibits such participation and there have been instances where this has happened, such action in the modern House would be regarded as out of character with the status and role of the Speaker unless the matter under debate was of a peculiarly parliamentary nature falling within the responsibilities of the Speaker.

In the past, when the consideration in detail stage of bills was taken in the committee of the whole, Speakers occasionally spoke on bills in the committee stage. On 4 June 1942 Speaker Nairn participated in debate in committee on the Australian Broadcasting Bill and moved an amendment.[104] On 1 October 1947 Speaker Rosevear participated in debate in committee on the 1947–48 estimates.[105]

Speaker Cameron took a different view of the Speaker's entitlement to participate in debate when he stated on 4 March 1953:

> As soon as a bill is put before a committee of the whole House, it is open to any honourable member, the Speaker alone excepted, in my view, to attend and put before the committee any amendment that he wishes.[106]

There have been cases when the Speaker has participated in debate when the matter before the House concerned the Parliament or the Speaker's administration.[107] On 29 March 1944 the Deputy Speaker ruled that Speaker Rosevear was in order in requesting the Chairman of Committees to take the Chair to enable Speaker Rosevear to address the House from the floor. The matter before the House was a motion to discharge Members from attendance on the Joint Committee on Social Security. Speaker Rosevear spoke in connection with the Speaker's administration. In making this ruling the Deputy Speaker stated:

> . . . there are precedents in this House for the Speaker taking his place on the floor when the Estimates of Parliament are before honourable members.[108]

The Deputy Speaker also ruled that it was in order for Speaker Rosevear to address the House from the Table.[109]

Special circumstances applied in 1987 and 1988 when Speaker Child moved, and spoke to, the second readings of the Parliamentary Privileges Bill and the Public Service (Parliamentary Departments) Bill. She had sponsored the bills jointly with the President of the Senate. The Speaker spoke from the Table of the House, on the government side.[110] Later Speakers have introduced bills relating to the parliamentary service, and moved and spoken (from the Chair) to the second reading.[111] In the case of the Parliamentary Service Bill 1999 the Speaker also moved amendments to the bill.[112]

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102 S.O. 41(f).

103 In the House of Commons the Speaker takes no part in debate either in the House or in committee, *May*, 24th edn, p. 61.

104 H.R. Deb. (4.6.1942) 2125–6.

105 H.R. Deb. (1.10.1947) 403.

106 H.R. Deb. (4.3.1953) 563.

107 H.R. Deb. (10.10.1905) 3315 (committee); H.R. Deb. (25.10.1932) 1527–9 (committee); H.R. Deb. (4.11.1936) 1504–6 (committee); H.R. Deb. (23.9.1938) 147 (committee); H.R. Deb. (30.4.1948) 1344–6 (House); H.R. Deb. (11.11.1964) 2835 (House); H.R. Deb. (9.9.1975) 1170–72 (committee).

108 H.R. Deb. (29.3.1944) 2209.

109 VP 1943–44/119 (29.3.1944).

110 H.R. Deb. (19.3.1987) 1154–6; H.R. Deb. (19.5.1988) 2692–4.

111 For a full listing *see* table in Ch. on 'Non-government business'.

112 VP 1998–2001/672–3 (28.6.1999), 898 (27.9.1999).

Pursuant to section 5 of the *Parliament Act 1974*, the Speaker has given notice for, moved and spoken to motions for approval of buildings or other works proposed to be erected within the parliamentary precincts.[113]

When the Speaker participated in debate in the former committee of the whole he was called and addressed as the 'honourable Member for . . .', not as 'Mr Speaker'.[114] Following the introduction of estimates committees in 1979, the Speaker played an active part in the consideration of the estimates for the Parliament. The chairman of the 1979 estimates committee which considered the appropriation for Parliament took the view 'that Mr Speaker represents the ministerial position for Parliament'.[115] Questions by Members regarding the estimates were put to the Speaker and answered by him. He was called and addressed as 'Mr Speaker' in these circumstances. The Speaker has not spoken in the Federation Chamber (or previously, in the Main Committee), except to make a constituency statement.[116]

The Speaker frequently makes statements to the House[117] and may intervene in debate in special circumstances. For example, Speakers have spoken from the Chair on condolence motions following the death of a former Minister.[118] It is usual for the Speaker to take part in valedictory remarks at the end of each year.

Questions

Standing order 103 provides that Members may direct questions without notice to the Speaker on any matter of administration for which he or she is responsible. There are also arrangements which permit, in effect, questions in writing to the Speaker. (*See* Chapter on 'Questions').

Administrative

Control over Parliament House

Section 6 of the *Parliamentary Precincts Act 1988* provides that the parliamentary precincts are under the control and management of the Presiding Officers. It further provides that they may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts. In respect of the ministerial wing these powers are subject to any limitations and conditions agreed between the Presiding Officers and a particular Minister. Prior to the enactment of this provision, however, the authority of the Presiding Officers had become well established in practice. The Speaker exercises singular authority over the House of Representatives area in Parliament House. In 1901 Speaker Holder said:

> Before the order of the day is called on, I have to inform the House that I have made a careful examination of that part of the building which is at the disposal of Members of the House of Representatives. I may mention at once that, in my opinion, the accommodation for members, officers, and the press is extremely limited . . . Honourable members may rest assured that I shall do all in my power to study their convenience and comfort in every possible way, and I am sure that the Right Honourable the Prime Minister will assist me in that direction.[119]

113 VP 2013–16/1243 (26.3.2015); VP 2016–18/428 (1.12.2016). On other occasions the motion has been moved by a Minister on behalf of the Speaker, e.g. H.R. Deb. (24.6.2015) 7384.

114 H.R. Deb. (14.6.1945) 3116, 3119.

115 H.R. Est. Comm. Deb. (28.8.1980) 16.

116 Speaker Burke, H.R. Deb. (26.6.2013) 7192.

117 E.g. H.R. Deb. (21.8.1996) 3346–7; VP 1998–2001/26 (11.11.1998); VP 2008–10/615 (16.10.2008); H.R. Deb. (20.10.2010) 859; VP 2013–16/535 (4.6.2014).

118 E.g. H.R. Deb. (22.5.1978) 2339; H.R. Deb. (3.12.2008) 12361.

119 H.R. Deb. (21.5.1901) 76.

In 1931 Speaker Makin ruled out of order an amendment relating to his action in excluding a journalist from the press gallery on the ground that it infringed the authority vested in the Speaker.[120]

On 24 October 1919 Speaker Johnson in a statement to the House noted that it appeared the Economies Royal Commission, appointed by Governor-General's warrant, intended to investigate certain parliamentary services. The Votes and Proceedings record Speaker Johnson informing the House:

> As this Royal Commission had no authority from this Parliament, so far as he was aware, to interfere in any way with the various services of Parliament, it was his duty to call the attention of honourable Members to this proposed serious encroachment on the rights and privileges of Parliament by the appointment of a tribunal unauthorised by Parliament to inquire into matters over which the Legislature had absolute and sole control. . . . . He did not propose, unless he was so directed by the House, whose mouth-piece he was, to sanction any inquiry of the kind which was not authorized by Parliament itself.[121]

On 27 August 1952 Speaker Cameron informed the House that it appeared that a Member had engaged in a campaign of deliberate opposition to the Chair and the authority which he exercised in Parliament House. The Member later in a statement to the House assured Mr Speaker that at no time had he any thought of such a campaign. He expressed his regret and made an unqualified withdrawal of the text of telegrams he had sent to Mr Speaker and certain newspapers concerning the removal of the title Parliamentary Under-Secretary from the door of his office.[122] Speaker Cameron said:

> I want to make it perfectly clear that this building is public property, and that the Speaker of the House of Representatives is the custodian—the only custodian—of that property. He is the only authority who has the right, in this part of the building, to allot a room, to arrange for furniture, and to command the staff as to what they shall or shall not do.[123]

In 1968 Prime Minister Gorton supported this view:

> The Houses of Parliament, their arrangements, their furnishings and what is placed in them are under the control of the Presiding Officers and are not a field, I think, in which the Executive as such should seek to intrude.[124]

In 1980, during a strike by journalists, Speaker Snedden was asked whether steps had been taken to see that no 'unauthorised person' was using the facilities of the Press Gallery. Speaker Snedden replied that a resolution had been passed by the Federal Parliamentary Press Gallery asking, inter alia, that the passes of two named persons be withdrawn and that no new members be admitted without consultation with the Gallery Committee. The Speaker stated that the Presiding Officers retained, absolutely and solely, the right to determine admission to the Gallery, and that although he had and would, in normal circumstances, consult with the Gallery Committee, under no circumstances would he take action to prevent any media representative whom he judged to be qualified and competent to report proceedings from coming to the Gallery to report them.[125]

Parliamentary administration

For many purposes the Speaker is in effect 'Minister' for the Department of the House of Representatives and jointly with the President of the Senate is 'Minister' for the Department of Parliamentary Services and the Parliamentary Budget Office. Certain Acts

120 H.R. Deb. (30.4.1931) 1491.
121 VP 1917–19/587 (24.10.1919).
122 VP 1951–53/387 (27.8.1952), 393 (28.8.1952).
123 H.R. Deb. (28.8.1952) 692.
124 H.R. Deb. (24.10.1968) 2292.
125 H.R. Deb. (14.5.1980) 2693–4.

refer to the Minister administering the department concerned. For such purposes the Speaker is considered to be the Minister administering the Department of the House of Representatives.

The powers and functions of a Presiding Officer under the *Parliamentary Service Act 1999* parallel those of a Minister in relation to an executive government department under the *Public Service Act 1999*. Under the provisions of the Parliamentary Service Act the Presiding Officers are no longer involved in everyday administrative matters, which are the responsibility of the Clerks of the two Houses, the Secretary of the Department of Parliamentary Services, and the Parliamentary Budget Officer. For the purposes of the Public Governance, Performance and Accountability Act 'Minister' is defined to include a Presiding Officer. The Act authorises the Presiding Officers to approve expenditure under an appropriation for a parliamentary department.[126]

The administration and staff of the Department of the House of Representatives and the Parliamentary Service Act are discussed in more detail at page 208.

The Speaker (or the Speaker and the President), may respond to committee recommendations concerning matters within the Speaker's (Presiding Officers') responsibility.[127]

Services to Members

It is a recognised responsibility of the Speaker to ensure that Members are provided with the necessary facilities and resources within Parliament House for the proper execution of their duties. The departmental heads of the parliamentary departments are responsible for the services provided by their departments and administrative actions taken by them, all public expenditure and, where applicable, accountability for revenue collected. However, the Presiding Officers have responsibilities in so far as matters of policy are concerned, and sensitive matters—where, for instance, a Member feels that a service has not been provided or has been provided inadequately—may be referred to or discussed with the Speaker. Some government departments also provide services to Members, principally electorate office and travel entitlements.

Ex officio membership of committees and associations

The Speaker is appointed by statute to the Joint Committee on the Broadcasting of Parliamentary Proceedings, and is customarily appointed chair. Under the standing orders the Speaker is, ex officio, a member of the House Committee[128] and member and chair of the House Appropriations and Administration Committee.[129] The Speaker (or in the absence of the Speaker, the Deputy Speaker) was included as a member (and chair) of the Selection Committee when it was re-established in the 43rd Parliament.[130]

The Speaker, Deputy Speaker and Second Deputy Speaker can only be appointed to a committee if a standing or other order requires the appointment, or if they consent.[131] Speaker Cameron agreed to be a member of the Select Committee on Hansard[132] provided he was not a party nomination.

126 *Public Governance, Performance and Accountability Act 2013,* ss. 8, 71.
127 E.g. H.R. Deb. (1.4.2004) 28010; H.R. Deb. (27.11.2008) 11744; H.R. Deb. (18.3.2013) 2378.
128 S.O. 218.
129 S.O. 222A.
130 S.O. 222.
131 S.O. 230. The Act establishing a statutory committee may in some cases exclude the Speaker and Deputy Speaker from membership; this is the case with the Public Works Committee.
132 VP 1954–55/75 (23.9.1954); H.R. Deb. (23.9.1954) 1534–45.

The Speaker is, ex officio, a member of the (non-parliamentary) Historic Memorials Committee. With the President of the Senate, the Speaker is joint president of the Australian Group of the Inter-Parliamentary Union (IPU) and of the Australian National Group of the Asia Pacific Parliamentary Forum (APPF).

ABSENCE OF SPEAKER AND VACANCY IN OFFICE

Vacancy

At the first meeting of a newly elected House of Representatives, before the despatch of any other business, the House must choose a Member to be Speaker. The House must also choose a Speaker at any other time when the office becomes vacant.[133]

If the office of Speaker becomes vacant during a session, the Clerk reports the vacancy to the House at its next sitting and the House either at that time or on the next sitting day elects a new Speaker.[134]

If a vacancy occurs between two sessions, the Clerk reports the vacancy to the House when it returns either after hearing the Governor-General's speech or after the declaration of the opening of the session.[135] The House then elects a new Speaker.[136] In all cases, until a Speaker has been elected, the Clerk acts as chair of the House[137] and conducts the election of the Speaker.

A vacancy in the office of Speaker may occur for the following reasons:[138]

- the Speaker ceases to be a Member of the House of Representatives;
- the Speaker is removed from office by a vote of the House;[139]
- the Speaker has resigned his or her office in writing addressed to the Governor-General, or, if appropriate, the Administrator; or
- the death of the Speaker.

A Speaker who is resigning his or her seat as well as his or her office does so in writing to the Governor-General.[140]

Acting Speaker

The Constitution provides that before or during any absence of the Speaker, the House may choose a Member to perform the Speaker's duties in the Speaker's absence.[141] The House has therefore provided in its standing orders that when the Speaker is absent the Deputy Speaker, or if the Deputy Speaker is also absent, the Second Deputy Speaker, shall be Acting Speaker.[142]

If the House is sitting the Acting Speaker takes the Chair without any formal announcement. Service as Acting Speaker may commence when the House is not

133 Constitution, s. 35.
134 S.O. 19(a). In practice the vacancy may be reported the same day, e.g. VP 1974–75/508 (27.2.1975); VP 2010–13/1144 (24.11.2011).
135 *See also* Ch. on 'The parliamentary calendar'.
136 S.O. 19(b).
137 S.O. 10(b).
138 Constitution, s. 35. For details of specific vacancies *see* appendix 2.
139 This has never occurred. A motion to such effect was negated in 2012; however, the Speaker resigned later the same day, VP 2010–13/1838, 1842 (9.10.2012).
140 Constitution, s. 35; this was the case with Speaker Jenkins, VP 1985–87/665–6 (11.2.1986).
141 Constitution, s. 36.
142 S.O. 18(a).

sitting—for example, on 22 April 2012 Speaker Slipper announced that he would stand aside as Speaker until certain matters had been dealt with, and on the basis of the Speaker's statement the Deputy Speaker was taken to have become Acting Speaker.[143]

A Member chosen by the House as Acting Speaker in accordance with section 36 of the Constitution (proceeding under standing order 18), has all the powers of the Speaker—including constitutional powers, powers under commonwealth laws, powers under standing orders, and ex officio functions such as committee membership.[144] Pursuant to this authority Acting Speakers have received commissions from the Governor-General to administer the oath or affirmation of allegiance to Members, announced the return to writs issued by the Speaker for a by-election and administered the oath of allegiance to the newly elected Members.[145]

If the Speaker and both the Deputy Speaker and the Second Deputy Speaker are absent, the Clerk informs the House and the House then either elects one of the Members present to perform the duties of Speaker or adjourns to the next sitting day.[146] The Clerk acts as chair of the House until a Member is elected to perform the duties of Speaker. On 25 May 1921 the Clerk announced that both the Speaker (previously absent) and Deputy Speaker were absent and the House then elected one of its Members to act as Speaker during the Deputy Speaker's absence.[147]

Before the creation of the position of Second Deputy Speaker in 1994 the standing orders provided for the appointment by the House of another Member to be Acting Deputy Speaker during the Speaker's continuing absence, while the Deputy Speaker was Acting Speaker.[148]

There have been occasions of lengthy acting appointments during absences of the Speaker due to illness or parliamentary duties overseas.[149]

Deemed Speaker

Continuing authority for certain administrative actions of the Speaker is also provided for in the *Parliamentary Presiding Officers Act 1965*. When the office of Speaker becomes vacant due to resignation, the person who was Speaker is deemed to continue to be Speaker for the purposes of the exercise of any powers or functions of the Speaker under a law of the Commonwealth until a new Speaker is chosen. Again, when the House has been dissolved, the Speaker at the time of dissolution is deemed to continue as Speaker for the purpose of exercising statutory powers or functions until a Speaker is chosen by the House.

If the Speaker or the person deemed to be Speaker dies, or is unable through ill health to exercise any powers or functions under a law of the Commonwealth, or is absent from Australia, the Deputy Speaker is deemed to be Speaker, for the purposes of the exercise of any powers or functions of the Speaker under a law of the Commonwealth, until the House chooses a new Speaker or the absence or incapacity of the elected Speaker ends.

143 Media release, Office of the Speaker, 22 4.2012. On the next sitting day (8 May) the Speaker resumed his duties as Speaker, although leaving the Deputy Speaker to chair the proceedings of the House (as Deputy rather than as Acting Speaker), *see* Speaker's statement in House, H.R. Deb. (8.5.2012) 4127.

144 Advice of Chief General Counsel, 30 July 2012.

145 E.g. VP 1978–80/422–3 (27.9.1978), 433 (28.9.1978); VP 1987–90/771 (17.10.1988), 1143 (2.5.1989).

146 S.O. 18(b).

147 VP 1920–21/537 (25.5.1921).

148 Then S.O. 16.

149 E.g. VP 1948–49/5 (1.9.1948), 289 (26.5.1949); VP 1950–51/195 (11.10.1950).

This does not extend to the exercise of the Speaker's constitutional functions as provision is made in the Constitution for the Governor-General to exercise these powers in the Speaker's absence.[150] If there is no Deputy Speaker, then the person who last held that office is deemed to continue as Deputy Speaker until a new Deputy Speaker is elected by the House, and such a person can be deemed to be the Speaker (*and see* page 206).

THE SPEAKER'S VOTE

Exercise of the casting vote

The Speaker cannot vote in a division in the House unless the numbers are equal, and then he or she has a casting vote.[151] The provision for a casting vote also applies to Members deputising for or acting in the position of Speaker (that is, Deputy Speaker or Second Deputy Speaker, or another Member as Acting Speaker).[152]

The provision for a casting vote does not apply to members of the Speaker's panel in the Chair, unless specifically appointed by resolution of the House as Acting Speaker, as it has been considered that the standing orders providing for the nomination and duties of the members of the Speaker's panel do not fulfil the requirements of s. 36 of the Constitution, which refers to the House choosing a Member to perform the duties of an absent Speaker.[153]

Any reasons stated by the Chair when exercising a casting vote are recorded in the Votes and Proceedings.[154]

There have been occasions where there has been an equality of votes but the Speaker has not exercised a casting vote.[155] This has occurred when there has been an equality of votes on motions without notice for the suspension of standing orders, when it was clear that the necessary absolute majority could not be achieved and that a casting vote could not affect the result.[156]

On 30 November 2000 the votes were equal on a motion of dissent from a ruling by Speaker Andrew. The Speaker stated that the question had not been supported by a majority and, in the circumstances, he was not prepared to give a casting vote, but believed his ruling to have been correct. He said that as the matter of the time for the ringing of the bells had been raised (complaint having been made that they had rung for one minute instead of four), there was the possibility of confusion, and under the standing order (now S.O. 132) he would put the question again.[157]

The decisions of successive Speakers in the House of Commons in giving a casting vote have not always been consistent but three principles have emerged:

- the Speaker should always vote for further discussion, where this is possible;
- where no further discussion is possible, decisions should not be taken except by a majority; and

150 Constitution, ss. 33, 37.
151 Constitution, s. 40.
152 S.O. 3(d).
153 Opinion of the Solicitor-General, 22 February 1962.
154 S.O. 135(c).
155 *But see* Opinion of Solicitor General dated 22 September 2010 which expressed the view that s. 40 imposed a duty to exercise a casting vote (SG 37 of 2010).
156 VP 1968–69/375 (19.3.1969), H.R. Deb. (19.3.1969) 698; VP 2010–13/329–330 (22.2.2011); VP 2010–13/1404–5 (8.5.2012).
157 VP 1998–2001/1936 (30.11.2000).

- a casting vote on an amendment to a bill should leave the bill in its existing form.[158]

There have been 39 occasions[159] when the Speaker or Deputy Speaker has exercised a casting vote in a division in the House. These instances are outlined below.

To enable a further decision of the House

- On 12 June 1902, the numbers being equal on a second reading amendment to the Bonuses for Manufactures Bill, Speaker Holder stated that, as the House would have an immediate opportunity for another vote, he gave his casting vote with the 'Ayes' which had the effect of negativing the amendment. The subsequent question on the second reading was agreed to by a majority of six.[160]

To enable debate to continue

- On 21–23 May 1914, the numbers being equal on a motion for the closure, Speaker Johnson gave his casting vote with the 'Noes'.[161] Speaker Bell on 3 December 1935,[162] Deputy Speaker Lucock on 10 October 1963,[163] Deputy Speaker Edwards on 29 April 1992,[164] Deputy Speaker Burke on 20 June 2012[165], and Speaker Smith on 1 September 2016 and 15 June 2017 took the same course.[166] On 30 May 1991 Speaker McLeay gave his casting vote with the 'Ayes' on a closure moved on the mover of a motion to suspend standing orders and with the 'Noes' on a closure moved on the seconder of the motion.[167]
- On 13 February 1929 the House debated certain determinations by the Public Service Arbitrator on a motion that the paper be printed, which was the method used at that time to initiate debate on documents presented to the House. When the numbers were equal on the division, Speaker Groom declared himself with the 'Noes' in order to give an opportunity for further consideration of the matter in the House.[168]
- On 11 December 1942 Speaker Nairn declared himself with the 'Noes' when the numbers were equal on a motion that the debate on the war situation be adjourned. He stated 'My casting vote goes in the direction of obtaining a determination of the question during the present sittings of Parliament'.[169]
- On 10 February 2011, the numbers being equal on the question on the second reading of a private Member's bill, Speaker Jenkins gave his casting vote with the 'Ayes' so that discussion could continue.[170] On 31 May 2012 Deputy Speaker Burke also gave her casting vote with the 'Ayes' on the question on the second reading of a private Member's bill, following the same principle.[171] On 1 November 2012

158 *May*, 24th edn, p. 420.
159 To December 2017.
160 VP 1901–02/455–6 (12.6.1902).
161 VP 1914/53 (21.5.2014).
162 VP 1934–37/480 (3.12.1935).
163 VP 1962–63/580 (10.10.1963).
164 VP 1990–92/1438–9 (29.4.1992).
165 VP 2010–13/1590 (20.6.2012).
166 VP 2016–18/89 (1.9.2016); VP 2016–18/ 841 (15.6.2017).
167 VP 1990–92/803–5 (30.5.1991).
168 VP 1929/17–18 (13.2.1929).
169 VP 1940–43/450 (11.12.1942); H.R. Deb. (11.12.1942) 1824.
170 That is, continue on the third reading. However, during that debate standing orders were suspended pursuant to standing order 132 to permit the House to divide again—the question on the second reading was then agreed to and the exercise of the casting vote was superseded, VP 2010–13/299–300 (10.2.2011).
171 VP 2010–13/1548 (31.5.2012).

Speaker Burke gave her casting vote with the 'Ayes' on the question on the second reading of a government bill, following the same principle.[172]

To decide a matter before the House

On several occasions, the Speaker's casting vote has decided the matter before the House:

- On 4 September 1913, when the vote was taken on an amendment to add words to the Address in Reply, the numbers were equal. Speaker Johnson then made the following statement:

  > There being an equality of votes, as shown by the division lists, it becomes necessary for me to give the casting vote. I take this opportunity of saying that, notwithstanding anything that has appeared in the press or elsewhere about the Speaker's casting vote, I have not been approached in any way either by members of the House or the press outside or anybody else in regard to how my vote is to go, with the exception of one occasion when it was done on the floor of the House. In giving my casting vote on the amendment to the Address in Reply moved by the Leader of the Opposition, the Right Honourable Member for Wide Bay, without offering any opinion or comment upon the debate just concluded, I desire to point out certain facts. This is a Parliament met for the first time fresh from a general election. As the result of the election the Government in office at the time, finding itself in a minority in the House of Representatives and unable to carry on the business of the country, resigned. A new Government was formed which, on presenting a memorandum of its policy to the House, was met with a no-confidence amendment to the Address in Reply. The new Government has so far not been afforded an opportunity to submit any of its proposed legislative measures for the consideration and judgment of the House, whilst several honourable Members opposed to the Government have expressed the view that some of the proposed measures should be proceeded with. Guided by these and other public considerations, and supported by abundant authority, I give my vote with the Noes, and declare the amendment resolved in the negative.

  The Address was immediately agreed to, without a division.[173]
- On 7 November 1913 a motion was moved that the resumption of the debate on the Government Preference Prohibition Bill be made an order of the day for the following Tuesday. An amendment was moved to omit 'Tuesday' and substitute 'Wednesday'. The numbers being equal on the amendment, Speaker Johnson voted against it.[174]
- On 11 November 1913 Speaker Johnson named a Member for disregarding the authority of the Chair. On the motion that the Member be suspended from the service of the House the numbers were equal and the Speaker gave his casting vote with the 'Ayes'.[175]
- On 6 May 1914 the numbers were equal on an amendment to add words to the Address in Reply. The amendment was negatived on the casting vote of Speaker Johnson. The Address was immediately agreed to, without a division.[176]
- On 13–14 May 1914 debate resumed on the motion of a Minister 'That he have leave to bring in . . .' the Government Preference Prohibition Bill. An amendment to insert certain words after 'That' was negatived on the casting vote of Speaker Johnson.[177] The main question was then put and the Speaker gave his casting vote with the 'Ayes'.[178] On the motion for the first reading the Speaker was again

172 VP 2010–13/ 1950–51 (1.11.2012).
173 VP 1913/43–4 (4.9.1913).
174 VP 1913/149–50 (7.11.1913).
175 VP 1913/151 (11.11.1913).
176 VP 1914/31 (6.5.1914).
177 VP 1914/39–40 (13.5.1914).
178 VP 1914/41 (13.5.1914).

required to exercise his casting vote which he gave with the 'Ayes',[179] and he took similar action in respect of the second reading on 21–23 May 1914,[180] and the third reading on 28 May 1914.[181]

- On a motion on 10 May 1938 that a report of the Munitions Supply Board be printed, Speaker Bell gave his casting vote with the 'Noes'.[182]
- On 24 April 1931, on a question of privilege being raised and a motion being moved that the expulsion of a member of the press from the press gallery or precincts of the House was a question for the House to decide, and not a matter for decision by the Speaker, Speaker Makin gave his casting vote with the 'Noes'.[183]
- On 19 April 1972, in relation to an amendment to a proposed amendment to the standing orders, Deputy Speaker Lucock gave his casting vote with the 'Noes' 'in order to retain the status quo and in view of the undertaking given by the Deputy Leader of the House to refer the matter to the Standing Orders Committee'.[184]
- On 18 November 2010, on an amendment to a motion proposing to suspend standing orders to permit consideration of certain items of private Members' business during government business time, Speaker Jenkins gave his casting vote with the 'Noes', noting that he did so in accordance with precedents for retaining a proposition in its original state. On 25 August 2011, in similar circumstances, Speaker Jenkins again gave his casting vote with the 'Noes', noting that he did so in accordance with precedents.[185]
- On 15 June 2011, on the motion that a Member be granted an extension of time to speak to a motion to suspend standing orders, Speaker Jenkins gave his casting vote with the 'Noes', noting that the motion had not been supported by a majority and that by voting 'No' he would not prevent further discussion.[186]
- On 19 March 2012, on a motion for disallowance, Speaker Slipper gave his casting vote with the 'Noes' in accordance with the principle that decisions should not be taken except by a majority and the principle that legislation should be left in its original form.[187] On 17 September 2012, on a motion for disallowance, Deputy Speaker Burke gave her casting vote for the 'Noes' in accordance with precedents for retaining the law in its original state.[188]
- On 24 May 2012, 21 June 2012 (as Deputy Speaker), 14 March 2013 and 6 June 2013 Speaker Burke gave casting votes with the 'Noes', in accordance with the principle that a casting vote on an amendment to a bill should leave the bill in its original form.[189]

179 VP 1914/41–2 (13.5.1914).
180 VP 1914/48 (21.5.1914).
181 VP 1914/61 (28.5.1914).
182 VP 1937–40/87 (10.5.1938).
183 VP 1929–31/593 (24.4.1931).
184 VP 1970–72/1018–19 (19.4.1972).
185 VP 2010–13/205–6 (18.11.2010); VP 2010–13/846 (25.8.2011). In both cases the amendment had attempted to include an additional item of private Members' business.
186 VP 2010–13/635 (15.6.2011).
187 VP 2010–13/1342 (19.3.2012).
188 VP 2010–13/1793 (17.9.2012).
189 VP 2010–13/1490 (24.5.2012), 1599 (21.6.2012), 2147–8 (14.3.2013), 2390 (6.6.2013).

- On 16 August 2012 Deputy Speaker Burke gave her casting vote to the 'Noes' on two private Members' motions, in accordance with the principle that a decision should not be taken except by a majority;[190]
- On 6 December 2017 Speaker Smith gave his casting vote for the 'Noes' on a motion to refer matters to the Court of Disputed Returns, in accordance with the principle that where further discussion is not possible, a decision should not be taken except by a majority.[191]

In a ballot for the election of Deputy Speaker or Second Deputy Speaker, when there are only two candidates, with each receiving the same number of votes, the Speaker then exercises a casting vote.[192] There is no instance of the Speaker exercising a casting vote in these circumstances.

Speaker voting in committee

In the days of the operation of the committee of the whole several Speakers exercised their right to vote in committee (for details *see* page 222 of the second edition). The Speaker does not participate in Federation Chamber proceedings.[193]

SOURCES OF PROCEDURAL AUTHORITY

The operation of the House is governed by various rules and conventions which in turn are sources for the procedural authority exercised by the Speaker. There are three main sources of procedural authority:

- the Constitution;
- the standing orders; and
- traditional practice.

In many ways the provisions of the Constitution and the standing orders reflect traditional parliamentary practice which applied in the House of Commons in the years before Federation, and which was also followed in various ways in Parliaments in the Australian colonies prior to Federation.

Constitution

The Constitution contains a number of detailed provisions dealing with the actual operations of the House. Amongst the provisions are:

- the requirement that the House, before proceeding to any other business, must choose a Member to be the Speaker, and must also choose a Member to be Speaker whenever the office becomes vacant, and the related provision that the Speaker ceases to hold office if he or she ceases to be a Member, and may be removed from office by a vote of the House or may resign by writing addressed to the Governor-General;
- the provision that before or during an absence of the Speaker the House may choose a Member to perform the Speaker's duties during the absence; and

190 VP 2010–13/1694–5 (16.8.2012).
191 VP 2016–18/1274 (6.12.2017).
192 S.O. 14(d)(e).
193 Except that the Speaker (and Deputy Speaker) may make a constituency statement under S.O. 193; e.g. H.R. Deb. (26.6.2013) 7192 (first time).

- the provision that questions arising shall be determined by a majority of votes other than that of the Speaker, who only has a casting vote.

Standing orders

Acting under the power conferred by section 50 of the Constitution, the House has adopted comprehensive standing orders to govern the conduct of its business, and also to govern related matters such as the operation of committees and communication between the Houses. The standing orders are rules the House has adopted by resolution, and they are considered to have continuing, or standing, effect. They are thus binding at all stages, unless they are suspended (the standing orders themselves contain special provision for their suspension), or unless there is unanimous agreement—that is, leave—for something to be done which would otherwise be inconsistent with the standing orders.

The House adopted temporary standing orders in 1901 which were largely based on rules and standing orders followed in the colonial legislative assemblies. These temporary standing orders were amended from time to time until 1950, when permanent standing orders were adopted. In 1963 a major revision and renumbering was agreed to, and significant changes were subsequently made on a regular basis.[194]

In November 2003 the Procedure Committee presented a report providing and recommending a completely revised set of standing orders for the House[195]—a revision initiated by an earlier recommendation by the committee that the standing orders be 'restructured and rewritten to make them more logical, intelligible and readable'.[196] In June 2004 the House resolved to adopt the revised standing orders, to come into effect on the first day of sitting of the 41st Parliament.[197]

The standing orders:

- reflect traditional parliamentary practice in the conduct of business, for example, in the consideration of legislation; and
- reflect and complement constitutional provisions, for example, in the detailed rules laid down in the standing orders for the consideration of financial bills.

The House has often adopted sessional orders, which are temporary standing orders or temporary changes to the standing orders, in order, for example, to enable experimentation with a new procedure or arrangement before a permanent change is made to the standing orders.

See also 'Motions relating to the standing orders' in Chapter on 'Motions'.

Traditional practice

A number of practices and conventions are observed in the House which are not imposed either by the Constitution or by the standing orders, but which are traditional parliamentary rules, often also followed in other Parliaments operating in the Westminster tradition. Examples of such a convention are the sub judice convention and the practice that a charge against a Member should only be made by means of a substantive motion which admits of a distinct vote of the House. Other practices have evolved locally, for

194 For a more detailed history of the development of the Standing Orders *see* 'Rules and Orders' *in* G. S. Reid and M. Forrest, *Australia's Commonwealth Parliament 1901–1988: ten perspectives*, Melbourne University Press, 1989, pp. 132–83.

195 Standing Committee on Procedure, *Revised standing orders,* PP 394 (2003).

196 Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees,* PP 363 (1999).

197 VP 2002–04/1744 (24.6.2004).

example, the convention of alternating the call between Opposition and Government during debate and in Question Time.

The standing orders used to provide that in all cases not provided for in the standing orders or by sessional or other order or by practice of the House, resort shall be had to the practice of the United Kingdom House of Commons 'in force for the time being, which shall be followed as far as it can be applied'.[198] With the development of the House's own body of practice and its documentation, since 1981, in *House of Representatives Practice*, reference to House of Commons practice became increasingly rare, and this provision was omitted from the revised standing orders adopted in 2004. Standing order 3(e) now provides that:

> The Speaker (or other Member presiding) is responsible for ruling whenever any question arises as to the interpretation or application of a standing order and for deciding cases not otherwise provided for. In all cases the Speaker shall have regard to previous rulings of Speakers of the House and to established practices of the House.

SPEAKER'S RULINGS

A ruling is a decision or determination made by the Chair on a matter to do with the business or operation of the House. Usually a ruling will be given in response to a point of order (*see below*), when a Member queries or challenges in some way an aspect of proceedings or debate. In some circumstances, however, a ruling may be given without a point of order having been taken—for example, a Member may propose to move a motion or an amendment, and the Chair may intervene immediately of his or her own volition and rule the proposed motion or amendment out of order. The Speaker must preserve order in the Chamber to enable business to be conducted properly. In order to do this the Speaker must rule fairly on points of order and be very familiar with the standing orders and the practices of the House. The Speaker's statements and rulings must be sufficiently clear and authoritative for Members to accept them.

The question sometimes arises as to whether rulings are 'binding' and, in a literal sense, the answer is 'no', but the question is more complex than it may appear. There have been many rulings given over the years which are consistent with one another, consistent with the standing orders and conventions of the House, and which are supported, implicitly or explicitly, by the House. Such rulings form part of the body of practice which continues to govern the operations of the House and rulings with that status are, in effect, regarded as binding, although even then Speakers are able to give rulings which take account of new factors or considerations. In this way rulings and interpretations may be developed and adapted over time. From time to time rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow sufficient opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.

The Speaker has stated that *House of Representatives Practice* is the authoritative source of precedent.[199]

The situation in the House of Representatives is in contrast with that in the United Kingdom House of Commons, where many rulings are given after the Speaker has been

198 Former S.O. 1.
199 H.R. Deb. (10.3.2004) 26438–9.

forewarned of the subject by a Member who may advise that he or she will take a point of order on it, and the Speaker thus has an opportunity to take account of any relevant precedents and of all the considerations involved.[200] The situation is also different in the Senate where a President's ruling which has not been dissented from is considered to have a standing equivalent to a resolution of the Senate.[201]

The Speaker may also make private rulings, that is, when not in the Chair. Such rulings may not be related to the actual proceedings in the House. This may occur for instance when a Member seeks the Speaker's guidance on a point of procedure relating to future proceedings in the House. Private rulings in effect serve to clarify points of practice and procedure and have the same authority as rulings from the Chair and may be supplemented by rulings from the Chair.

Points of order

The principal standing orders relating to points of order and Speaker's rulings are standing orders 86 and 87 which state that:

- a Member may raise a point of order with the Speaker at any time;
- the matter takes precedence until it is disposed of by the Speaker giving a ruling on it;
- if a Member wishes to dissent from a ruling, the dissent must be declared at once. A motion of dissent, which must be submitted in writing, shall, if seconded, be proposed to the House and may be debated immediately.

House practice is that a point of order must be raised immediately. It is not acceptable to raise points of order concerning proceedings earlier in the day or concerning proceedings of a previous day.[202]

A Member has a right to make his or her point of order without interruption except by the Chair. However, there may be circumstances when a point of order on a point of order may be justified—for example, when points of order which are inordinately long, frivolous or of dubious validity or when unparliamentary language is used. It would be expected that the Chair would normally intervene in these cases but a point of order on the point of order could be made. On occasion the Chair may hear further points of order before ruling, or grant other Members indulgence to speak to clarify a situation. However, there is no obligation on the Chair to exercise such discretion. The Chair may rule on a point of order as soon as he or she feels in a position to do so.[203]

The opportunity to raise a point of order should not be misused to deliberately disrupt proceedings or to respond to debate. If perceiving this to be the case, Speakers have cut short the point of order until the Member interrupted by the point of order has finished speaking, or refused to hear it.[204] Speakers have also cut short a point of order when they believe they are aware of the issue being raised.

The Speaker may make his or her decision on a point of order clear by directing the Member who has raised it to resume his or her seat and/or returning the call to the

200 *May*, 24th edn, p. 62.

201 *Odgers*, 14th edn, p. 152.

202 In the House of Commons it is usual for the Speaker to hear points of order after Question Time instead of during that period, *see May*, 24th edn, p. 455.

203 E.g. H.R. Deb. (31.8.1999) 9454–6; H.R. Deb. (29.6.2000) 18719.

204 E.g.H.R. Deb. (18.6.2009) 6582; H.R. Deb. (23.6.2009) 6855; H.R. Deb. (11.3.2010) 2283, 2305 (Speaker said he had had regard to the number of occasions on which he had disciplined the Member in relation to points of order); H.R. Deb. (22.2.2011) 912–4; H.R. Deb. (12.8.2015) 8104; H.R. Deb. (11.11.2015) 12879–80.

Member who had been speaking.[205] The Chair has refused to hear a point of order while a Minister was moving a motion.[206] Members have been disciplined by the Chair for raising spurious or frivolous points of order,[207] for introducing debate when raising a point of order,[208] and for persisting with matters after the Chair has ruled.[209]

Dissent from rulings

Standing order 87 provides that, if a Member dissents from a ruling of the Speaker, the objection or dissent must be declared at once. A Member moving a motion of dissent must submit the motion in writing. If the motion is seconded, the Speaker shall then propose the question to the House, and debate may proceed immediately. Time limits for the debate are: whole debate 30 minutes; mover 10 minutes; seconder 5 minutes; Member next speaking 10 minutes; any other Member 5 minutes.[210] A dissent motion may be moved in the Federation Chamber (*see* Chapter on 'The Federation Chamber').

Any motion of dissent must be moved at the time the ruling is made,[211] and no amendment may be moved to the motion as a ruling must be either accepted without qualification or rejected.[212] A Member cannot move dissent from a ruling which has just been supported by a vote of the House.[213] Conversely, once a dissent from the Speaker's ruling has been carried then the Chair cannot repeat the ruling until the House reverses its decision on the ruling.[214]

A dissent motion has lapsed for want of a seconder,[215] and a dissent motion has been withdrawn by leave.[216] A proposed dissent motion has been ruled out of order when it referred to a matter that had happened two days before.[217] The Speaker has refused to accept a motion that a Member be heard and the Member has then attempted to move dissent, but the Speaker stated that there was nothing to dissent from.[218] When two proposed matters of public importance have been submitted and the Speaker has selected one, it has been held that a motion of dissent was out of order as no ruling had been given.[219] It is not in order to move dissent in relation to the allocation of the call, which is a matter for the Chair's discretion.[220] A motion of dissent may not be moved in respect of a direction that a Member leave the Chamber.[221] The Speaker has not accepted a motion of dissent when the question before the Chair was that 'the question be now put', as standing order 81 obliges the Chair to put that question immediately without amendment

205 E.g. H.R. Deb. (28.5.2009) 4761; H.R. Deb. (23.6.2009) 6855.
206 H.R. Deb. (20.9.2007) 93–4.
207 E.g. VP 1996–98/195 (29.5.1996), 1871 (27.8.1997), 2461 (18.11.1997); H.R. Deb. (17.2.2005) 101; VP 2008–10/111 (21.2.2008), 1065 (28.5.2009); VP 2013–16/879 (2.10.2014).
208 VP 2010–13/928 (20.9.2011).
209 E.g. VP 1974–75/958 (9.10.1975); VP 1993–96/1602 (17.11.1994); VP 1996–98/2065 (30.9.1997).
210 S.O. 1. The specific provision has applied since 2006; previously the limits for debates not otherwise provided for applied, mover 20 mins, others 15 mins (now 15 and 10 mins).
211 VP 1950–51/27 (9.3.1950); VP 1951–53/65–6 (10.7.1951). A dissent motion has been moved following a statement by the Speaker in which he responded to queries arising from a decision he had made at an earlier sitting, H.R. Deb. (27.5.2003) 15039–15056.
212 VP 1951–53/505 (21.10.1952).
213 H.R. Deb. (30.9.1954) 1774.
214 H.R. Deb. (25.11.1953) 530; H.R. Deb. (26.11.1953) 553–4.
215 VP 1912/13 (21.6.1912); VP 1974–75/441–2 (11.2.1975).
216 VP 1971/543 (23.4.1971). Leave to withdraw a motion has however been refused, VP 1954–55/330 (6.10.1955).
217 H.R. Deb. (9.3.1950) 585.
218 H.R. Deb. (1.6.1977) 2281.
219 VP 1954–55/221 (24.5.1955), 265–6 (9.6.1955).
220 H.R. Deb. (3.4.2000) 15091–3. (The call can be challenged by the motion that another Member who had risen 'be heard now'.)
221 H.R. Deb. (19.9.2007) 78.

or debate.[222] The Speaker has declined to accept a motion that a Member moving a motion of dissent be not further heard,[223] but on other occasions such motions have been accepted and agreed to.[224] In speaking to a motion of dissent a Member may not make a personal reflection on the Speaker.[225]

There have been several occasions when the House has agreed to a motion dissenting from the Speaker's ruling.[226] Any dissent from the Speaker's ruling is not necessarily interpreted as a censure of the Speaker.[227]

In 1931 a motion of dissent was moved against a ruling given by Speaker Makin. During the debate on the motion, which was subsequently negatived, Speaker Makin participated and stated:

> It has been the invariable rule, when a motion has been submitted inviting the House to disagree with Mr Speaker's ruling, for the Speaker to reply from the Chair . . . I shall make my statement from the Chair . . .[228]

However, it has become the established practice for the Chair not to participate during debate on a motion of dissent from a ruling except, for instance, to explain or clarify a procedural matter, as the question is in the hands of the House and for it to decide.

In 1962 a Member moved dissent from a ruling by the Deputy Speaker. The Speaker took the Chair and in the division on the motion of dissent the Deputy Speaker voted against the dissent, which was negatived.[229] The Speaker ruled that it was in order for the Deputy Speaker to vote in the division.[230] On another occasion, having been relieved in the Chair by the Speaker, a member of the Speaker's panel whose ruling had been subject to dissent voted in favour of the dissent.[231]

TABLE 6.1 MOTIONS OF DISSENT FROM RULINGS

	Moved	*Negatived*	*Agreed to*	*Withdrawn, lapsed, etc.*
Speaker	133	106	6	21
Acting Speaker	12	10	–	2
Deputy Speaker	45	37	1	7
Total	190	153	7	30

To end December 2017

Table does not include dissent motions ruled out of order, or dissent in the Federation Chamber or former committee of the whole.

The practice of dissenting from a Speaker's ruling is not shared by the lower Houses of other major Westminster-style Parliaments, namely, the United Kingdom, Canada and India. Before the dissent provision was abolished in the Canadian House of Commons, Laundy stated:

222 H.R. Deb. (15.3.2000) 14783–7.
223 VP 1978–80/572 (21.11.1978).
224 E.g. VP 2002–04/970–2 (18.6.2003); VP 2013–16/205–6 (10.12.2013).
225 H.R. Deb. (27.5.2003) 15053.
226 VP 1920–21/218 (23.7.1920), 221–2 (28.7.1920), H.R. Deb. (28.7.1920) 3018–23; VP 1937/106–7(10.9.1937), H.R. Deb. (10.9.1937) 954; VP 1951–53/595 (6.3.1953), H.R. Deb. (6.3.1953) 669–74; VP 1951–53/714 (8.10.1953), H.R. Deb. (8.10.1953) 1169–70; VP 1953–54/65 (2.12.1953), H.R. Deb. (2.12.1953) 769–80; VP 1954–55/184–5 (3–4.5.1955), H.R. Deb. (4.5.1955) 362–73; VP 1954–55/201 (12.5.1955), H.R. Deb. (12.5.1955) 671–3.
227 H.R. Deb. (13.5.1914) 895–6.
228 VP 1929–31/492 (17.3.1931); H.R. Deb. (17.3.1931) 279.
229 VP 1962–63/55 (7.3.1962).
230 H.R. Deb. (7.3.1962) 552.
231 VP 2002–04/358–9 (26.8.2002).

> In practice, the rule tends to encourage Members to challenge Speakers' rulings, and when carried to extreme lengths . . . its use can seriously undermine the authority of the Chair and lead to a serious disruption of business. It is also open to criticism on the ground that a Speaker, in order to avoid the damage to his prestige and authority which the rejection of one of his rulings by the House would inevitably involve, might tend to rule as a matter of course in favour of the majority in order to ensure that his rulings will be sustained. Thus, whatever advantages may be claimed for such a rule, there can be no question that its disadvantages are of a very serious nature indeed.[232]

In 1986 the Procedure Committee recommended that the House should abolish the dissent procedure, but the recommendation was not adopted.[233]

Interpretation of the Constitution or the law

Speakers have generally taken the view that, with the exception of determination of points of procedure between the two Houses, the obligation to interpret the Constitution does not rest with the Chair and that the only body fully entitled to do so is the High Court. Not even the House has the power finally to interpret the terms of the Constitution.[234]

The most frequent determination of points of procedure between the two Houses has occurred in relation to Senate amendments to bills or pressed requests for amendments, where the rights or responsibilities of the House were considered to be affected. Typically, the Speaker has directed the attention of the House to the constitutional question which the message transmitting the purported amendment or the pressed request has involved, and referred to the requirements of section 53 of the Constitution. The decision as to whether the House would receive and entertain the message has been left with the House. It is felt that the Speaker is not acting as an interpreter of the Constitution in these cases but acting as the custodian of the privileges of the House.[235]

In any matter which might involve or touch on the constitutional rights or powers of the House, the view has been taken that, other things being equal, the Speaker should not take decisions which could have the effect of limiting these rights or powers. On 10 June 1999 the Speaker was asked to rule against an amendment to the effect that a Member was not in breach of section 44(v) of the Constitution. It was argued that the amendment was unconstitutional and out of order because of the provisions of section 376 of the Commonwealth Electoral Act which allow reference of such matters to the Court of Disputed Returns. The Speaker allowed the amendment to stand, stating that the matter should be allowed to proceed because the House was master of its own destiny.[236] On 13 October 1999 the Speaker was asked to rule on an amendment to the effect that a private Member be censured and ordered to produce a document believed to be in his possession and from which he had quoted. The Speaker was asked to rule the amendment out of order on the grounds that the House did not have the power to order a private Member to produce documents. The Speaker stated that it was not his intention to limit the power of the House to determine what could or could not be produced, that the House was master of its own destiny and that the matter could be put.[237]

In relation to the interpretation of the law, the Chair has ruled:

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232 Philip Laundy, *The office of Speaker*, Cassell, London, 1964, p. 36.

233 Standing Committee on Procedure, *The standing orders and practices which govern the conduct of Question Time*, PP 354 (1986).

234 VP 1907–08/384–5 (22.4.1908); H.R. Deb. (22.4.1908) 10485–7.

235 *See* Ch. on 'Senate amendments and requests'.

236 H.R. Deb. (10.6.1999) 6727–33, *and see* 'Challenges to membership—s. 44(v) of the Constitution' in Ch. on 'Members'.

237 H.R. Deb. (13.10.1999) 11492–510.

- a question of law should be asked of the Attorney-General, not the Speaker;[238]
- it is not the duty of the Speaker to give a decision on (to interpret) a question of law;[239] and
- a very heavy tax would be imposed if the Speaker, as soon as any motion or bill were introduced, were expected to put the whole of the Crown Law Offices into operation in order to see whether what was proposed to be done was in accordance with the law.[240]

CRITICISM OF SPEAKER'S ACTIONS AND CONDUCT

The Speaker's actions can only be criticised by a substantive motion. This may be a motion of dissent from a Speaker's ruling, where comment must be limited to the specifics of the ruling. Wider criticism is usually in the form of a censure or want of confidence motion. The Speaker and Deputy Speaker have been subject to the judgment of the House by substantive motion on a number of occasions, summarised in the table on page 198.

On 10 April 1973 a notice of motion 'That Mr Speaker ought to be ashamed of himself' was placed on the Notice Paper under general business. On 12 April the motion was moved but lapsed for want of a seconder. The mover described his motion as 'something stronger than dissent . . . not as strong as a censure . . .'.[241]

Criticism of Speaker in the House

It is not acceptable for the Speaker to be criticised incidentally in debate.[242] During an adjournment debate in 1950 a Member questioned the way in which Speaker Cameron had called Members during Question Time. The Speaker in reply said that the Member 'will come to my office in due course, examine the figures, and next week he will state the correct position'. He then gave figures showing the number of questions asked during the preceding weeks.[243] On subsequent sitting days, the Member sought to catch the Speaker's eye at Question Time. The Speaker said on one occasion 'I have decided that I shall not call the honourable member . . . for another question until he corrects the unjustified and inaccurate charges that he made against me . . .' and on another 'I cannot see the honourable member'. When the Member was the only one on the opposition side to rise for the call, the Speaker ignored him and gave the call to the government side. The incident was finally closed when the Member stated that he had not wished to cast any reflection on the Chair relating to the call or the Speaker's impartiality.[244]

238 H.R. Deb. (13.6.1901) 1075.
239 H.R. Deb. (3.9.1912) 2874; H.R. Deb. (23.7.1915) 5340.
240 H.R. Deb. (12.11.1915) 7649.
241 NP 15 (10.4.1973) 511; VP 1973–74/121 (12.4.1973, item 10); H.R. Deb. (12.4.1973) 1396.
242 H.R. Deb. (20.5.1920) 2383; H.R. Deb. (29.3.1944) 2203–24.
243 H.R. Deb. (25.5.1950) 3279–80.
244 *See* H.R. Deb. (31.5.1950) 3454–62; H.R. Deb. (1.6.1950) 3577–87, 3653–5.

TABLE 6.2 MOTIONS OF CENSURE OF OR NO CONFIDENCE IN THE SPEAKER OR DEPUTY SPEAKER, AND RELATED MOTIONS

Occupant of the Chair	*Date*	*Motion*	*Decision*
Speaker Rosevear	28.9.1944	That so much of the standing orders be suspended as would prevent the moving of a motion of no confidence in the Speaker (moved by Mr Fadden). VP 1944–45/58; H.R. Deb. (28.9.1944) 1676–82.	Negatived
Speaker Rosevear	26.7.1946	That Mr Speaker does not possess the confidence of this House (moved by Mr Menzies, pursuant to notice). VP 1945–46/429–30; H.R. Deb. (26.7.1946) 3196–203.	Negatived
Deputy Speaker Clark	Moved 24.2.1949; resolved 8.9.1949.	That this House has no further confidence in Mr Deputy Speaker on the grounds: (a) That in the discharge of his duties he has revealed serious partiality in favour of Government Members, (b) That he regards himself merely as the instrument of the Labor Party and not as the custodian of the rights and privileges of elected Members of this Parliament; (c) That he constantly fails to interpret correctly the Standing Orders of the House; and (d) Of gross incompetency in his administration of Parliamentary procedure (moved by Mr Harrison, pursuant to notice). Amendment moved (Mr Dedman)—That all words after 'That' be omitted with a view to inserting the following words in place thereof 'this House declares its determination to uphold the dignity and authority of the Chair, and deplores the fact that the Deputy Speaker while carrying out his duties with ability and impartiality, has not at all times received the support from all Members which he is entitled to expect in maintaining that dignity and authority'. VP 1948–49/236, 381–4; H.R. Deb. (24.2.1949) 655–61; H.R. Deb. (8.9.1949) 110–39, 147–61.	Amendment agreed to; motion, as amended, agreed to
Speaker Cameron	20.4.1950	That this House, having taken into consideration the statement made by Mr Speaker from the Chair on the 30th March last referring to his relationships with His Excellency the Governor-General, is of opinion that Mr Speaker merits its censure (moved by Mr Chifley, pursuant to notice). VP 1950–51/55–6; H.R. Deb. (20.4.1950) 1691–702.	Negatived
Speaker Cameron	10.5.1955	That this House has no confidence in Mr Speaker for the reasons: (1) That, in the discharge of his duties, he has acted in a partisan way by displaying bias against Members of Her Majesty's Opposition; (2) Many of his decisions have been arbitrary and unjust; and (3) That he fails to interpret or apply correctly the Standing Orders of the House (moved by Mr Calwell, pursuant to notice). VP 1954–55/193–4; H.R. Deb. (10.5.1955) 543–62.	Negatived

Occupant of the Chair	*Date*	*Motion*	*Decision*
Speaker Aston	21.4.1971	That the Speaker no longer has the confidence of the House (moved by Mr Barnard, pursuant to notice). VP 1970–72/524–5; H.R. Deb. (21.4.1971) 1763–81.	Negatived
Speaker Cope	8.4.1974	That the House has no confidence in Mr Speaker (moved by Mr Snedden, standing orders having been suspended). VP 1974/90–1; H.R. Deb. (8.4.1974) 1117–26.	Negatived
Deputy Speaker McLeay	24.9.1986	That the Deputy Speaker no longer enjoys the confidence of the House (moved by Mr Sinclair, standing orders having been suspended). VP 1985–87/1152–3; H.R. Deb. (24.9.1986) 1319–28.	Negatived
Acting Speaker McLeay	19.10.1988	That the Acting Speaker no longer possesses the confidence of the House (moved by Mr Sinclair, standing orders having been suspended). VP 1987–90/784–6; H.R. Deb. (19.10.1988) 1900–12.	Negatived
Acting Speaker McLeay	3.11.1988	That the Acting Speaker no longer enjoys the confidence of the House (moved by Mr Sinclair, standing orders having been suspended). VP 1987–90/828–30; H. R. Deb. (3.11.1988) 2362–74.	Negatived
Speaker Child	8.3.1989	That this House censures the Speaker for her failure to act impartially in the exercise of her office (moved by Mr Howard, standing orders having been suspended). VP 1987–90/1062–4; H.R. Deb. (8.3.1989) 634–52.	Negatived
Speaker McLeay	2.4.1992	That the Speaker no longer possesses the confidence of this House (moved by Dr Hewson, standing orders having been suspended). VP 1990–92/1419–20; H.R. Deb. (2.4.1992) 1733–47.	Negatived
Speaker McLeay	17.12.1992	That so much of the standing orders be suspended as would prevent the Member for Bass moving forthwith—That the Speaker no longer possesses the confidence of the House for the following reasons: (1) that in the discharge of his duties as joint administrator of the Joint House Department he did knowingly sign an official report of that Department to the Parliament which included an anonymous reference to a public liability compensation settlement to himself without giving any personal explanation to the Parliament; and (2) that the Speaker has failed to protect the dignity of the Parliament by consistently seeking to hide the facts surrounding his compensation claim and subsequent settlement from the Parliament and the people of Australia (moved by Mr Smith). VP 1990–92/1976–7; H.R. Deb. (17.12.1992) 4071–77.	Negatived

Occupant of the Chair	*Date*	*Motion*	*Decision*
Speaker Andrew	30.11.2000	That the Speaker no longer possesses the confidence of the House (moved by Mr Beazley). VP 1998–2001/1936–7; H.R. Deb. (30.11.2000) 23117–35.	Negatived
Speaker Andrew	28.5.2002	That so much of the standing orders be suspended as would prevent the Member for Lilley from moving forthwith the following motion: 1. the unprecedented decision of the Speaker to expunge the Hansard record without reference to precedents of the House; 2. his continuing application of standing orders in favour of the Government exemplified today in Question Time by refusing to rule the Minister for Employment and Workplace Relations out of order, rather, extending to him latitude denied to the Opposition to ask a relevant and in order question to the Deputy Prime Minister and Leader of the National Party; and 3. the abuse of House procedures in gagging a dissent motion to protect the Speaker from scrutiny over his rulings in the House (moved by Mr Swan). VP 2002–04/201–4; H.R. Deb. (28.5.2002) 2484.	Negatived
Deputy Speaker Causley	17.8.2005	That so much of the standing orders be suspended as would prevent the Leader of the Opposition moving a motion of censure against the Deputy Speaker (moved by Mr Beazley). VP 2004–2007/541–4; H.R. Deb. (17.8.2005) 103–6.	Negatived
Speaker Slipper	9.10.2012	That, as provided by section 35 of the Constitution, the Speaker be removed from office immediately (moved by Mr Abbott, by leave). VP 2010–13/1838–9; H.R. Deb. (9.10.2012) 11573–601.	Negatived
Speaker Bishop	27.3.2014	That so much of the standing and sessional orders be suspended as would prevent the Member for Watson moving immediately—That the House has no further confidence in Madam Speaker on the grounds: (a) that in the discharge of her duties she has revealed serious partiality in favour of Government Members; (b) that she regards herself merely as the instrument of the Liberal Party and not as the custodian of the rights and privileges of elected Members of the Parliament; (c) that she constantly fails to interpret correctly the Standing Orders of the House; and (d) of gross incompetency in her administration of Parliamentary procedure (moved by Mr Burke). VP 2013–16/444; H.R. Deb. (27.3.2014) 3404–12.	Negatived

To end 2017.
Table does not include motions moved in respect of the former Chairman of Committees (3, all negatived)—*see* 2nd edn, p. 237.

On 26 May 2014 the Manager of Opposition Business (Mr Burke) unsuccessfully moved a motion seeking to refer the Speaker's use of her Parliament House dining room to the Committee of Privileges and Members' Interests.[245] The following day the Speaker made a statement to the House on the role of the Speaker. Later, standing orders were suspended to permit the moving of a motion that the Manager of Opposition Business 'be required by this House to immediately apologise to the Speaker for grievously reflecting on her in this place and most particularly yesterday in a motion of referral of the Speaker to the Standing Committee of Privileges and Members' Interests'. During debate on the suspension motion Mr Burke apologised for a statement he had made that may have been inaccurate. However, on being called to speak after the substantive motion had been agreed to, Mr Burke stated he had already dealt with the terms of the motion and had nothing to add. The Speaker stated she did not accept that the Member had apologised to her, but said she hoped that the salutary motion would bring about more decorum.[246]

Reflections on Speaker made outside the House

A reflection on the character or actions of the Speaker inside or outside the House has attracted the use of the penal powers of the House of Commons.[247] However, since the enactment of the Parliamentary Privileges Act, proposed actions in such circumstances have had to be considered in light of the provisions of the Act.

On 11 November 1913 the Prime Minister drew attention to a statement, reported to have been made by the Member for Ballaarat[248] (Mr McGrath) outside the House, which reflected on Speaker Johnson. Mr McGrath was alleged to have said:

> The Speaker has lost the confidence of Members. We have absolute proof that the Speaker has altered a Hansard proof. The proof showed that the third reading of the Loan Bill was not carried, according to its own words, and he altered the proof to make it appear in Hansard that it was carried. The Speaker was acting in a biased manner, and was proving himself a bitter partisan.

Mr McGrath was asked by the Speaker to state whether the newspaper report of his speech was correct. Mr McGrath spoke but did not avail himself of the opportunity to admit or deny the correctness of the report. The Prime Minister then moved:

> That the honourable Member for Ballaarat be suspended from the service of this House for the remainder of the Session unless he sooner unreservedly retracts the words uttered by him at Ballarat on Sunday, the 9th October [later amended to November], and reflecting on Mr Speaker, and apologises to the House.

Mr McGrath was again asked by the Speaker if the report was correct and spoke on a second occasion without admitting or denying the correctness of the report. The motion was agreed to.[249] On 29 April 1915 Mr McGrath expressed his regret in respect of the incident and the House agreed that the resolution of 11 November 1913 should be expunged from the Votes and Proceedings.[250]

On 15 May 1964 a radio journalist during a broadcast implied that Speaker McLeay had given doubtful rulings and suggested that he 'might analyse the word "impartiality" before the next sittings'. It was considered by the Speaker that these remarks were a grave reflection on his character and accused him of partiality in the discharge of his duties. As the House proposed to rise for the winter adjournment that day, it was agreed that a

245 VP 2013–16/485 (26.5.2014).
246 VP 2013–16/497, 498–500 (27.5.2014); H.R. Deb. (27.5.2014) 4344, 4363–81.
247 *May*, 24th edn, pp. 61, 263.
248 Division name changed from Ballaarat to Ballarat in 1977. Before 1977 Hansard sometimes incorrectly recorded 'Ballarat'.
249 VP 1913/151–3 (11.11.1913); H.R. Deb. (11.11.1913) 2982–3053.
250 VP 1914–17/181 (29.4.1915); H.R. Deb. (29.4.1915) 2729–49.

reference to the Privileges Committee would be unsatisfactory. Thus, it was decided that other more immediate action should be taken—namely, that, unless a complete and full apology and retraction were made over the same broadcasting stations, the journalist's press pass should be withdrawn and, with the concurrence of the President of the Senate, the journalist should be denied admittance to Parliament House. The journalist was summoned by the Speaker and apparently made some admissions. On being informed that a breach of privilege could have also been committed by each of the broadcasting stations, he requested the Speaker not to press the matter in relation to the stations and emphasised that he alone was to blame. He agreed to broadcast a suitable retraction and apology that night, to be repeated on the following morning, following the clearance of the script with the Speaker.

On 22 August 1986 Speaker Child advised the House that her attention had been drawn to reported remarks critical of her attributed to the Rt Hon. I. M. Sinclair, MP, Leader of the National Party, in connection with the custody of documents in possession of the Parliamentary Commission of Inquiry which were to be placed in the custody of the Presiding Officers. The Speaker called on Mr Sinclair to withdraw the allegations and apologise to the Chair. Mr Sinclair, explaining his remarks, said that they were not meant to be about the Speaker but about Parliament and he did not believe that Parliament was a suitable repository for documents containing unresolved allegations. He withdrew and apologised. Later, on 16 September the Speaker again referred to the matter and said that, having examined the transcript of the reported remarks and having compared it to the statement in the House, she could only conclude that Mr Sinclair had misled the House and that in her opinion the transcript contained serious personal reflections on the Chair which constituted a 'breach of the privileges' of the House and that the subsequent apology constituted a contempt. Mr Sinclair addressed the House, followed by the Deputy Speaker who moved a motion of censure of Mr Sinclair. The motion was withdrawn, by leave, after Mr Sinclair had acknowledged his remarks, withdrawn them and again apologised.[251]

On 24 February 1987 Speaker Child advised the House that she had become aware of certain remarks critical of the Speaker made outside the House by a Member (Mr Tuckey) following his suspension on the previous day. The Speaker alluded to the remarks and stated that she had received a letter from Mr Tuckey in which he apologised and unreservedly withdrew and sought leave to make a personal explanation at the first opportunity. The Speaker, however, granted precedence to the matter under the standing order relating to privilege, and the Leader of the House moved a motion to the effect that the House found the remarks a serious reflection on the character of the Speaker, that they contained an accusation of partiality in the discharge of her duty and therefore constituted a contempt, and that Mr Tuckey be suspended for seven sitting days. The motion was debated and agreed to.[252]

On 28 April 1987 Speaker Child mentioned in the House media reports of comments critical of her made by a Member (Mr Spender) in a private paper circulated to party colleagues. The Speaker said that, although it had been leaked, the paper was originally written as a private document, that it would be totally ludicrous now to ask a Member to

251 H.R. Deb. (22.8.1986) 529, 558–9; H.R. Deb. (16.9.1986) 701–5; VP 1985–87/1089, 1090 (22.8.1986), 1102 (16.9.1986).
252 VP 1985–87/1467–8 (24.2.1987); H.R. Deb. (24.2.1987) 573, 580–7.

reject his own writings, that she raised the matter only because of the wide media speculation the paper evoked, and that she rejected the criticism.[253]

On 9 October 1990 Speaker McLeay made a statement to the House referring to remarks reportedly made by a Member outside the House which amounted to a reflection on the Chair. The Member concerned then unreservedly withdrew the reflection and apologised to the Chair.[254]

On 30 November 2005 Speaker Hawker referred to a media release issued by a Member which had reflected on the actions and motivations of the chair. He stated that such reflections seriously undermined the orderly conducting of the business of the House and required the Member to withdraw them, which the Member did. Later, the Speaker noted that it was a well-established parliamentary principle that reflections on the chair, inside or outside the Chamber, were highly disorderly, but that since the passage of the Parliamentary Privileges Act such reflections were regarded as important matters of order rather than as a contempt of the House.[255]

Speaker's authority not supported by the House

The Speaker's authority and decisions are usually supported by the House. If the House dissents from rulings or in other ways fails to support the Speaker's decisions he or she is placed in a difficult position. However, as noted earlier (*see* 'Dissent from rulings' at page 194), agreement by the House to a motion of dissent from a Speaker's ruling is not necessarily interpreted as a censure of the Speaker.

Amid prolonged scenes of uproar in the House on 27 February 1975,[256] Speaker Cope announced his resignation after the House failed to support his action in naming a Minister. The series of incidents that led to his resignation began after Question Time when Mr C. R. Cameron, Minister for Immigration, rose to make a personal explanation, during which a Member pointedly implied that he was lying. After interchanges, and suggestions by Speaker Cope, accepted by the Member, that the Member substitute 'untruth' for the word 'lie', Mr Cameron rose to protest again and the Speaker called him to order. Mr Cameron then said, 'Look I don't give a damn what you say' and the remainder of his utterance was lost amid opposition uproar. Speaker Cope asked Mr Cameron to apologise to the Chair. Mr Cameron remained silent. Speaker Cope then named Mr Cameron. As no Minister proceeded to move for Mr Cameron's suspension, the motion was moved by Mr Sinclair, Manager of Opposition Business. Government Members crossed the floor to vote against the suspension (although some government Members left the Chamber), and the motion was defeated by 59 votes to 55. After announcing the result of the division, Speaker Cope informed the House of his intention to submit his written resignation to the Governor-General. Before he left the Chamber, Speaker Cope asked Mr Scholes, the Chairman of Committees, to take the Chair as Deputy Speaker. Speaker Cope resigned as Speaker later that day[257] and, following formal communication of the resignation to the House, Mr Scholes was elected

253 VP 1985–87/1591 (28.4.1987); H.R. Deb. (28.4.1987) 2059. On 26 April 1988 Speaker Child mentioned criticisms attributed to a Member (Mr Downer). She rejected the criticisms and said such comments did harm to the institution but said she did not intend to take the matter further—H.R. Deb. (26.4.1988) 2045.

254 VP 1990–92/223–4 (9.10.1990).

255 H.R. Deb. (30.11.2005) 78; H.R. Deb. (5.12.2005) 46; H.R. Deb. (8.12.2005) 70.

256 H.R. Deb. (27.2.1975) 824–9.

257 VP 1974–75/502–3 (27.2.1975); Constitution, s. 35.

Speaker.[258] This is the only occasion on which the Government has failed to support the Speaker after a Member has been named.

Motions for the suspension of a Member have been negatived on two other occasions. In the first case, in 1938, the Government did not have sufficient Members present to ensure that the motion was agreed to—proceedings continued after the vote without a statement by the Speaker or comment by Members.[259] In the second case, in 2011, the minority Government did not obtain sufficient support from crossbench Members to ensure that the motion was agreed to. Following the vote the Speaker announced that he would consider his position. A motion of confidence in the Speaker was immediately moved by the Leader of the Opposition, seconded by the Prime Minister and carried unanimously.[260]

DEPUTY SPEAKER

The Deputy Speaker's former title of 'Chairman of Committees' was dropped with the abolition of the committee of the whole in 1994.[261] For a description of the origin and former functions of the position *see* pages 233–39 of the second edition.

In addition to the function of Speaker's deputy, the Deputy Speaker has specific responsibility for chairing the Federation Chamber.[262] In the absence of the Speaker the Deputy Speaker serves as Acting Speaker (*see* page 184).

Election of Deputy Speaker

At the beginning of each Parliament or whenever the office becomes vacant, the House elects a Member to be Deputy Speaker.[263]

The election of the Deputy Speaker takes place after the Speaker has been elected in a new Parliament. The ballot for Deputy Speaker at the beginning of a Parliament also determines the election of the Second Deputy Speaker. The procedure is similar to that for the election of Speaker[264] except that the Speaker presides, not the Clerk. A further difference is that nominees do not have to be present at the election or inform the House whether they accept nomination.

If there is more than one nomination, a ballot[265] is held, and the Member with the most votes is elected Deputy Speaker and the Member with the next greatest number of votes Second Deputy Speaker. If two nominees are equal the Speaker has a casting vote. There has been no occasion when there have been more than two candidates for the office of Deputy Speaker (or formerly, Chairman of Committees).

The office of Deputy Speaker is usually filled by the nominee of the government party or parties.[266] In the case of a Liberal–Nationals coalition Government, the usual practice

258 VP 1974–75/508–9 (27.2.1975).
259 VP 1937–40/223 (14.10.1938); H.R. Deb. (14.10.1938) 862.
260 VP 2010–13/584 (31.5.2011), H.R. Deb. (31.5.2011) 5284–6.
261 Where certain legislation, such as the Public Works Committee Act, continued to refer to the Chairman of Committees, such provisions applied to the position of Deputy Speaker.
262 S.O. 16(b).
263 S.O. 13. For a list of Chairmen of Committees/Deputy Speakers since 1901 *see* Appendix 3.
264 The election procedures of S.O. 11 are qualified by S.O. 14 for this purpose.
265 As described for the ballot for Speaker at page 171.
266 At the start of the 43rd Parliament an opposition Member, nominated by a government Member, was elected as Deputy Speaker and another opposition Member, nominated by an opposition Member, was elected as Second Deputy Speaker.

has been for the Nationals to nominate the Government's candidate for Deputy Speaker and for the Liberal Party to nominate the candidate for Speaker.[267]

In the early years after Federation, when party lines were not clearly drawn, the incumbent of the then office of Chairman of Committees did not always change with a change in the Government. In 1941, when the Curtin Ministry succeeded the Fadden Ministry without an election, Chairman Prowse remained in office. He resigned on 21 June 1943 at the same time as Speaker Nairn.[268] In divisions in the House in the period from 1941 to 1943, Chairman Prowse frequently voted against the Government[269] and immediately following his resignation he voted in support of a motion of no confidence in the Government.[270]

Deputy Speaker as Chair of House

As it would be impossible for the Speaker to take the Chair for the whole of the time the House is sitting, the standing orders make the necessary relief provisions. It is not necessary to inform the House when such relief arrangements are about to take place.

When the Speaker is absent the Deputy Speaker becomes Acting Speaker[271] (*see* page 184). The Deputy Speaker may also take the Chair of the House during any sitting of the House whenever requested to do so by the Speaker.[272]

While in the Chair, the Deputy Speaker has the same procedural powers and functions as the Speaker. In 1906 the Chairman of Committees, as Deputy Speaker, signed a message to the President of the Senate. After consideration the President accepted the message.[273] It is now the practice for the Deputy Speaker to sign messages to the Senate whenever the Speaker is unavailable.

If the Deputy Speaker is absent, the Speaker may ask the Second Deputy Speaker or any member of the Speaker's panel to take the Chair as Deputy Speaker[274] but the Deputy Speaker, in practice, ensures that an unofficial roster is maintained to provide occupants for the Chair throughout a sitting. 'Deputy Speaker' is the correct address to be used when the Deputy Speaker, Second Deputy Speaker or a member of the Speaker's panel is relieving the Speaker in the Chair.

If the Speaker and the Deputy Speaker are both absent, the Second Deputy Speaker performs the duties of the Speaker as Acting Speaker. In the absence of the Deputy Speaker the Second Deputy Speaker acts as Deputy Speaker.[275] The Acting Deputy Speaker has all the powers and functions of the Deputy Speaker.[276]

For coverage of the powers and duties of the Deputy Speaker as Chair of the Federation Chamber *see* Chapter on 'The Federation Chamber'.

267 In 1978 a former Chairman and a government Member from the National Country Party, Mr Lucock, was nominated by the Opposition, VP 1978–80/10 (21.2.1978). Mr Lucock was not present at the time, but signified his availability by telegram—the standing orders not requiring acceptance of nomination to be given.

268 VP 1940–43/549 (22.6.1943).

269 VP 1940–43/308 (26.3.1942), 313 (29.4.1942), 349 (21.5.1942), 473 (11.2.1943), 478 (16.2.1943).

270 VP 1940–43/551 (22.6.1943).

271 S.O. 18(a).

272 S.O. 16(b). On 8 May 2012 a period commenced when Speaker Slipper did not preside during meetings of the House and Deputy Speaker Burke took the Chair for all periods during which the Speaker would have presided, *see* statement by the Speaker, H.R. Deb. (8.5.2012).

273 S. Deb. (24.9.1906) 5165.

274 S.O.s 16(c), 17(b).

275 S.O.s 16(c), 18(a).

276 *See* VP 1951–53/367 (6.8.1952) (before present offices were created).

Resignation and vacancy

If the Deputy Speaker wishes to resign from office, he or she may do so by means of a personal announcement, or by notifying the Speaker, in writing, who will make an announcement to the House.[277]

The practice following the resignation of a Chairman of Committees was formerly for a motion to be moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'.[278] More recent practice was not to have motions accepting a Chairman's resignation.

On 14 July 1975 Chairman Berinson resigned from office, by letter to the Speaker, as he had been appointed to the Ministry. As the House was not sitting a new Chairman could not be elected and Mr Berinson was deemed to continue to be Chairman of Committees until a new Chairman was elected by the House on 19 August 1975.[279] In addition, as the Speaker was absent overseas, Mr Berinson was deemed to be Presiding Officer for the purposes of the exercise of any powers or functions by the Presiding Officer under a law of the Commonwealth.[280]

SECOND DEPUTY SPEAKER

The office of Second Deputy Speaker was created in 1994 with the establishment of the Main Committee, the precursor to the Federation Chamber. The function of the Second Deputy Speaker is to assist the Deputy Speaker in the Federation Chamber and, in the absence of the Deputy Speaker, to act as Deputy Speaker.[281] In the absence of both the Speaker and the Deputy Speaker the Second Deputy Speaker may perform the duties of Speaker, as Acting Speaker.[282] At the request of the Speaker, he or she may take the Chair of the House (as Deputy Speaker) [283] without formal communication to the House.

In proposing the new office the Procedure Committee recommended that it be filled by a non-government Member.[284] The recommendation was accepted by the Government,[285] and the first Second Deputy Speaker was an opposition Member, nominated by the Opposition and elected unopposed.[286] The standing orders now state that only a non-government Member may be elected.[287] In the 37th Parliament the Second Deputy Speaker was an opposition Member when elected. He became an independent during the later stages of the Parliament's life, but retained the office.

At the beginning of a Parliament, or whenever the two offices are vacant at the same time, elections for Deputy Speaker and Second Deputy Speaker are conducted together, with the Member with the highest number of votes becoming the Deputy Speaker and the Member with the next highest number of votes becoming the Second Deputy Speaker.[288] When a vacancy in the position of Second Deputy Speaker occurs later in a Parliament,

277 The Constitution and the standing orders of the House contain no specific provision on the matter.
278 VP 1940–43/549–50 (22.6.1943); VP 1961/9 (8.3.1961).
279 VP 1974–75/821 (19.8.1975).
280 *Parliamentary Presiding Officers Act 1965*.
281 S.O. 16(c).
282 S.O. 18(a); e.g. VP 1993–96/2189 (20.6.1995); VP 1996–98/929 (2.12.1996).
283 S.O. 16(c).
284 Standing Committee on Procedure, *About time: bills, questions and working hours*. PP 194 (1993) 19–20.
285 H. R. Deb. (8.2.1994) 541.
286 VP 1993–96/842 (3.3.1994).
287 S.O. 13(c). This provision was omitted from 10.10.2012; reinstated 13.11.2013.
288 S.O. 14.

or if there is only one nomination for the position of Deputy Speaker when there are two vacancies, a separate election for Second Deputy Speaker is conducted.[289]

SPEAKER'S PANEL

At the commencement of every Parliament the Speaker nominates a panel of not less than four Members to assist the Chair.[290] At any time during the Parliament the Speaker may nominate additional Members or revoke the nomination of a Member.[291] The Speaker's nomination of the members of the panel has traditionally been by warrant which he or she has presented to the House early in a new Parliament, although the standing order does not specify that a warrant or other instrument is necessary. Sometimes nominations may be spread over some days, if, for instance, there are delays in persons being proposed by their parties.

The role of a member of the Speaker's panel is:

- to take the Chair of the Federation Chamber (as Deputy Speaker) when requested to do so by the Deputy Speaker, or in the absence of the Deputy Speaker, the Second Deputy Speaker; and
- to take the Chair of the House as Deputy Speaker when requested to do so by the Speaker or, more usually, by the Deputy Speaker.[292]

The number of Members nominated by the Speaker has varied.[293] Generally the Speaker appoints both opposition and government Members to the Speaker's panel, with government Members being in the majority. Recent practice has been for a senior member of staff to approach both the government and opposition parties and request a list of nominees for the Speaker's panel. However, at the start of the 43rd Parliament in 2010 there were no nominees from opposition parties, and ten government Members were appointed.[294] At the start of the 44th Parliament there were again no opposition nominees, but opposition Members were appointed later in the Parliament and in the 45th Parliament.

It is usual for the Speaker to nominate Members who are not in the Ministry or the opposition executive.[295] A member of the panel who becomes a Minister is normally removed from the panel without any announcement being made to the House.[296]

In practice rosters are maintained for occupants of the Chair. On occasion, when neither the Speaker or the Deputy Speaker, nor any Member entitled to serve as Deputy Speaker has been available to take the Chair (or in the past to take the Chair in committee as Deputy Chairman) other Members have taken the Chair with the concurrence of the House so that business could proceed.[297]

289 S.O. 14(b). The standing order allows the position to be left unfilled.

290 Formerly, Members were nominated as Deputy Chairmen, or earlier, as Temporary Chairmen, *see* earlier editions for more historical detail.

291 S.O. 17(a).

292 S.O. 17(b)(c).

293 In the 45th Parliament there were 13 members.

294 Later, non-aligned Members were also appointed, VP 2010–13/1244 (16.2.2012).

295 In 1958 Speaker McLeay nominated a member of the opposition executive (Mr Webb) as a Temporary Chairman, VP 1958/13 (11.3.1958).

296 E.g. Mr T.W. White, 8 March 1933; Mr K. Beazley removed in 2005 after being elected Leader of the Opposition, as announced to House 8.2.2005. In 2015 the Speaker presented a warrant revoking the nominations of newly appointed Parliamentary Secretaries, VP 2013–16/1071 (9.2.2015).

297 E.g. H.R. Deb. (8.7.1915) 4723; H.R. Deb. (18.9.1986) 1010 *and see* H.R. Deb. (14.3.1991) 2054.

If disorder arises or if special circumstances apply when a member of the Speaker's panel is presiding, the Speaker or Deputy Speaker will often resume the Chair.

STAFF OF THE HOUSE AND ADMINISTRATION

The historical distinction between Parliament and Government is of particular importance to the staff of the House. The Clerk and his or her staff, above all, serve the House and must exhibit at all times complete impartiality in dealing with all sections of the House. Distinctively, as ongoing staff of the House, their role transcends the contemporary and the temporary. Marsden describes the important distinction which characterises the special and traditional role of the parliamentary officer in these terms:

> The staff which serve the Commons . . . are not answerable in any way to the Government of the day. Nor are they appointed by politicians or political organisations; if they were, their usefulness would disappear overnight. They are the servants only of the House, and it is this long-preserved independence from political control that has endowed them with their own special value to the smooth running of the machinery of government. Within the Palace precincts they are rigidly, almost religiously, non-political. Whatever the complexion of the Government in office the House can be certain of receiving that completely impartial and professionally expert service for which its Officers enjoy a reputation second to none, and upon which all Members can, and do, rely unhesitatingly, regardless of party affiliations, religious distinctions or personal differences of temperament.
>
> Because these officials *are* servants of the House, and have not to rely on political patronage either for their appointments or for their continuation in office, they are able to devote the whole of their lives to their task and to develop their individual capacities to a very high standard of professionalism.[298]

These ideals have always applied in the Commonwealth Parliament, but they were strengthened and given legislative recognition by the passage of the *Parliamentary Service Act 1999*.

The Parliamentary Service Act

Staff of the Department of the House of Representatives, and the other parliamentary departments, are employed under the *Parliamentary Service Act 1999*.[299] The objectives[300] of this Act are:

- to establish a non-partisan Parliamentary Service that is efficient and effective in serving the Parliament;
- to provide a legal framework for the effective and fair employment, management and leadership of Parliamentary Service employees;
- to define the powers and responsibilities of Secretaries, the Parliamentary Librarian, the Parliamentary Service Commissioner and the Parliamentary Service Merit Protection Commissioner;[301] and
- to establish rights and obligations of Parliamentary Service employees.

The legal framework provided by the Parliamentary Service Act for the employment of Parliamentary Service employees follows that established by the *Public Service Act 1999* for Public Service employees, except where differences are necessary to reflect the

298 Philip Marsden, *The officers of the Commons 1363–1978*, 2nd edn, HMSO, London, 1979, p. 15.

299 Before the commencement of this Act parliamentary staff were employed pursuant to specific sections of the *Public Service Act 1922*.

300 *Parliamentary Service Act 1999*, s. 3.

301 These are separate offices from those of Public Service Commissioner and Public Service Merit Protection Commissioner, but in practice have been held by the same persons. While the objectives of the Act were not updated, from 2011 the Act has also defined the powers and responsibilities of the Parliamentary Budget Officer.

unique character of the parliamentary service and the obligation of parliamentary staff to serve the Parliament.

The Act sets out the following Parliamentary Service values:[302]

Committed to service

(1) The Parliamentary Service is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Parliament.

Ethical

(2) The Parliamentary Service demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

Respectful

(3) The Parliamentary Service respects the Parliament and all people, including their rights and their heritage.

Accountable

(4) The Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament and the Australian community.

Impartial

(5) The Parliamentary Service is non-partisan and provides advice that is frank, honest, timely and based on the best available evidence.

Principal staff of the House

The Clerk of the House

The Clerk of the House of Representatives is responsible for administering the Department of the House of Representatives and advising the Speaker and Members on parliamentary law, practice and procedure. Since 1901 there have been 16 Clerks of the House of Representatives.[303]

The office of Clerk of the House had its origins in the early English Parliament but the first record of the appointment of a Clerk was in 1363. The records kept by Clerks of the House of Commons date from the 16th century. The word 'Clerk' simply meant a person who could read and write. Since many Members could then do neither, one of the Clerk's main functions was to read out petitions, and later bills and other documents, to the House.

In the 16th century the Clerks began to undertake a wider range of functions. The first of this new generation, John Seymour, began to record the proceedings of the House in an unofficial journal. At first mainly a record of motions and bills, it was later expanded to include such things as the election of the Speaker, records of attendance, divisions and decisions on matters of privilege. Today the responsibility for recording all proceedings and decisions of the House is vested in the Clerk, and they are recorded in the official record, the Votes and Proceedings.[304]

The first Clerk of the House of Representatives was Sir George Jenkins who, in an acting capacity only, served for less than two months before resuming his position as Clerk of the Parliaments of Victoria. He was succeeded by Charles Gavan Duffy who remained as Clerk until 1917 when he became Clerk of the Senate.

302 *Parliamentary Service Act 1999*, s. 10.
303 *See* Appendix 5.
304 S.O.s 27, 28.

Clerk Duffy's successor Walter Augustus Gale served as Clerk for 10 years until he died in office in July 1927 following the Parliament's first meeting at Canberra on 9 May. His successor John Robert McGregor also died in office, two months later on 28 September, only 27 days after his appointment, on the night of his first sitting day as Clerk and of the second meeting of the House in Canberra. Earlier that day the House had agreed to a motion of the Prime Minister:

> That this House records its sincere regret at the death of Walter Augustus Gale, C.M.G., who was an officer of the House of Representatives since the inauguration of the Commonwealth, and Clerk of the House from the 1st February, 1917, until his death, and this House expresses its appreciation of the loyalty and ability with which he devoted himself to his official duties, and tenders its profound sympathy to his wife and family in their great bereavement.[305]

At 8.12 p.m. Clerk McGregor's death was announced by the Speaker and as a mark of respect the House immediately adjourned.[306] The death of former Clerks has been reported to the House, Members standing as a mark of respect.[307]

In 1937 Frank Clifton Green was appointed Clerk and served for a record period of 18 years. A Clerk's term of office is now limited to 10 years.[308]

The Clerk is appointed by the Speaker after the Speaker has consulted Members of the House about the proposed appointment.[309] In practice, party leaders are consulted. Without exception, a person who is appointed as Clerk has been in the service of the House and has served at the Table for a long period. The parliamentary experience thus gained is important to the required understanding of parliamentary law and procedure and its application to varying circumstances. A person cannot be appointed as the Clerk of the House of Representatives unless the Speaker making the appointment is satisfied that the person has extensive knowledge of, and experience in, relevant parliamentary law, procedure and practice.[310]

The title Clerk of the Parliaments was used by the first Clerk of the Senate but in 1908, for statutory reasons, his successor was appointed Clerk of the Senate, and the title Clerk of the Parliaments[311] has not been used since in the Australian Parliament. This reflects the distinctive nature of the bicameral legislature. The title owes its origin to early English Parliaments before the Lords and Commons were formed into two distinct and separate Houses. In some bicameral Parliaments either the Clerk of the Upper House or the senior Clerk of the two Houses carries, in addition to his or her own title, that of Clerk of the Parliaments.

While the House is sitting the Clerk and the Deputy Clerk sit at the Table in front of the Speaker's Chair. The Clerk sits to the right of the Speaker and the Deputy Clerk to the left.

It is the practice in the House of Representatives for the Clerks at the Table to wear a black gown. Clerks at the Table wore wigs until January 1995,[312] except for two periods, 1911–13 and 1914–17, when Speaker McDonald directed that the Clerks should not wear wigs. In 1929 Speaker Makin left it to the Clerk to decide whether he would continue to

305 VP 1926–28/354 (28.9.1927).
306 VP 1926–28/359 (28.9.1927).
307 E.g. VP 2004–07/127 (9.12.2004).
308 *Parliamentary Service Act 1999*, s. 58 (3).
309 *Parliamentary Service Act 1999*, s. 58 (2).
310 *Parliamentary Service Act 1999*, s. 58 (4).
311 *See* J 1908/2 (16.9.1908). The question of title later became an issue in respect of the Clerk of the House in 1920 when a recommendation by the Speaker for him to use the title was not pursued as it met with some opposition.
312 VP 1993–96/1759 (31.1.1995); H.R. Deb. (31.1.1995) 1. Party leaders were consulted about the proposed change. Although there was not unanimity, the Speaker directed that the change proceed.

wear the wig and gown. Clerk E.W. Parkes decided to continue the practice of wearing the formal dress.

Role and functions of the Clerk

The Clerk has an administrative role as well as being a specialist in the rules of parliamentary procedure and practice. As departmental head the Clerk administers the Department of the House of Representatives in the same way as the secretary of an executive department administers his or her department. The Clerk administers a department of about 150 staff members responsible for providing services to the Speaker and the House including the Prime Minister, Ministers, party leaders, shadow ministers and private Members. The management role of the Clerk covers the usual range of departmental functions including staffing matters, financial management and so on.

The Clerk is responsible for procedural and related matters both inside and outside the Chamber.[313] In this capacity the Clerk has responsibilities laid down in the standing orders which include the recording of the Votes and Proceedings of the House (the official record), the safe keeping of all records and documents of the House, the arrangements for bills, production of the Notice Paper, and the signing of Addresses agreed to by the House, motions of thanks and orders of the House.

The Clerk also performs essential functions in the legislative process. As each bill is passed by the House, before it is sent or returned to the Senate the Clerk must certify on the bill that it has passed the House. In whatever way and whenever the House deals with an amendment to a bill or disposes of a bill the Clerk is required to certify accordingly the action taken by the House. Every bill originating in the House and passed by both Houses must be certified by the Clerk to that effect before it can be forwarded to the Governor-General for assent.

When the House proceeds to elect a new Speaker the Clerk assumes the role of chair of the House, calling on the proposer and seconder and putting such questions as are necessary until the Speaker's Chair is filled (*see* page 170).

The Clerk and the staff must also assist the smooth running of the Chamber by the provision of routine support services, documentation and advice. To do this adequately the Clerk must have extensive knowledge and experience in the interpretation of the standing orders, in parliamentary practice and precedent, and in the requirements of the Constitution in so far as they affect the role of the House and its relationship with the Senate. He or she is also required to be informed on the law and practice of other Parliaments and in particular of that of the United Kingdom House of Commons from which much of House of Representatives practice was derived.[314]

The Clerk's advice is offered to the Chair, to Governments, Oppositions, individual Members of the House, the Committee of Privileges and Members' Interests, the Procedure Committee, the House Appropriations and Administration Committee and other committees. Advice is given to Members on a wide range of subjects relating to their work and to their participation in proceedings. While sitting at the Table the Clerk must always keep an ear to the debate as he or she may be called upon to give immediate advice to the Chair or others in relation to a procedural or technical matter suddenly arising.

313 The Clerk's role in these matters is discussed in detail throughout the text.
314 Constitution, s. 49.

Each day before the House meets the Clerk needs to examine the business scheduled for the day's sitting, consider any difficulties which may arise and, prior to the meeting of the House, brief the Speaker in relation to the day's business. The Clerk and staff also maintain a close relationship with the other parliamentary departments and with executive departments and provide advice or guidance in relation to proposed, current or past House business affecting departments.

Deputy Clerk and senior staff

The office of Deputy Clerk is the second most senior in the House of Representatives. In the absence of the Clerk the Deputy Clerk performs the Clerk's duties.[315] During any vacancy in the office of Clerk, the Deputy Clerk exercises all the Clerk's powers and performs all his or her functions and duties.[316] The Deputy Clerk is the Clerk of the Federation Chamber.

The Clerk and Deputy Clerk may be relieved in their Chamber duties by the Clerks Assistant and the Serjeant-at-Arms, and by other senior parliamentary staff. The Clerks Assistant and the Serjeant-at-Arms manage areas of the Department of the House of Representatives (*see below*).

Serjeant-at-Arms

The Serjeant-at-Arms is another office having its origins in early English parliamentary history. About the end of the 14th century the office assumed a form recognisable in its descendant of today. Early concepts of the role of the Serjeant-at-Arms as 'attendant upon the Speaker' and acting only 'on the instruction of the Speaker' still characterise the functions of the Serjeant-at-Arms today. Over the centuries the Serjeant-at-Arms as bearer of the Mace became identified with protecting the privileges of the Commons, the Speaker being the guardian, the Serjeant-at-Arms the enforcer.

The Serjeant-at-Arms' functions in the Chamber are associated mainly with the ceremony of Parliament and the preservation of order. Bearing the Mace on the right shoulder, the Serjeant-at-Arms precedes the Speaker into the Chamber and announces the Speaker to Members. The Serjeant-at-Arms, the Deputy Serjeant or Assistant Serjeant attends in the Chamber at all times when the House is sitting. The duties of the Serjeant-at-Arms in the Chamber include the recording of Members' attendance and delivering messages to the Senate. If a Member refuses to follow the Speaker's direction, the Speaker may order the Serjeant-at-Arms to remove the Member from the Chamber or the Federation Chamber or take the Member into custody.[317] The Serjeant-at-Arms announces to the Speaker any visitor seeking formal entrance to the Chamber, such as the Usher of the Black Rod. The Serjeant-at-Arms is responsible for maintaining order in the galleries and can remove or take into custody any visitor or person other than a Member who disturbs the operation of the Chamber or the Federation Chamber.[318] Outside the Chamber the responsibilities of the Serjeant-at-Arms include the provision of a range of support services and the security of that part of the parliamentary precincts occupied by the House of Representatives. The Serjeant is a Member of the Parliament's Security Management Board.

315 S.O. 21.
316 S.O. 22.
317 S.O. 94(f).
318 S.O. 96. If a person is taken into custody the Speaker must report this to the House without delay.

For formal ceremonies a Serjeant-at-Arms has traditionally worn Court dress, comprising a black cut-away coat, knee breeches (or skirt), silver-buckled shoes, lace jabot and cuffs, white kid gloves, ceremonial sword and cocked hat (carried under the left arm). More recently an adaptation of this regalia has been worn. For normal sitting days the Serjeant wears the cut-away coat with black trousers or skirt, and gloves when carrying the Mace; the buckled shoes, hat and sword are not used.

The Department of the House of Representatives

The Department of the House of Representatives provides the administrative support for the efficient conduct of the House of Representatives, its committees and certain joint committees and a range of services and facilities for Members in Parliament House. The department also administers certain shared functions on behalf of both Houses. In 2018 the departmental program structure consisted of five activities as follows:

Chamber and Federation Chamber, managed by the Clerk Assistant (Table) and the Clerk Assistant (Procedure), provides programming, procedural and administrative support necessary for the conduct of the business of the House and the Federation Chamber; undertakes research on parliamentary matters; produces publications and provides information about the House and its proceedings; and provides secretariat services for certain domestic committees.

Community awareness, managed by the Serjeant-at-Arms promotes awareness and understanding of the House of Representatives and the Parliament.

Committee support, managed by the Clerk Assistant (Committees), provides secretariat services to the House of Representatives investigatory committees and some joint committees (other joint committees are supported by the Department of the Senate).

Inter-parliamentary relations and capacity building, managed by the Clerk Assistant (Table) supports the Parliament's relations with other Parliaments (jointly funded by the Department of the Senate).

Members' services and corporate support, managed by the Serjeant-at-Arms, administers salaries and certain entitlements of Members and provides a wide range of services to Members in Parliament House; and delivers corporate support services, including human resources, financial management and information technology services.

The other parliamentary departments

The Parliamentary Service comprises four departments, namely, the Department of the House of Representatives, the Department of the Senate, the Department of Parliamentary Services, and the Parliamentary Budget Office. The Presiding Officers are the parliamentary heads of these departments, their authority and administrative responsibility being established by the *Parliamentary Service Act 1999*. The Speaker has ultimate responsibility for the Department of the House of Representatives, and the President for the Department of the Senate. The two Presiding Officers are jointly responsible for the Department of Parliamentary Services, which provides joint support to Senators and Members, and the Parliamentary Budget Office. The Clerk of each House is the head of his or her department; the head of the Department of Parliamentary Services has the title of Secretary; the Parliamentary Budget Office is headed by the Parliamentary Budget Officer.

Department of the Senate

The role and functions of the Department of the Senate are equivalent to those of the Department of the House of Representatives. The Department of the Senate also administers certain shared functions on behalf of both Houses. The Department provides the secretariats to those joint committees not supported by the Department of the House of Representatives. It also administers the Parliamentary Education Office, which provides educational material and programs on the role and functions of the Parliament (jointly funded by the Department of the House of Representatives).

Department of Parliamentary Services

The Department of Parliamentary Services (DPS) was formed on 1 February 2004[319] by the amalgamation of the three former joint departments—the Department of the Parliamentary Reporting Staff, the Department of the Parliamentary Library, and the Joint House Department. The Parliamentary Librarian is a statutory office within the department.

DPS provides services and products to support the function of the Australian Parliament, and the work of parliamentarians. Working in collaboration with the house departments, DPS provides or facilitates the following:

- library and research services;
- information and communication technology services;
- security services;
- building, grounds and heritage management services;
- audio visual and Hansard services;
- art services;
- visitor services;
- food and beverage, retail, health, banking and childcare services; and
- corporate, administrative and strategic services for DPS.

Parliamentary Budget Office

Legislation to establish the Parliamentary Budget Office was passed in 2011.[320] The function of the Parliamentary Budget Office is to provide non-partisan and policy neutral analysis of the budget cycle, fiscal policy and the financial implications of policy proposals, in particular to provide:

- election policy costings on request of authorised party representatives and independent members of parliament;
- policy costings outside of the caretaker period on request of individual Senators and Members;
- responses to budget-related non-policy costing requests of individual Senators and Members; and
- formal contributions on request to relevant parliamentary committee inquiries.

The Parliamentary Budget Office may initiate its own work program in anticipation of client requests, including research and analysis of the budget and fiscal policy settings.

319 In accordance with resolutions passed by each House (VP 2002–04/1079 (14.8.2003), 1092 (19.8.2003)), pursuant to s. 54 of the *Parliamentary Service Act 1999*.

320 *Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011*.

The Joint Committee on Public Accounts and Audit has an oversight role in respect of the Office's annual work plan, draft budget estimates and annual report.[321]

Bodies advising the Presiding Officers

In the administration of services to the Parliament the Presiding Officers are assisted by the following advisory bodies:

The **Joint House Committee**, consisting of the members of the House Committees of the Senate and the House of Representatives meeting together as the Joint House Committee, advises the Presiding Officers on the provision of services and amenities to Senators, Members and staff in Parliament House.[322]

The **Joint Standing Committee on the Parliamentary Library**, appointed by resolution of both Houses, advises the Presiding Officers on matters relating to the Parliamentary Library.[323]

The **Security Management Board**, consisting of the Secretary of DPS,[324] the Serjeant-at-Arms, the Usher of the Black Rod, and a Deputy Commissioner of the Australian Federal Police, provides advice to the Presiding Officers on security policy and the management of security measures for Parliament House.[325]

The **Parliamentary ICT Advisory Board** (PICTAB) oversees the development and progress of parliamentary information and communication technology (ICT) strategic plan, and provides guidance to the DPS Chief Information Officer on strategic objectives and outcomes. It comprises Senators and Members, and representatives of the Parliamentary Service Commissioner and each parliamentary department.

The **Art Advisory Committee**, consisting of the Presiding Officers, their deputies and the Secretary of DPS, and assisted by an art adviser from the National Gallery of Australia, provides advice in relation to the Parliament House Art Collection.

Parliamentary finances

Since 1982–83 funding for the Parliament has been provided separately from funding for executive government operations, through the annual Appropriation (Parliamentary Departments) Acts. From 2000–2001 budgets for the parliamentary departments have been prepared using an accrual basis. The Appropriation (Parliamentary Departments) Acts contain appropriations for each department, under the headings 'departmental outputs', and 'administered expenses'.

House Appropriations and Administration Committee

The House Appropriations and Administration Committee was first appointed in 2010.[326] Its function is to:

- consider estimates of the funding required for the operation of the Department of the House of Representatives each year;

321 Functions as outlined in the Minister's second reading speech, H.R. Deb. (24.8.2011) 9141–2.

322 *See* 'House Committee' in Ch. on 'Parliamentary committees'.

323 *See* 'Joint Standing Committee on the Parliamentary Library' in Ch. on 'Parliamentary committees'.

324 Or other DPS employee nominated by the Presiding Officers.

325 Established pursuant to s. 65A of the *Parliamentary Service Act 1999*. S*ee also* 'The security of the parliamentary precincts' in Ch. on 'Parliament House and access to proceedings'.

326 S.O. 222A.

- provide to the Speaker for presentation to the House and transmission to the Minister for Finance, the committee's estimates of amounts for inclusion in appropriation and supply bills for the Department of the House of Representatives;
- consider proposals for changes to the administration of the Department of the House of Representatives or variations to services provided by the Department;
- consider and report to the Speaker on any other matters of finance or services as may be referred to it by the Speaker;
- consider and report to the House on any other matters of finance or services as may be referred to it by the House;
- make an annual report to the House on its operations;
- consider the administration and funding of security measures affecting the House and advise the Speaker and the House as appropriate; and
- consider any proposals for works in the parliamentary precincts that are subject to parliamentary approval and report to the House on them as appropriate.

In addition, the committee may confer with the Senate Standing Committee on Appropriations and Staffing to:

- consider estimates of the funding required for the operation of the Department of Parliamentary Services each year; and
- provide to the Speaker for presentation to the House and transmission to the Minister for Finance, estimates of amounts for inclusion in appropriation and supply bills for the Department of Parliamentary Services.

The committee has nine members, including the Speaker as chair, four government Members and four non-government or non-aligned Members. The committee is assisted by the Clerk, Serjeant-at-Arms and officers of the Department of the House of Representatives appropriate to any matters under consideration.

7
The parliamentary calendar

The appointment of the times for the holding of sessions of Parliament, the prorogation of the Parliament and the dissolution of the House, is a matter for decision by the Governor-General. The Constitution states:

> The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives.[1]

In practice however these vice-regal prerogatives are exercised with the advice of the Executive Government.[2]

Once a Parliament (session), or a further session within that Parliament, has commenced, the days and times for the routine meetings and adjournments of the House are a matter for the House to decide. Yet in practice, by virtue of its majority support, these decisions rest with the Executive Government.

The Constitution also provides that the House of Representatives can continue for no longer than three years from the first meeting of the House.[3] The significance of this to the concept of a representative Parliament and Government is that a Parliament is of limited duration on the democratic principle that the electors must be able to express their opinions at regular general elections. On the other hand a Parliament of short fixed-term duration may be viewed as undesirable in that too frequent elections have disruptive and/or negative effects on the parliamentary and governmental processes.

Of further significance is the principle that Parliament should be neither out of existence nor out of action for any undue length of time. The continuity of the Commonwealth Parliament is assured by several constitutional provisions. Following a dissolution or expiry of a House of Representatives, writs for a general election must be issued within 10 days,[4] and following a general election the Parliament must be summoned to meet not later than 30 days after the day appointed for the return of the writs.[5] Regular meetings are assured as there must be a session of Parliament at least once in every year, in order that 12 months shall not intervene between the last sitting in one session and the first sitting in the next session.[6] 'Session' in this context has in practice been interpreted as 'a sitting period' (*see below*).

Apart from the constitutional framework within which the parliamentary calendar is determined, there are also a number of practical considerations of some importance, for example:

- the necessity for Parliament to meet regularly and at specified times to approve financial measures, particularly appropriations for the ordinary annual services of the Government and for the Parliament itself;

1 Constitution, s. 5.
2 *See* Ch. on 'The Parliament and the role of the House', particularly on dissolution.
3 Constitution, s. 28.
4 Constitution, s. 32.
5 Constitution, s. 5.
6 Constitution, s. 6. In practice the maximum interval has not been applied and would cause financial problems for a Government if it were.

- in keeping with responsible government, the need to ensure a regular forum for continuous scrutiny of executive action; and
- the normal demands to consider new and amending legislation.

TERMINOLOGY

The following definitions cover some of the parliamentary terms associated with sittings of the House and the intervals between sittings. A diagram illustrating their relationship to the overall 'parliamentary calendar' is shown on the following page.

Parliament

A Parliament commences upon the first sitting day following a general election and concludes either at dissolution or at the expiry of three years from the first meeting of the House—whichever occurs first.

Session

A session commences upon the first sitting day following a general election or prorogation and concludes either by prorogation (the formal ending of a session), dissolution or at the expiry of three years from the first meeting of the House.

Sitting period

Sitting periods occur within a session. Sittings of the House in each calendar year are usually divided into distinct periods—the Autumn, Winter (or Budget) and Spring sittings (*see* page 238).

Sitting

A sitting commences pursuant to the standing or sessional orders, or in accordance with a resolution of the House at a previous sitting, and concludes with the adjournment of the same sitting. The same sitting may extend over more than one day (*and see* Chapter on 'Order of business and the sitting day').

Recess

A recess is a period between sessions of the Parliament or the period between the close of a session by prorogation and the dissolution or expiry of the House.

Adjournment

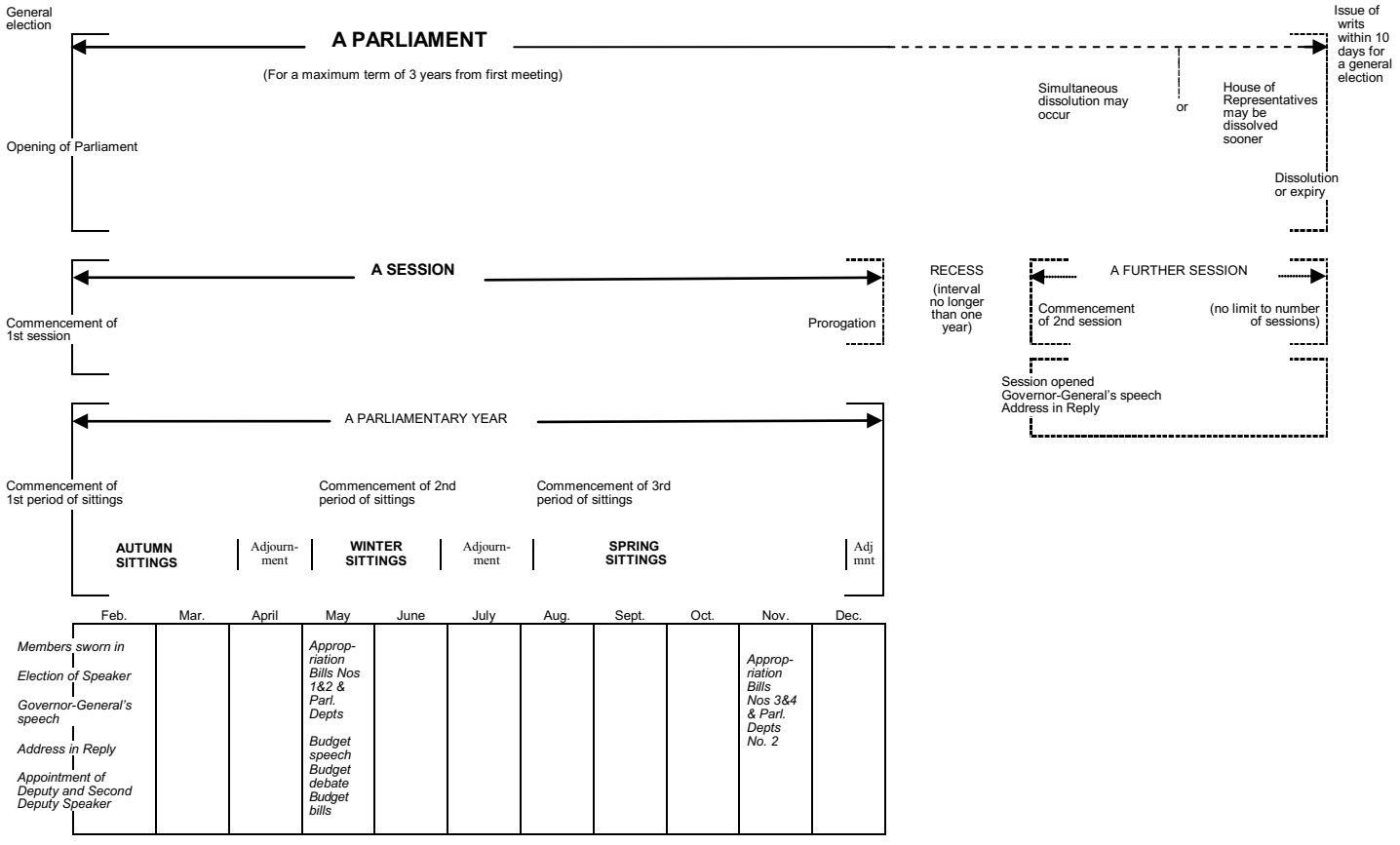
An adjournment is said to occur when the House stands adjourned, by its own resolution or in accordance with the standing orders, for any period of time. Thus the term covers the period between the end of one sitting day and the commencement of the next, the gap (usually of two weeks) between sitting weeks within a sitting period, and also the periods of time between the main sitting periods each year, which are technically not recesses, although they are often colloquially referred to as such.

Suspension of sitting

Sittings are suspended, that is, temporarily interrupted, with the Speaker or Member presiding leaving the Chair, for a variety of reasons.[7]

7 *See* Ch. on 'Order of business and the sitting day'.

The parliamentary calendar in perspective



This calendar is based on a December election and February opening, and on a May Budget. It assumes a prorogation (if occurring) and the commencement of a 2nd session at the end of the first year of the Parliament; in practice a single session has usually run for the life of a Parliament (i.e. up to three years).

A PARLIAMENT

Parliaments are numbered in arithmetical series, the 1st Parliament being from May 1901 to November 1903. The 45th Parliament commenced on 30 August 2016. Appendix 15 lists the significant dates of each Parliament since 1901.

The duration of a Parliament is directly related to the duration of the House of Representatives. Having met, pursuant to the Governor-General's proclamation, a Parliament continues until the House of Representatives expires by effluxion of time three years from the first meeting of the House, or until the House is sooner dissolved by the Governor-General.[8] The House is dissolved by proclamation of the Governor-General.

It is usual for a Parliament to be terminated by dissolution, and only one House of Representatives has expired by effluxion of time.[9] A dissolution may occur near to the three year expiry time or it may occur prematurely for political reasons.[10] On seven occasions (1914, 1951, 1974, 1975, 1983, 1987 and 2016) the premature termination of the House of Representatives (and hence the Parliament) has coincided with the dissolution of the Senate, that is, the House and the Senate were dissolved simultaneously.[11]

Summoning Parliament

The Constitution provides that Parliament must be summoned to meet not later than 30 days after the day appointed for the return of the writs.[12] The day for the new Parliament to assemble is fixed by the Governor-General by proclamation. The day fixed may be before the day by which writs are to be returned.

In the proclamation summoning Parliament to meet after a general election the constitutional authority, which provides that the Governor-General may appoint such times for holding the sessions of the Parliament as the Governor-General thinks fit, is cited. The Governor-General appoints a day for the Parliament to assemble for the despatch of business, and Senators and Members are required to give their attendance at Parliament House, Canberra, at a time specified on that day. Usually, the day fixed is a Tuesday and in recent years the time fixed has been 10.30 a.m. The Clerk of the House writes to all Members, as soon as the gazettal of the proclamation is made, informing them of the proclamation and the date and time appointed for the assembly of the Parliament.[13]

8 Constitution, s. 28.

9 3rd Parliament (20.2.1907–19.2.1910), which is therefore the longest—*see* p. 228.

10 The shortest lived Parliament was the 11th (6.2.1929–16.9.1929) which was dissolved after 7 months and 11 days. (*See* table 'Early dissolutions of the House of Representatives' in Ch. on 'The Parliament and the role of the House'.)

11 Constitution, s. 57—*see* Ch. on 'Double dissolutions and joint sittings' for details.

12 Constitution, s. 5. The day fixed for the return of writs for the general election of Members to the 27th Parliament was on or before 24 November 1969, Gazette, 82 (29.9.1969), which meant that the new Parliament had to be summoned to meet not later than 24 December 1969. The Parliament met on 25 November for only one sitting before the first session was prorogued on 23 February 1970.

13 The terms of the proclamation are published in the Gazette and are also reproduced in the Votes and Proceedings, e.g. VP 2016–18/1 (30.8.2016).

Proceedings on opening day

The proceedings on the meeting of a new Parliament are characterised by a combination of the traditional and ceremonial elements of parliamentary custom and practice which is reflected in part by the standing orders.

These standing orders[14] reflect two principles of parliamentary custom:

- that the House is not properly constituted until it has elected its Speaker, which is its first action as a House; and
- that the House does not proceed to the despatch of business until the Speaker has been presented to, and it has heard the speech of, the Governor-General.[15]

The Sovereign may declare in person the causes of the calling together of a new Parliament but this has not occurred to date (*but see* page 231).[16]

Welcoming ceremony

Opening proceedings of the 42nd Parliament in 2008 were preceded by a Welcome to Country ceremony in Members' Hall, led by an elder of the Indigenous people of the Canberra region. Since June 2010 the standing orders have provided for local Indigenous people to be invited to conduct a ceremony of welcome prior to Members assembling in the House of Representatives.[17] The ceremony of welcome for the 43rd Parliament took place in the forecourt, and for the 44th and 45th Parliaments in the Great Hall.

House assembles and Parliament opened

On the day appointed for the Parliament to assemble, the bells are rung for five minutes before the appointed time. Prior to the bells ceasing to ring, the Serjeant-at-Arms places the Mace below the Table, as the House at that stage has not elected a Speaker.

When the bells cease ringing, the Clerk of the House reads the proclamation summoning Parliament. Traditionally, the Usher of the Black Rod, having been directed by the Governor-General's Deputy (or the Senior Deputy where two Deputies have been appointed) to request the attendance of Members of the House in the Senate Chamber, is admitted and orally delivers the message from the Bar of the House. Members, led by party leaders, preceded by the Serjeant-at-Arms (without the Mace) and the Clerk, Deputy Clerk and a Clerk Assistant, proceed to the Senate Chamber where the Deputy addresses the Members of both Houses.[18] The following form of words was used at the opening of the 45th Parliament:

> His Excellency the Governor-General has appointed me as his Deputy to declare open the Parliament of the Commonwealth. The Clerk of the Senate will now read the instrument of appointment.[19]

After the instrument is read the Deputy declares the Parliament open.[20] The Deputy then informs the Members of both Houses that, after certain Senators[21] and Members have been sworn and the Members of the House have elected their Speaker, the

14 S.O. 4 determines the procedure on the meeting of a new Parliament; S.O.s 5–6 determine the procedure on opening day in relation to the Governor-General's speech.

15 H.R. Deb. (23.10.1934) 30–1; S.O. 4(i).

16 S.O. 9(a). This may also be carried out by the Administrator (S.O. 2), VP 1961/1 (7.3.1961); or Deputies of the Governor-General (S.O. 9(b)).

17 S.O. 4(a).

18 In 1976 Members of the opposition party did not attend the Senate Chamber, H.R. Deb. (19.2.1976) 166, 169–70.

19 S. Deb. (12.11.2013) 1.

20 Until 2004 the Deputy did not explicitly declare the Parliament open—the Deputy's address was in effect the declaration.

21 Normally Senators for the Australian Capital Territory and the Northern Territory, or Senators filling casual vacancies. In the case of the first meeting of Parliament following a simultaneous dissolution of both Houses it is also necessary for Senators to elect their President.

Governor-General will declare the causes of the calling together of the Parliament. The Deputy then retires and Members return to the House to await the arrival of the Deputy to administer the oath or affirmation.

Deputy appointed by Governor-General

The Deputy appointed by the Governor-General to declare open the Parliament is ordinarily a Justice of the High Court. It is usual for the Chief Justice to be appointed the Deputy. The Chief Justice (or other judge) is also authorised by the Governor-General to administer the oath or affirmation of allegiance to Members. A second judge[22] is given the necessary authority when a large number of Senators are to be sworn in, such as at the opening of Parliament following a double dissolution. Should only one judge be authorised to administer oaths/affirmations in such situations, Members of the House would have a lengthy wait while Senators were sworn in. The simultaneous swearing in of Senators and Members is also regarded as symbolic of the independence of the Houses.

Members sworn

On Members returning to the House and after an interval of some minutes, the judge, who is received standing, is escorted to the Speaker's Chair, and his or her authority from the Governor-General to administer the oath or affirmation is read by the Clerk. Returns to the writs for the general election[23] (including returns to writs for supplementary elections[24]), showing the Member elected for each electoral division, are presented by the Clerk.[25] For these purposes the names of Members shown on the writs, called by the Clerk and recorded in the Votes and Proceedings, are as given by Members on their nomination forms, so that, for example, sometimes an abbreviated first name is shown, or the name of a person who has married and changed her name since nomination will be shown as it was at the time of nomination. Members then come to the Table, in groups in the order in which they are called, to be sworn in. After making the oath or affirmation, and signing the oath or affirmation form, Members return to their seats.[26] When all Members present have been sworn in, the judge signs the attestation forms and retires, preceded by the Serjeant-at-Arms.

Members not sworn in at this stage may be sworn in later in the day's proceedings[27] or on a subsequent sitting day by the Speaker, who receives an authority from the Governor-General to administer the oath or affirmation. As the Constitution provides that every Member shall take and subscribe an oath or affirmation of allegiance before taking his seat,[28] a Member may take no part in the proceedings of the House until this occurs.[29]

22 The term 'Deputy' in such cases (although appearing in the Votes and Proceedings, e.g. VP 1987–90/3 (14.9.1987), VP 2016–18/2 (30.8.2016)) is technically a misnomer. In the past the judge commissioned to swear in Members has been described as 'Commissioner' (even when also appointed Deputy), e.g. VP 1950–51/3 (22.2.1950).

23 A proclamation by the Governor-General rectifying errors in the writs has also been presented, VP 1998–2001/3 (10.11.1998).

24 Necessary when a person who has nominated for a general election dies after nominations have closed and before polling day, VP 1973–74/4 (27.2.1973).

25 E.g. VP 2016–18/3–6 (30.8.2016).

26 *See* Ch. on 'Members', for further discussion and form of oath and affirmation.

27 E.g. VP 2008–10/26 (12.2.2008).

28 Constitution, s. 42. Members assembling (and sitting) in the Chamber prior to being sworn in are said to 'assume' their seats. They 'take' their seats after being sworn.

29 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 (4.8.1954). However, in similar circumstances returning Members re-elected have been permitted to 'assume' their seats immediately prior to being called to the Table to be sworn.

Election of Speaker

After Members have been sworn in, the Clerk of the House, acting as chair, informs the House that the next business is the election of Speaker. The Speaker is then elected in the manner prescribed by the standing orders,[30] following which the Serjeant-at-Arms places the Mace upon the Table and the party leaders offer their congratulations. The Prime Minister then informs the House of the time when the Governor-General will receive the Speaker—for example, 'immediately after the resumption of sitting at 2.30 p.m.'. The Speaker announces that the bells will ring for five minutes before the time of presentation so that Members may assemble in the Chamber and accompany the Speaker, when they may, if they so wish, be introduced to the Governor-General. The sitting is then suspended.

Presentation of Speaker to Governor-General

Members reassemble in the Chamber at the appointed time and the Speaker enters the Chamber, preceded by the Serjeant-at-Arms, and resumes the Chair. When it is made known to the Speaker that the Governor-General is ready, the Speaker states that he or she would be glad if Members would attend with him or her to wait upon the Governor-General.[31] The Speaker, preceded by the Serjeant-at-Arms (carrying the Mace which is covered in the presence of the Governor-General), accompanied by the Clerk, Deputy Clerk and a Clerk Assistant and followed by party leaders and Members, proceeds to meet the Governor-General.

On return to the House in procession, the Speaker formally reports his or her presentation to the Governor-General and lays on the Table the authority received from the Governor-General to administer the oath or affirmation of allegiance to Members.[32] Oaths or affirmations are then administered to any Members not already sworn in.[33] Unlike Members elected to the House at by-elections, Members sworn in at this stage are not escorted by sponsors.[34]

Governor-General's speech

In the meantime the sitting of the Senate, having earlier been suspended until such time as the Governor-General has appointed (usually 3 p.m.), resumes and the Governor-General is escorted by the Usher of the Black Rod to the Vice-Regal Chair on the dais in the Senate Chamber. Black Rod is then directed by the Governor-General to inform the Members of the House that their attendance is required in the Senate Chamber. Black Rod proceeds to the House of Representatives and, in keeping with tradition, knocks three times on the Chamber door. On recognising Black Rod the Serjeant-at-Arms informs the Speaker of Black Rod's presence. The Speaker directs that Black Rod be admitted and Black Rod then announces the Governor-General's message. The Speaker, preceded by the Serjeant-at-Arms (carrying the Mace which is left covered at the entrance to the Senate Chamber), accompanied by the Clerk, Deputy Clerk and a Clerk Assistant, and followed by party leaders and Members, proceeds to the Senate Chamber.[35] The

30 S.O. 11; e.g. VP 2016–18/6–7 (30.8.2016); *and see* Ch. on 'The Speaker, Deputy Speakers and officers'.

31 In 1976 Members of the opposition party did not attend the presentation, H.R. Deb. (19.2.1976) 166, 169–70; *see also* Ch. on 'The Speaker, Deputy Speakers and officers'.

32 The terms of the authority are published in the Votes and Proceedings, e.g. VP 2016–18/7 (30.8.2016).

33 E.g. VP 1978–80/7 (21.2.1978).

34 *See* Ch. on 'Members'.

35 In 1976 Members of the opposition party did not attend the Senate, H.R. Deb. (19.2.1976) 166, 169–70.

Governor-General invites the Speaker to be seated. Members, after bowing to the Governor-General, take seats in the Senate Chamber.

The Governor-General then declares the causes of the calling together of the Parliament. In this speech, termed the Governor-General's 'opening speech', the affairs of the nation are reviewed briefly and a forecast given of the Government's proposed program of legislation for the session. The speech is normally of about 30 minutes duration.[36] At the conclusion of the speech a copy is presented to the Speaker by the Governor-General's Official Secretary,[37] and an artillery salute is fired. The Governor-General retires from the Senate Chamber, after which the Speaker and Members return to the House in procession.

Formal business

There is a traditional practice in both Houses of the United Kingdom Parliament of reading a bill a first time before the Queen's Speech is reported, in order to assert the right of each House to deliberate without reference to the immediate cause of summons.[38] This practice has been adopted by the House of Representatives, the standing orders providing that 'Before the Governor-General's Speech is reported some formal business shall be transacted and the Prime Minister may announce his or her ministry'.[39] Business which has preceded the reporting of the speech also includes announcements by the Prime Minister of other government party appointments and by the leaders of the other parties informing the House of their party appointments. A non-contentious bill, known as the 'formal' bill or 'privilege' bill, is then presented, usually by the Prime Minister. The bill is read a first time and the second reading made an order of the day for the next sitting.[40] The order of the day is placed on the Notice Paper and nowadays remains at or near the bottom of the list of items of government business throughout the session, the bill lapsing at prorogation or dissolution.

There is no prescribed or traditional form or title for the 'privilege' bill.[41] In earlier times the 'privilege' bill has been passed into law,[42] although it was customary not to proceed beyond the first reading stage before consideration of the Governor-General's speech.[43] However, in recent times it has been the practice for the 'privilege' bill not to proceed beyond the first reading stage even after consideration of the Governor-General's speech. Although the 'privilege' bill is not proceeded with, its provisions may be incorporated in another bill introduced and passed later in the Parliament.[44]

The Procedure Committee has pointed out 'a fundamental flaw' in the practice of presenting the privilege bill, an item of government business, as an assertion of the House's independence from the executive arm of government. The committee

36 The opening speech for the 7th Parliament consisted of five lines mentioning only the need for the Houses to approve supply, VP 1917/5 (14.6.1917). The speech for the 27th Parliament consisted of four paragraphs, H.R. Deb. (25.11.1969) 18–19.

37 The text of the speech is incorporated in Hansard, e.g. H.R. Deb. (30.8.2016) 17–25.

38 *May*, 24th edn, p. 159. The practice is an expression of the House's independence of the Crown and the Executive Government.

39 S.O. 6(a). The practice has not been adopted by the Senate.

40 E.g. VP 2016–18/9 (30.8.2016).

41 In contrast to the House of Commons where the bill is by ancient custom the Outlawries Bill. *May*, 24th edn, p. 159.

42 The last occasion was in 1945.

43 H.R. Deb. (26.5.1909) 31.

44 E.g. provisions of the privilege bill of the 36th Parliament, the Parliamentary Presiding Officers Amendment Bill 1990, were included in the Parliamentary Presiding Officers Amendment Bill 1992. The privilege bill of the 42nd Parliament, the Amendments Incorporation Amendment Bill 2008, contained components of a bill to be introduced at a later date.

recommended that it be replaced by a motion, in the form of a resolution of commitment to the Australian people.[45] However, the recommendation has not been adopted.

Report of Governor-General's speech and Address in Reply Committee

The Speaker then formally reports the Governor-General's speech, after which a committee to prepare an Address in Reply to the speech is appointed on motion[46] usually moved by the Prime Minister. The motion names the Members to form the committee, which traditionally consists of the Prime Minister and two other Members of the government party or parties (usually backbench Members elected for the first time at the preceding general election, or with relatively short periods of service in the House).[47] The motion to appoint the committee is normally agreed to without debate. The committee presents a report in terms of the proposed Address in Reply later that day,[48] or, more usually, at the next sitting.[49]

The Address in Reply is a short resolution expressing loyalty to the Queen and thanks to the Governor-General (*see* page 235). In the United Kingdom House of Commons the Address in Reply was originally an answer, paragraph by paragraph, to the royal speech, prepared by a committee appointed for that purpose. However, the appointment of the committee was discontinued over a century ago. Current United Kingdom practice is that two Members are selected by the Government to move and second the Address, which is moved in the form of a short resolution expressing thanks to the Sovereign.[50]

At this point the formal and regular proceedings of the opening day have been completed and it is then customary for the sitting to be suspended until an appointed time, usually 5 p.m., in order that guests of the Parliament present for the occasion may be offered some light refreshment. Alternatively the House may adjourn until the next sitting.

Other business

If the House does not then adjourn, it is free to proceed to other business. However, the initiation of business generally requires that notice be given, and this limits the business that can be dealt with unless leave of the House is granted[51] or standing orders are suspended (there is no Notice Paper for the first day of sitting). Condolence motions or references to deaths of former Members or Senators or other persons have taken place,[52] after which the House may suspend or adjourn as a mark of respect.[53] The election of the Deputy Speaker and Second Deputy Speaker may be conducted,[54] a copy of an election petition has been presented,[55] committees have been appointed and members of

45 Standing Committee on Procedure, *Balancing tradition and progress: procedures for the opening of Parliament*, August 2001, pp. 16, 32, 45–6.

46 S.O. 6(c); e.g. VP 2016–18/9 (30.8.2016). No committee was appointed to prepare an Address in Reply following the opening of the 1st Session of the 7th Parliament on 14 June 1917, VP 1917/5 (14.6.1917).

47 The committee has consisted of four Members excluding the mover, VP 1909/6 (26.5.1909); two Members excluding the mover, VP 1912/5 (19.6.1912); and two Members, the Prime Minister (mover) and Leader of the Opposition, VP 1954/2 (15.2.1954). A Member has subsequently been discharged from the committee and another Member appointed in his place, VP 1976–77/21 (18.2.1976).

48 E.g. VP 1998–2001/13 (10.11.1998). A specific hour (3.30 p.m.) has been included in the resolution for the time of report, VP 1903/3 (26.5.1903).

49 E.g. VP 2016–18/56 (31.8.2016).

50 *May*, 24th edn, p. 160. The Procedure Committee has viewed the appointment of a committee to prepare the Address in Reply in the House of Representatives as redundant, noting that the House abandoned a similar redundant mechanism when it eliminated the Committee of Reasons in 1998. Standing Committee on Procedure, *Balancing tradition and progress—Procedures for the opening of Parliament.* p. 32.

51 E.g. VP 1967–68/11 (21.2.1967); VP 2008–10/11 (12.2.2008).

52 E.g. H.R. Deb. (12.2.2008) 33–61; H.R. Deb. (28.9.2010) 35–9; VP 2016–18/10–11 (30.8.2016).

53 E.g. VP 1943–44/8 (23.9.1943) (adjourn); VP 1967–68/10 (21.2.1967) (suspend); VP 2002–04/10 (12.2.2002) (adjourn).

54 E.g. VP 2016–18/10 (30.8.2016).

55 VP 2008–10/39 (12.2.2008).

committees nominated,[56] and sessional orders[57] or amendments to standing orders[58] agreed to. A program of sittings may be agreed to,[59] and statements made by indulgence on matters of importance.[60] Appropriation and supply bills have been introduced.[61] Although it is not a common practice, the ordinary order of business has been proceeded with, including the presentation of petitions,[62] questions without notice,[63] the presentation of documents,[64] and ministerial statements.[65] Notices have been given (they can be lodged with the Clerk at any time after the election of Speaker).

A motion of censure of the Government has been moved, following the suspension of standing orders.[66] On one occasion standing orders were suspended to enable steps to be taken to obtain supply and to pass a supply bill through all stages without delay. The supply bill was agreed to and returned from the Senate, without requests, that day.[67]

Proposed new arrangements for opening day

For proposals to change the arrangements for opening day *see* earlier editions (6th edition, pages 222–3).

Dissolution

The most common way for a Parliament to be terminated is by the dissolution of the House of Representatives, such dissolution being made by proclamation by the Governor-General.[68] On seven occasions the Parliament has been terminated by the simultaneous dissolution of the House of Representatives and the Senate[69] and one Parliament expired by effluxion of time (*see* page 228).

In the proclamation dissolving the House of Representatives the provision of section 5 of the Constitution, whereby the Governor-General may dissolve the House, is cited, and the House is dissolved (the date and time of dissolution is normally specified). Since 1993 the Parliament has been prorogued (*see* page 231) prior to the dissolution of the House. This may be done by separate proclamation[70] but sometimes the proclamation dissolving the House has also prorogued the Parliament.[71]

The proclamation is published in the Commonwealth Gazette and read from the front of Parliament House by the Official Secretary to the Governor-General immediately prior to the hour of dissolution.[72] This practice was adopted in 1963 following doubts being raised by the Attorney-General as to whether publication of the proclamation in the Gazette would be sufficient to proclaim it for the purposes of section 5 of the

56 VP 1969–70/12–18 (25.11.1969).
57 VP 1920–21/6 (26.2.1920).
58 VP 2008–10/11–26 (12.2.2008).
59 E.g. VP 2016–18/9 (30.8.2016).
60 E.g. H.R. Deb. (12.11.2013) 25–7.
61 VP 1993–96/14–16 (4.5.1993).
62 VP 1980–83/9–10 (25.11.1980).
63 VP 1967–68/10 (21.2.1967).
64 VP 1967–68/10 (21.2.1967).
65 VP 1964–66/11 (25.2.1964).
66 VP 1969–70/18 (25.11.1969).
67 VP 1913/7, 12 (9.7.1913).
68 Constitution, s. 5.
69 *See* Ch. on 'Double dissolutions and joint sittings'.
70 E.g. Gazette S204 (15.10.2007), Gazette S208 (17.10.2007).
71 E.g. Gazette S432 (31.8.1998), Gazette S421 (8.10.2001), Gazette S136 (19.7.2010).
72 The proclamation dissolving the 25th Parliament on 31 October 1966 was read by the Clerk of the House in the absence of the Official Secretary. A member of the Governor-General's staff is considered the appropriate person to do so. A copy of the proclamation is also included in the bound volumes of the Votes and Proceedings, e.g. VP 2004–07/2176–7.

Constitution. It was considered that section 17(j) of the *Acts Interpretation Act 1901* which makes publication in the Gazette sufficient publication for the purposes of Commonwealth Acts, was not applicable as the proclamation is not made under a Commonwealth Act.[73]

The modern practice is that the Official Secretary reads the proclamation from the front of Parliament House, accompanied by the Clerk of the House, the Deputy Clerk and the Serjeant-at-Arms. The House staff then return to the entrance to the House of Representatives Chamber and the Clerk of the House posts a copy of the proclamation at the door of the Chamber. An artillery salute may be fired at the precise time of dissolution to mark the end of the Parliament.

Staff of the Senate have attended the reading of the proclamation by the Official Secretary of the Governor-General on the occasion of a simultaneous dissolution of both Houses. They have not attended when the Parliament is prorogued and only the House is being dissolved. At the 2016 simultaneous dissolution, only the Clerks of both Houses attended the reading of the proclamation.

Effects of dissolution

Dissolution has the following effects on the House of Representatives:[74]

- all proceedings pending come to an end—that is, all business on the Notice Paper lapses;
- Members of the House cease to be Members, although those who renominate continue to receive their allowances up to and including the day prior to the day fixed for the election;[75] Ministers, however, continue in office[76] and the Speaker is deemed to be Speaker for administrative purposes until a Speaker is chosen in the next Parliament;[77]
- any sessional or other such non-ongoing orders or resolutions cease to have effect;
- all House committees, and all joint committees (whether established by Act or resolution), cease to exist.

It is considered desirable for bills passed during a session to be assented to before the dissolution proclamation is made.[78]

If a notice of a motion to disallow a legislative instrument lapses because of the dissolution, the legislative instrument concerned is deemed to be presented to the House on the first sitting day after the dissolution,[79] so allowing full opportunity for the notice of disallowance to be given again in the next Parliament. If there is no disallowance notice the count of 15 sitting days within which one may be given continues into the next Parliament.

73 Advice of Attorney-General's Department, dated 12 September 1969 (referring to 1963).

74 *And see* Ch. on 'Motions' in respect of resolutions and orders of the House.

75 *Parliamentary Allowances Act 1952*, s. 5A(2).

76 Ministers can hold office for up to three months without being a Member or Senator (Constitution, s. 64). However, a caretaker convention applies—*see* Ch on 'House, Government and Opposition'.

77 *Parliamentary Presiding Officers Act 1965*.

78 Advice of Attorney-General's Department, dated 29 October 1963 (expressing opinion of Attorney-General). The *Commonwealth Debt Conversion Act (No. 2) 1931* was assented to on 15 January 1932, the House of Representatives having been dissolved on 26 November 1931, VP 1929–31/951–3 (26.11.1931). *See also* opinion by Solicitor-General, dated 9 October 1984, which expressed the view that the Constitution does not require that bills be assented to prior to prorogation or dissolution; and the New Zealand case *Simpson v. Attorney-General* NZLR (1954) 271–86.

79 *Legislation Act 2003*, s. 42(3). Equivalent provision applies if the Parliament expires or is prorogued, for full details *see* 'Delegated legislation' in Ch. on 'Legislation'.

Constitutionally, it is the House of Representatives that is regularly dissolved for electoral purposes and not the Senate. The Senate's existence (coupled with its electoral system) is continuous in character, except in the circumstances of the simultaneous dissolution of both Houses.

There would be considerable constitutional and legal doubt in respect of any proposal for the meeting of the Senate after the dissolution of the House unless specific statutory or constitutional provision was made. The Senate has not met after a dissolution of the House has occurred but has passed a resolution which, according to *Odgers*, in effect asserts its right to do.[80] (*See also* 'Effects of prorogation' at page 234).

Expiry

Section 28 of the Constitution provides that a House of Representatives may 'continue for three years from the first meeting of the House, and no longer'. This requirement is interpreted as meaning that a Parliament not earlier dissolved expires at midnight on the day before the third anniversary of the first day of sitting.[81] The 3rd Parliament has been the only one to expire by effluxion of time. This Parliament first met on 20 February 1907 and the final meeting was on 8 December 1909, after which Parliament was prorogued until 26 January 1910. On 18 January 1910 Parliament was further prorogued until 19 February 1910 at which time it expired. Writs for the election of Members of the House of Representatives were then issued on 28 February 1910. Expiry affects the House of Representatives (and the Senate) in the same way as a dissolution.

Prolongation

On 2 March 1917, during World War I, the House agreed to a motion moved by the Prime Minister which requested the Imperial (United Kingdom) Government to legislate for the extension of the duration of the then House of Representatives until six months after the final declaration of peace, or until 8 October 1918, whichever was the shorter period, and to enable the next elections for the Senate to be held at the same time as the next general election for the House of Representatives.[82] A motion in the same terms lapsed in the Senate and the proposition did not proceed further.[83] Suggestions were made during World War II that the life of the 15th Parliament be extended. In answering a question in the House on the proposition, the Prime Minister stated that, in his opinion, 'the extension of the life of this Parliament would, in certain circumstances, require an authorising act of the Parliament of the United Kingdom . . . [but that] the Government has not yet thought it necessary to consider it'.[84] With the enactment of the respective Australia Acts by the Commonwealth[85] and United Kingdom Parliaments, such a proposed method of prolonging the life of a Parliament is not possible.

A SESSION

The life of a Parliament may be divided into sessions. A session of Parliament commences upon the first sitting day following a general election and terminates only

80 J 1983–84/1276 (22.10.1984), *and see Odgers*, 14th edn, pp. 199, 606–8.
81 Interpretation supported by opinion of Acting Solicitor-General, dated 14 May 1992.
82 VP 1914–17/576 (2.3.1917).
83 S. Deb. (1.3.1917) 10758–9.
84 H.R. Deb. (21.6.1940) 135.
85 *Australia Act 1986*, s. 1.

when the Parliament is prorogued or the House of Representatives is dissolved or expires by effluxion of time. The Constitution provides that there shall be a session of the Parliament once at least in every year, so that 12 months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.[86] In practice this has not been interpreted to mean that a session cannot continue beyond a year, but to mean that there shall not be an interval of 12 months between consecutive sittings.

When a session is terminated by a prorogation (not being followed by a dissolution), after an indeterminate interval[87] a further session commences pursuant to a proclamation by the Governor-General.

The duration of a Parliament therefore may be composed of more than one session and constitutionally there is no limit to the number of sessions which may occur. In practical terms the number of sessions would be unlikely to exceed three in any one Parliament. Likewise there is no constitutional limit to the duration of a session within a Parliament.

It is now the usual practice for Parliaments (the 44th Parliament excepted) to consist of one session only. However, in the past the number and duration of sessions have varied considerably:

- two sessions have contained only one sitting day; the shortest sessions have been:
  - 1st Session 7th Parliament from 14 June 1917 to 16 June 1917; the only sitting was 14 June;
  - 1st Session 27th Parliament from 25 November 1969 to 23 February 1970; the only sitting was 25–26 November;
- a number of sessions have continued into their third year, although not being the only session in the Parliament, for example:
  - 2nd Session 7th Parliament, 1917–18–19,
  - 1st Session 15th Parliament, 1937–38–39–40,
  - 2nd Session 27th Parliament, 1970–71–72,
  - 1st Session 44th Parliament, 2013–14–15–16;
- the longest session has been the 1st (and only) Session of the 39th Parliament, from 10 November 1998 to 8 October 2001;
- the 3rd Parliament was unique in having four sessions.

In 1957, on the opening day of the 2nd Session of the 22nd Parliament, the Leader of the House announced that in future there would be a regular session of the Parliament each year with a formal opening in the Autumn preceded by a prorogation of the previous session.[88] However, this system of annual sessions fell into disuse after the 1st (and only) Session of the 24th Parliament had continued for over 20 months.

Opening of a new session

Procedure for the opening day of a new session of the Parliament following a prorogation is similar to that for the opening day of a new Parliament except that, as the session is a continuation of and not the commencement of a Parliament, no Deputies are

86 Constitution, s. 6. A list of sessions is included at Appendix 15.

87 The average interval between prorogation and opening of a new session since 1961 has been10 days in respect of five prorogations. The longest recess was of nine months and six days between the 1st and 2nd Sessions of the 4th Parliament. The shortest recess was of three days between the 1st and 2nd Sessions of the 44th Parliament.

88 H.R. Deb. (19.3.1957) 19–22.

appointed by the Governor-General to open Parliament, only those Members elected at by-elections since the last meeting are sworn in, and the Speaker, Deputy Speaker and Second Deputy Speaker continue in office without re-election.

For the 2nd Session of the 44th Parliament the House met at 9.30 a.m. On earlier occasions the House usually met for a new session at 3 p.m. When the bells cease ringing, the Serjeant-at-Arms announces the Speaker, who takes the Chair as the Mace is placed on the Table.[89] The Clerk of the House reads the proclamation summoning Parliament,[90] and Members then rise in their places while the Speaker reads the acknowledgement of country and prayers. The House then awaits the arrival of the Usher of the Black Rod with a message advising that the Governor-General desires the attendance of Members to hear the speech, traditionally in the Senate Chamber.

While awaiting the arrival of Black Rod, the House may attend to other business, which has included announcements such as the death of a Member and the issue of and return to the writ to fill the vacancy,[91] the Speaker's receipt of an authority to administer the oath or affirmation of allegiance to Members,[92] and changes in staff of the House.[93] The opportunity has also been taken to swear in Members.[94]

Under the traditional arrangement, upon receipt of the message summoning Members to attend in the Senate, the Speaker, accompanied by Members and House staff, has proceeded to the Senate Chamber.[95] On return to the House, and before the Speaker has reported the Governor-General's speech, business transacted has included announcements regarding ministerial arrangements,[96] the resignation of Members and the issue of writs,[97] and the receipt of the Speaker's authority to administer the oath or affirmation of allegiance to Members.[98] It has also included presentation of documents,[99] the moving of condolence motions[100] and, on each occasion, the presentation of a 'privilege' bill (*see* page 224).

Following the report of the speech and the appointment of the Address in Reply Committee, the House has generally adjourned. Alternatively, condolence motions may then be moved and the sitting may be suspended or the House adjourned as a mark of respect. If the House is not adjourned, or if the sitting is resumed, the House may proceed with the ordinary order of business of a day's sitting. On the opening day of the 2nd Session of the 44th Parliament the House continued to meet to deal with business that it wished to be considered by the Senate.[101] On one occasion the Address in Reply was brought up and agreed to, and Customs Tariff Proposals were then introduced.[102] On two

89 This practice was adopted in 1977, VP 1977/1 (8.3.1977). Previously the Speaker took a chair near the ministerial bench and the Mace was placed under the Table until the proclamation was read, VP 1974/1 (28.2.1974).

90 Initial proceedings are governed by S.O. 8. On the opening day of the 2nd Session of the 18th Parliament, the Clerk having informed the House of the unavoidable absence of the Speaker, the Chairman of Committees carried out the Speaker's duties, VP 1948–49/2 (1.9.1948).

91 VP 1968–69/2 (12.3.1968).

92 VP 1961/2 (7.3.1961).

93 VP 1957–58/1 (19.3.1957).

94 VP 1970–72/1 (3.3.1970).

95 From this point the procedure is the same as for the meeting of a new Parliament; S.O.s 5–7 apply. The Governor-General's speech at the opening of the 2nd Session of the 2nd Parliament consisted of only 12 lines dealing with the Government's intention to submit electoral redistribution proposals to the Parliament, VP 1905/2 (28.6.1905).

96 VP 1968–69/2–3 (12.3.1968).

97 VP 1960–61/2 (8.3.1960).

98 VP 1960–61/2 (8.3.1960).

99 VP 1909/2 (26.5.1909).

100 VP 1958/2 (25.2.1958).

101 VP 2016/7–23 (18.4.2016).

102 VP 1954/5–11 (15.2.1954).

other occasions standing orders were suspended to enable a supply bill to pass through all stages without delay.[103]

'Opening' by the Sovereign

FIRST SESSION

On the meeting of a new Parliament and hence the 1st Session, the actual 'opening' of Parliament is carried out by the Governor-General's Deputy. The Governor-General or the Sovereign may open Parliament in person but neither has done so.

However the 1st Parliament, which assembled at the Exhibition Building in Melbourne on 9 May 1901 pursuant to proclamation of the Governor-General,[104] was opened by His Royal Highness the Duke of Cornwall and York in the name of, and on behalf of, His Majesty King Edward VII.[105] Some doubt has been expressed as to the legality of a person other than the Sovereign or the Governor-General (or the Governor-General's Deputy) opening Parliament.[106] Members took and subscribed the oath required by law before the Governor-General and then retired to the Legislative Assembly Chamber at Parliament House to choose a Speaker.[107] The next day the Governor-General delivered a speech to Members of both Houses on the opening of the 1st Session of the 1st Parliament.[108]

NEW SESSION

A new session of the Parliament is opened only in the sense of declaring the causes of the calling together of the Parliament constituted by the 'opening' speech.

Her Majesty Queen Elizabeth II has, on three occasions, made the speech to both Houses of Parliament at the commencement of a new session; the 3rd Session of the 20th Parliament on 15 February 1954, and the 2nd Sessions of the 28th Parliament on 28 February 1974 and the 30th Parliament on 8 March 1977. Prior to the first occasion the House adopted a new standing order 'to meet the requirements occasioned by the proposed Opening of the Parliament by Her Majesty the Queen'.[109] The standing order now provides that if the Queen attends a meeting to declare the causes for the calling together of Parliament, references in Chapter 2 of the standing orders to the Governor-General shall be read as references to Her Majesty.[110] The proceedings on the opening day when the speech is made by the Queen are the same as those for the normal meeting for a new session.

Prorogation

The constitutional and parliamentary nature of prorogation is described in the following passage from *May*:

103 VP 1911/4, 8 (5.9.1911); the supply bill was agreed to and returned from the Senate, without requests, that day; VP 1917–19/5 (11.7.1917).
104 VP 1901–02/1 (9.5.1901).
105 VP 1901–02/7–8 (9.5.1901). The Duke, commissioned by Letters Patent, was referred to during proceedings as His Majesty's High Commissioner.
106 *See Odgers*, 6th edn, p. 233.
107 VP 1901–02/8–9 (9.5.1901).
108 VP 1901–02/11–13 (10.5.1901).
109 VP 1953–54/66 (2.12.1953); *see also Royal Powers Act 1953*.
110 S.O. 9(a).

> The prorogation of Parliament is a prerogative act of the Crown. Just as Parliament can commence its deliberations only at the time appointed by the Queen, so it cannot continue them any longer than she pleases.[111]

Prorogation terminates a session of Parliament; a dissolution terminates a Parliament and thus there must be a general election. The decision only to prorogue the Parliament therefore does not attach to it the same significance as a decision to dissolve the House of Representatives. There is little guidance afforded by the constitutional provisions or conventions as to when or how often prorogation should take place or any established criteria regarding the taking of a decision to prorogue. While section 5 of the Constitution gives the Governor-General authority to prorogue the Parliament, the decision to prorogue follows the advice of the Government of the day.

Parliaments have often consisted of only one session without a prorogation intervening, and this is now usual. A prorogation does not necessarily precede a dissolution as is commonly the case in the United Kingdom, although this has been the recent practice. Between 1928 and 1990 Parliaments were not expressly prorogued prior to dissolution and the holding of a general election. Since then the Parliament has been prorogued before the dissolution of the House of Representatives.[112]

Parliament is prorogued by the Governor-General who may do so by proclamation or otherwise.[113] On 10 October 1902 the Acting Governor-General, in a speech to Members of both Houses in the Senate Chamber, prorogued the 1st Parliament until 14 November 1902[114] and it was then prorogued a further five times by proclamation before it met for the 2nd Session on 26 May 1903. The 2nd Session, in turn, was prorogued by the Governor-General in person on 22 October 1903.[115] The 2nd Parliament was prorogued in the same manner three times[116] and on each occasion there were further prorogations by proclamation.[117]

Since 1906 all prorogations have been made by proclamation published in the Commonwealth Gazette and, since 1977, read publicly at the front of Parliament House by the Official Secretary to the Governor-General, consistent with the practice with a proclamation of dissolution. The proclamations proroguing the 36th and 37th Parliaments (1993 and 1996) were read at the front of Parliament House immediately before the proclamations dissolving the House of Representatives. Since then, when prorogation and dissolution have occurred on the same day,[118] the Parliament has been prorogued and the House dissolved by a single proclamation.

The proclamation proroguing Parliament may be expressed as having immediate effect or as having effect at a later date, and may set down the day for the next meeting and summon all Senators and Members to be present at an hour appointed on that day.[119]

111 *May*, 24th edn, p. 145. In the United Kingdom a session normally begins in early November and continues until late in the following October, *May*, 24th edn, p. 327.

112 E.g. Gazette S40 (8.2.1993).

113 Constitution, s. 5.

114 VP 1901–02/565 (10.2.1902).

115 VP 1903/187 (22.10.1903).

116 VP 1904/268 (15.12.1904); VP 1905/229 (21.12.1905); VP 1906/180 (12.10.1906).

117 *See also* Appendix 15.

118 In the 41st Parliament, the proclamations proroguing the Parliament and dissolving the House of Representatives, signed on 14 October, were read at Parliament House on 15 October and 17 October 2007, respectively.

119 E.g. the proclamation of 21 March 2016 prorogued the Parliament from 5 p.m. on Friday 15 April until 9.30 a.m. on Monday 18 April; appointed Monday 18 April at 9.30 a.m. as the day and time for the Parliament to meet at Parliament House to hold a session of the Parliament; and summoned all Senators and Members to meet at that day, time and place. Gazette C2016G00380 (21.3.2016). A copy of the proclamation is included in the bound volumes of the Votes and Proceedings, e.g. VP 1976–77/625.

The history of the Australian Parliament in respect of prorogations is marked by inconsistency. In 1957 the Leader of the House stated that in future annual sessions of Parliament would be held,[120] and this practice continued until the end of 1961. Subsequently, the division of a Parliament into more than one session by means of regular prorogations appears to have been regarded as either inconvenient or unnecessary.

There are few occasions when advantage can be perceived in the act of prorogation in the modern context. This is illustrated by the fact that there have been only five prorogations since 1961, apart from prorogation immediately prior to the end of a Parliament, and four of these were for a particular reason:

- the 1968 prorogation followed the death of Prime Minister Holt and the formation of a new Ministry;
- the 1970 prorogation was caused by a general election being held on 25 October 1969, resulting in the Parliament being forced to meet, under section 5 of the Constitution, prior to Christmas; the Parliament met for one sitting day but the Government found that it was not able to have the Governor-General announce fully its proposed program at that time; the program was announced at the opening of the second session; and
- the Parliament was prorogued in 1974 and 1977 to enable the Queen to open the new session in each case.

In relation to the prorogation and recall of Parliament for a new session in 2016, the advice from the Prime Minister to the Governor-General was that the reason for recalling the Parliament was to enable it to give full and timely consideration to important parcels of legislation.[121]

From the point of view of the House and its Members, prorogation has the disadvantage of disrupting the business before the House and its committees and causes some additional workload in the new session. From the point of view of committees of the Parliament, the recent practice of not proroguing, except for special reasons, is desirable in order that they may continue their operations with minimal disruption while the House is not sitting. When prorogation is found to be necessary, it is to the advantage of committees if this is done as near as possible to the proposed meeting in the new session. This reduces the 'recess' time and so minimises the difficulties referred to earlier of committees not being able to meet during periods of recess. The recess involved need only be very short, for example, over a weekend.

There is also the argument, however, that regular, perhaps annual, prorogations could offer advantages, such as:

- a regular statement of government policies and intentions would be put before the House;
- there would be a regular opportunity for Members to debate the Government's statement; and
- there would be a regular and comprehensive clearing of the Notice Paper.

120 VP 1957–58/6 (19.3.1957); H.R. Deb. (19.3.1957) 19.

121 Letter from the Prime Minister to the Governor-General dated 21.3.2016.

Effects of prorogation

Prorogation of the Parliament has the following effects on the House of Representatives:[122]

- all proceedings come to an end—that is, all business on the Notice Paper lapses;[123] provision exists for the resumption in a new session, under certain conditions, of proceedings on bills which lapse by reason of prorogation;[124]
- any sessional orders cease to have effect;
- resolutions or orders of the House cease to have any force unless they are deemed to continue in a new session by virtue of being passed as standing orders or pursuant to statute, or unless there are explicit provisions to give them continuing force, or unless it is implicitly understood that they are to have ongoing effect;
- the House may not meet until the date nominated in the proclamation;
- bills agreed to by both Houses during a session are in practice assented to prior to the signing of the prorogation proclamation; however, bills have been assented to after Parliament has been prorogued;[125]
- the procedure in relation to a notice of motion for the disallowance of a legislative instrument applies to prorogation as to dissolution (*see* page 227);
- committees of the House and joint committees appointed by standing order or by resolution for the life of the Parliament continue in existence but may not meet and transact business following prorogation; committees whose tenure is on a sessional basis cease to exist; statutory committees continue in existence and may meet and transact business if, as is the normal practice, the Act under which they are appointed so provides; the Senate has taken a different approach to that of the House in relation to the effect of prorogation on its committees, and Senate standing orders and resolutions of appointment give most Senate committees the power to meet during recess; (the effect of prorogation on committees is discussed in more detail in the Chapter on 'Parliamentary committees').

Writs for the election of Members to fill vacancies may be issued by the Speaker, and a Member may resign his or her seat to the Speaker during a recess in accordance with the Constitution. The Speaker continues to hold all the powers and authority possessed by virtue of the office.

PROROGATION AND MEETINGS OF THE TWO HOUSES

It has been accepted that prorogation of the Parliament prevents either House from meeting. *Odgers* cites Professor Howard's view that the Senate could in fact meet to transact its own business. However, the Senate has not done this nor asserted its right to

122 *And see* Chs. on 'Parliamentary privilege' in respect of freedom from arrest in civil matters and 'Motions' in respect to resolutions and orders of the House.

123 A list of business lapsed at prorogation or dissolution is included in the bound volumes of Votes and Proceedings, e.g. VP 1998–2001/2702–26 (Appendix 4).While House practice is that business lapses immediately on prorogation, Senate practice is that business lapses after prorogation, at midnight on the day before the next sitting, *Odgers*, 14th edn, p. 625. In the House there is no Notice Paper for the first sitting of the new session; Notice Paper no.1 of the new session is issued for the second sitting of the session. In 2016 a Senate Notice Paper was issued for the first sitting, with numbering continuing from the last Notice Paper of the previous session. The Votes and Proceedings start the new session at no. 1, page 1, while Senate Journals continue numbering from the previous session. The same occurs with the numbering of messages—House messages restart at no. 1, Senate messages continue the numbering.

124 S.O. 174. *See* 'Lapsed bills' in Ch. on 'Legislation'.

125 The 4th Parliament having been prorogued on 29 November 1910, 11 bills were assented to on 1 December 1910, VP 1910/261–2 (25.11.1910). The view has been taken by the Solicitor-General that bills can be assented to after prorogation (Opinion No. 3 of 1952, dated 23 May 1952, *also* Opinion dated 9 October 1984 referred to at p. 227). This view has since been upheld by the High Court, *Attorney General (WA) v. Marquet* [2003] HCA 67.

do so.[126] The practice of proroguing the Parliament immediately prior to dissolution of the House has been said to be aimed at removing the possibility of the Senate sitting following the dissolution of the House.[127] At the conclusion of the 40th Parliament Prime Minister Howard indicated that the timing of the prorogation and dissolution (announced on 29 August for 31 August) was to allow the Senate to sit in the intervening period.[128]

The opening of a new session after a prorogation causes both Houses to meet. The prorogation of 15 April 2016 enabled a meeting of both Houses on the opening of the new session on 18 April, to deal in a timely way with legislation that the Government considered to be important.[129]

THE ADDRESS IN REPLY

Presentation to House

When the order of the day for the presentation of the report of the Address in Reply Committee is read,[130] either on the opening day or at a later sitting, the Speaker calls one of the two private Members of the committee to present the Address[131] and it is then read by the Clerk.[132] The most recent wording of the Address is:

> May it please Your Excellency:
>
> We, the House of Representatives of the Commonwealth of Australia, in Parliament assembled, desire to express our loyalty to our Most Gracious Sovereign, and to thank Your Excellency for the speech which you have been pleased to address to Parliament.[133]

The Member who presents the Address then moves that it be agreed to and at the conclusion of the mover's speech the Speaker calls on the other private Member to second the motion. The debate on the motion may continue immediately or be adjourned to the next sitting. The Address has been agreed to on the day it was presented to the House,[134] but debate usually extends over several sitting days.

Following the opening of the 1st Session of the 7th Parliament in 1917 and the report of the Governor-General's speech, the standing orders in connection with the Address in Reply were suspended and no Address was presented.[135]

In 1913, following a short speech by the Governor-General which dealt with the necessity to obtain supply and mentioned the fact that his present advisers had 'not yet been able to mature the proposals placed by them before the Electors',[136] the House considered a statement of ministerial policy together with the proposed Address in

126 *Odgers*, 14th edn, pp. 198, 608, 614.

127 *See* Denis O'Brien, 'Federal elections—the strange case of the two proclamations', *Public Law Review*, June 1993, v.4 (2) : 81–83.

128 *See* Transcript of Prime Minister's press conference at Parliament House, 29 August 2004, and S. Deb. (30.8.2004). The delay enabled the establishment of a foreshadowed Senate select committee to inquire into certain matters involving the Prime Minister, which held a public hearing after the prorogation. The House did not sit again before dissolution.

129 Letter from the Prime Minister to the Governor-General dated 21.3.2016.

130 The committee is, atypically, ordered to report at a specified time.

131 E.g. VP 2010–13/58 (29.9.2010). The Prime Minister has presented the Address and another Member moved that it be agreed to, VP 1922/11 (29.6.1922), VP 1925/9 (10.6.1925). The Prime Minister has presented the Address and moved that it be agreed to, VP 1944–45/6 (17.7.1944), VP 1954/5 (15.2.1954) (opening by the Queen).

132 In 1945 the Address was varied to include a welcome to the Duke of Gloucester, recently appointed as Governor-General, VP 1945–46/12 (22.2.1945) and there have been variations when Queen Elizabeth II opened sessions, VP 1954/5 (15.2.1954), VP 1974/36 (7.3.1974) and VP 1977/22–3 (16.3.1977). In 1974 the Address was varied to take cognisance of the fact that a new Governor-General had been appointed after the session commenced, VP 1974–75/36 (16.7.1974).

133 VP 2016–18/56 (31.8.2016).

134 VP 1969–70/11 (25.11.1969) (on this occasion there was no debate); VP 1954/5 (15.2.1954).

135 VP 1917/5 (14.7.1917).

136 VP 1913/5 (9.7.1913).

Reply.[137] In 1961, following the opening of the 3rd Session of the 23rd Parliament, a committee was appointed to prepare an Address in Reply to the speech by the Administrator.[138]

Debate

Standing order 76 exempts debate on the Address from the rule of relevance. The scope of debate is unlimited in subject matter and usually ranges over a wide field of public affairs, including government policy and administration. Members may not discuss a specific motion of which notice has been given,[139] and a specific allusion to any matter which is an order of the day should be avoided.

Each Member may speak for 20 minutes to the motion 'That the Address be agreed to'.[140] A Member who has already spoken to the main question may speak again, for 15 minutes only, to an amendment subsequently moved, but may not move or second such an amendment. The Address in Reply debate is traditionally an opportunity for newly elected Members to make their first speeches to the House. Debate on the Address has been closured.[141] In recent Parliaments the order of the day for the resumption of debate on the Address has generally been referred to the Federation Chamber.[142]

Amendments

Amendments to the Address may be moved in the form of an addition of words to the Address. An amendment would usually be moved by an opposition Member. It is usually critical of the Government and, having regard to its wording, could be considered by the Government to be an amendment of censure for the purposes of standing order 48. In this case the amendment must be disposed of before any business, other than formal business, is proceeded with.[143] After an amendment has been disposed of, a further amendment may be moved to add or insert words. There have been up to four amendments moved to a proposed Address.[144]

In 1970 an amendment expressing a censure of the Government was not accepted as a censure amendment for the purposes of standing order 48 (then S.O. 110). The House then, on the motion of the Leader of the Opposition, agreed to the suspension of standing orders to enable debate on the proposed Address and the amendment to have precedence until disposed of.[145] In 1905 an amendment to the Address, which added the words 'but are of opinion that practical measures should be proceeded with', was agreed to and the Address, as amended, presented to the Governor-General. Following the House's agreement to the amendment the Government resigned and a new Ministry was formed.[146]

137 VP 1913/13 (19.8.1913).
138 VP 1961/5–6 (7.3.1961). Presented to the Administrator, VP 1961/36 (23.3.1961).
139 H.R. Deb. (6.7.1922) 238.
140 S.O. 1.
141 VP 1951–53/29–30 (22.6.1951); VP 1998–2001/214 (9.12.1998).
142 E.g. VP 2008–10/170 (then Main Committee).
143 NP 3 (14.8.1913) 9, NP 3 (2.11.1934) 5; on these occasions the proposed Address and amendments were given precedence even though prior to 1965 the standing order did not make provision for a Minister to accept an *amendment* as a censure or no confidence amendment. In other cases, precedence was accorded although no precedence note appeared on the Notice Paper, H.R. Deb. (21.3.1957) 81, H.R. Deb. (27.2.1962) 271.
144 VP 1923–24/13–18 (2, 7, and 8.3.1923).
145 H.R. Deb. (18.3.1970) 557; VP 1970–72/48 (18.3.1970).
146 VP 1905/7–12 (30.6.1905, 5.7.1905, 7.7.1905).

Presentation to Governor-General

The Address in Reply, as agreed to by the House, is presented to the Governor-General by the Speaker,[147] accompanied by any Members who may think fit to attend.[148] The Speaker ascertains when the Governor-General is able to receive the Address and announces the time of presentation to the House,[149] either immediately the Address is agreed to[150] or at a later time.[151]

The sitting having been suspended (if necessary[152]), the Speaker, the mover and seconder of the Address,[153] the Clerk, the Deputy Clerk and the Serjeant-at-Arms,[154] together with those Members wishing to attend, proceed to Government House for the presentation. There, after a short presentation statement, the Speaker reads the Address and presents it to the Governor-General, who replies. The Speaker then presents the mover and seconder, the other Members and the Clerk and other staff to the Governor-General.

The Speaker[155] in reporting back to the House informs it of the Governor-General's reply[156] which has taken the following form:

> Mr/Madam Speaker
>
> Thank you for your Address in Reply.
>
> It will be my pleasure and my duty to convey to Her Majesty The Queen the message of loyalty from the House of Representatives, to which the Address gives expression.[157]

Her Majesty the Queen's reply may be announced at a later date.[158]

An Address has been presented to a Governor-General not being the one who made the opening speech.[159] The presentation has been delayed by over three months[160] and deferred due to the absence of the Governor-General.[161]

In July 1907 the Governor-General, through a senior Minister, inquired from Sydney whether it was necessary for him to go to Melbourne (where the Parliament was then situated) to receive the Address in Reply. Speaker Holder replied that the Address must be presented to the Governor-General personally by the Speaker with Members, which practically required it to take place in Melbourne. The Address was presented in Melbourne.[162] However in 1909 the Address was forwarded to the Governor-General who was absent in Queensland.[163]

147 In the absence of the Speaker the Address is presented by the Deputy Speaker, VP 1948–49/35 (15.9.1948), VP 1956–57/64 (20.3.1956). In recent years the presentation has been made at Government House, although on occasion in the past it has taken place in the Parliamentary Library, VP 1917–19/18 (20.7.1917); and elsewhere, VP 1903/32 (18.6.1903), VP 1906/43 (6.7.1906).

148 S.O. 7(a). In 1976 opposition Members did not attend the presentation.

149 Since 1937 the Speaker has ascertained the time for presentation and announced it to the House. Prior to this it was often done by the Prime Minister.

150 E.g. VP 1998–2001/216 (9.12.1998).

151 E.g. VP 2008–10/359 (5.6.2008).

152 Address presented on non-sitting day, VP 1958/23 (13.3.1958), 25 (18.3.1958).

153 Due to the respective absences of the seconder in 1943 and the mover in 1946, other Members took their places.

154 Bearing the Mace (which is left covered in the foyer of Government House). The Mace was not borne in 1943; *see also* Ch. on 'The Speaker, Deputy Speakers and officers'.

155 Or Deputy Speaker, VP 1977/43 (24.3.1977).

156 This was not done in 1910.

157 E.g. VP 2016–18/763 (23.5.2017).

158 VP 1973–74/73 (3.4.1973).

159 VP 1974–75/172 (18.9.1974).

160 VP 1910/21 (13.7.1910)—agreed to; 193 (27.10.1910)—presented.

161 VP 1922/59 (2.8.1922), 138 (21.9.1922), 145 (22.9.1922).

162 VP 1907–08/35 (31.7.1907).

163 VP 1909/89 (25.8.1909).

The Address in Reply to the Governor-General's speech on the opening of the 1st Session of the 3rd Parliament was agreed to on 21 February 1907[164] and the Parliament was prorogued on 22 February 1907. There is no record of the Address having been presented.

The order of the day relating to the Address in Reply to the speech of Her Majesty the Queen on the commencement of the 2nd Session of the 28th Parliament lapsed upon the simultaneous dissolution of the Senate and the House of Representatives on 11 April 1974.[165] Similarly, the order of the day relating to the Address in Reply of the 2nd Session of the 44th Parliament lapsed at the simultaneous dissolution of 9 May 2016.

In 1950 Speaker Cameron was questioned on his conduct at the presentation of the Address. It was alleged that the Governor-General having invited those present to accept some minor form of hospitality, 'Mr Speaker then abruptly left Government House in his robes of office, accompanied by officers of the House, but left behind the other members of the House'.[166]

SITTING AND NON-SITTING PERIODS

Statistics

Since 1901 the House has sat, on average, 67 days each year spread over 20 sitting weeks for a total of 627 hours per year.[167] The figures for each year since 1901 are given at Appendix 16.

Sitting periods

The usual practice since 1994 has been to have three sitting periods each year, extending from February to April (Autumn sittings), May to June (Budget sittings) and August to December (Spring sittings). Historically there were two sitting periods each year: the Autumn sittings, usually between February and June, and the Budget sittings, usually between August and December. The earlier calendar, with an August Budget, was reverted to in 1996 to accommodate that year's general election and change of government.

Pattern of sittings

Unless otherwise ordered, the House meets each year in accordance with the program of sittings for that year agreed to by the House.[168] Within a sitting period the House generally sits to a four weekly cycle of meetings, meeting on Mondays to Thursdays for two weeks followed by two weeks without sittings. This pattern is generally kept to, although sometimes either the sitting or non-sitting parts of the cycle may be of one week only.

164 VP 1907/30 (21.2.1907).

165 VP 1974/115 (bound volume, appendix 4).

166 H.R. Deb. (28.3.1950) 1207; VP 1950–51/47–8 (30.3.1950), H.R. Deb. (30.3.1950) 1415–22. The incident was later the subject of a motion of censure of the Speaker, VP 1950–51/55–6 (20.4.1950), H.R. Deb. (20.4.1950) 1691–1702; *see also* Ch. on 'The Speaker, Deputy Speakers and officers'.

167 1901 to 2016. These figures include suspensions of sitting for meal breaks, etc.

168 S.O. 29, e.g. VP 2016–18/11 (30.8.2016). Prior to 2008 the program was announced by the Government without being proposed to the House for agreement.

History of sitting pattern

Sitting patterns have varied considerably over the years. Before 1950 continuous sitting patterns were usual and it was not uncommon for the House to sit for three months or longer without a break of more than two or three days. The most usual sitting week was of four days (Tuesday to Friday) although in some years three-day weeks (usually Wednesday to Friday) predominated. In 1950 the three-day, Tuesday to Thursday, sitting week was instituted, and in the following period the practice of the House rising periodically for short breaks became established. Such breaks increased in frequency until a four-week cycle of three sitting weeks and one non-sitting week became the norm. This pattern continued to operate, with occasional experimental changes (sometimes for extended periods), until 1984. At that time sessional orders came into effect which provided generally for a four-week cycle of two sitting weeks followed by two non-sitting weeks, with the House sitting four days per week from Tuesday to Friday in the first week and from Monday to Thursday in the second week.[169]

Sessional orders in effect from September 1987 provided for Tuesday to Thursday sittings in the first sitting week of each cycle as it was considered that the Friday was in some ways a non-productive sitting day.[170] In 1994 the days of sitting were altered to Monday to Thursday in each sitting week. The change resulted from a recommendation of the Procedure Committee, which saw advantages in providing consistency of timetabling as well as an additional sitting day per four week cycle.[171] In 2008 the sitting program initially agreed provided for sittings from Monday to Friday, with Friday proceedings to be restricted to committee and private Members' business; however the proposal met with some resistance from Members and the timetable reverted to Monday to Thursday after a single Friday sitting.[172]

Days and hours of meeting

The Houses scheduled hours of meeting specified by standing order 29 are discussed in detail in the following chapter on 'Order of business and the sitting day'.

When the House is sitting its meeting times can be changed by a motion moved by a Minister without notice to set the next meeting of the House,[173] or by a Minister on notice to set a future meeting or meetings.[174] When the House is not sitting the Speaker may set an alternative day or hour for the next meeting, and must notify each Member of any change.[175]

A motion for the alteration of the day of next meeting may provide that the House not meet on a day laid down in the standing orders,[176] or meet on a day other than those laid down in the standing orders. It is not uncommon for the days and hours of meeting to be changed, especially towards the end of a sitting period when the business in hand may require an extra sitting day (or two). Such additional sittings have occurred on a Saturday,

169 VP 1983–84/468–70 (8.12.83)—to take effect from first sitting day of 1984.

170 VP 1987–90/89–90 (24.9.1987). The sessional orders were made standing orders in November 1992.

171 Standing Committee on Procedure, *About time: Bills, questions and working hours*. PP 194 (1993).

172 Debate of proposal H.R. Deb. (12.2.2008) 61–149. The Friday sitting was twice suspended because of disorder, H.R. Deb. (22.2.2008) 1243, 1284.

173 S.O. 30(a), e.g. VP 2008–10/838 (4.2.2009), 937 (16.3.2009).

174 S.O. 30(b).

175 S.O. 30(c). *See also* comment on actions by the Speaker under this provision under 'Discretionary powers' in the Ch. on 'The Speaker, Deputy Speaker and officers'.

176 E.g. VP 1978–80/1418 (23.4.1980).

although this is infrequent.[177] The House has varied its hour of meeting to enable Members to attend luncheons for visiting dignitaries,[178] or public functions such as Remembrance Day,[179] and to take account of the running of the Melbourne Cup[180] (in these matters any action taken by the Speaker is at the request of the Government). In the past the House has frequently changed its hours of meeting by means of sessional order.

On one occasion when a sitting continued beyond the hour of meeting set down for the following sitting, it was considered that a motion for fixing the next meeting of the House for later the same day could not be moved unless by leave of the House or by the suspension of standing (or sessional) orders,[181] but it is not clear whether this view would be taken if the situation arose again.

An amendment to a motion to alter the day or hour of next meeting may be moved[182] but the terms of the amendment must be confined to the next sitting day,[183] (that is, be relevant to the motion). An amendment proposing to substitute the normal day and hour of next meeting for the one proposed would be inadmissible as the same end may be achieved by voting against the motion.

Debate on a motion to alter the next sitting day must be confined to that question,[184] although in 1940 the Speaker allowed discussion to encompass the possible closing of Parliament as Members, in giving reasons for opposing the motion, feared that it presaged such an event.[185]

Two motions altering the hour of next meeting have been agreed to on the one day, the second superseding the first.[186] A motion to alter the hour of next meeting must be moved during the sitting prior to the sitting day in respect of which the hour of meeting is to be changed. However, such a motion in respect of a day not being the next sitting day has been moved by leave.[187]

Special adjournments

A special adjournment motion must be agreed to on those occasions when the House adjourns other than in accordance with the program of sittings for the year agreed by the House pursuant to standing order 29. Typically, the motion has taken one of the following forms:[188]

> That the House, at its rising, adjourn until [day, date, time], unless otherwise called together by the Speaker, or, in the event of the Speaker being unavailable, by the Deputy Speaker.[189]
>
> That the House, at its rising, adjourn until a date and hour to be fixed by the Speaker, . . . which time of meeting shall be notified to each Member.[190]

177 The additional sitting day on Saturday 18 December 1993 was the first Saturday sitting since 1929 (VP 1993–96/651). Since then the House has met on Saturday 6 December 1997, VP 1996–98/2682 (4.12.1997); and Saturday 26 June 2004, VP 2002–04/1758 (24.6.2004)—both of these were resumptions of the previous day's sitting.

178 E.g. VP 2002–04/623 (9.12.2002).

179 VP 1976–77/454 (10.11.1976).

180 H.R. Deb. (25.10.1979) 2490–1, VP 1978–80/1140 (25.10.1979).

181 H.R. Deb. (13.5.1914) 983–7, VP 1914/42 (13.5.1914). The Prime Minister submitted that at any time during Wednesday's sitting (which had continued beyond the hour of meeting for Thursday) the House could otherwise order as to the next day's sitting. The Chair took the view that this was so only if done before the appointed time of the next sitting.

182 VP 1974–75/540 (6.3.1975).

183 H.R. Deb. (31.1.1902) 9559.

184 H.R. Deb. (15.11.1918) 7929.

185 H.R. Deb. (24.5.1940) 1261–73.

186 VP 1945–46/345, 351 (9.4.1946).

187 VP 1901–02/265 (6.12.1901).

188 The precedents cited date from before the House adopted the practice of agreeing to an annual program of sittings.

189 E.g. VP 1996–98/3199 (2.7.1998). Most commonly used for a long adjournment.

190 E.g. VP 1987–90/1682 (30.11.1989). Sometimes used for a long adjournment.

> That the House, at its rising, adjourn until [day, date, time], unless the Speaker or, in the event of the Speaker being unavailable, the Deputy Speaker, fixes an alternative day or hour of meeting.[191]

If the House adjourns to a date and hour to be fixed, a Gazette notice is published when the day of meeting is determined, indicating the date and hour of meeting.[192]

In a case of the House having adjourned to a date and hour to be fixed,[193] the Speaker, at the request of the Government, notified Members and placed a public notice in the Gazette of the date and hour of meeting,[194] and, subsequently, the Government made a further request to change the hour of meeting. Members were notified of the change and a further Gazette notice was issued, revoking the original notice.[195]

In a case of the House having adjourned to a fixed date and hour,[196] the Government has requested the Speaker to change the hour of meeting to, for example, '2.45 p.m. or such time thereafter as Mr Speaker may take the Chair'.[197] Members are notified of the altered time.

Special reassemblies of the House

On eight occasions the House has reassembled on a day other than that specified in the special adjournment motion. On 20 June 1940 the House, having adjourned until 2 July 1940, reassembled to consider national security legislation.[198] On 9 July 1975 the House reassembled to discuss the Government's overseas loan negotiations, having adjourned until 19 August 1975.[199] On 21 and 22 January 1991 the House reassembled to consider the Gulf War, having adjourned until 12 February 1991.[200] On the other occasions the House reassembled prior to the date specified in the special adjournment motion to consider Senate amendments and requests to bills.[201] On each of these occasions the adjournment resolution enabled the Speaker to set an earlier day of meeting. Standing order 30 now gives standing authorisation for the Speaker when the House is not sitting to set an alternative day or hour for the next meeting, but such action would only be taken at the request of the Government.

On other occasions the House, having adjourned until a date and hour to be fixed by the Speaker, has reassembled prematurely for special reasons. These occasions have been the presentation of an Address to the Prince of Wales,[202] consideration of a constitutional problem relating to the suggested marriage of King Edward VIII,[203] consideration of the declaration of a state of war with Japan, Finland, Hungary and Rumania,[204] consideration of the conflict in Korea[205] and consideration of Senate amendments to bills.[206]

191 E.g. VP 1998–2001/1414 (13.4.2000). Used for short adjournment.
192 E.g. Gazette S136 (7.7.1975).
193 VP 1968–69/482 (29.5.1969).
194 Gazette 61 (18.7.1969) 4301.
195 Gazette 69 (7.8.1969) 4789. The change was made because of departure arrangements for the Duke and Duchess of Kent.
196 VP 1978–80/746 (5.4.1979).
197 E.g. VP 1978–80/747 (1.5.1979) (to allow Members to attend a luncheon for the Prime Minister of Korea); VP 2004–07/1777 (20.3.2007) (to allow Members to attend a funeral).
198 VP 1940/97 (30.5.1940), 99 (20.6.1940).
199 VP 1974–75/811 (5.6.1975); H.R. Deb. (9.7.1975) 3556, VP 1974–75/813 (9.7.1975).
200 VP 1990–92/478 (21.12.1990), 481 (21.1.1991).
201 VP 1985–87/334 (23.5.1985), 337 (31.5.1985); VP 1987–90/987 (1.12.1988), 989 (21.12.1988); VP 1987–90/1320 (1.6.1989), 1323 (15.6.1989); VP 1990–92/109 (17.5.1990), 111 (31.5.1990); VP 1990–92/1231, 1249 (28.11.1991), 1251 (19.12.1991).
202 VP 1920–21/187 (27.5.1920).
203 VP 1934–37/801 (9.12.1936); H.R. Deb. (9.12.1936) 2884.
204 VP 1940–43/267 (16.12.1941); H.R. Deb. (16.12.1941) 1068.
205 VP 1950–51/177 (6.7.1950); H.R. Deb. (6.7.1950) 4836.
206 E.g. VP 1959–60/314 (3.12.1959); VP 1974–75/143–9 (23.8.1974), H.R. Deb. (23.8.1974) 1126; VP 1987–90/1682 (30.11.1989), 1695 (21.12.1989).

On 7 February 1942 the Speaker notified Members that the House would meet on 11 March 1942. On 13 February a telegram was sent to all Members changing the date of meeting to 20 February, on which day the House met and went into a secret joint meeting with the Senate to discuss the current war situation.[207]

On 31 May 1972 the House adjourned until a date and hour to be fixed and all Members were advised on 12 July that the House would meet on 15 August. Because of a dispute in the oil industry, the Government requested the Speaker to put all Members on 'provisional notice' for a meeting on 4 August. All Members were advised on 2 August confirming the meeting and, after settlement of the dispute, further advice was sent on 3 August informing Members that the meeting was not to be held.

A special adjournment motion may specify more than one date—for example, 'That the House: (1) at its rising, adjourn until 2 January 1992 . . . and (2) at its rising on 2 January, adjourn until Tuesday, 25 February 1992 . . .'.[208]

207 VP 1940–43/275 (20.2.1942).

208 VP 1990–92/1231 (28.11.1991) (the one day meeting was for the occasion of an address to both Houses by the President of the United States of America).

8

Order of business and the sitting day

This chapter outlines the proceedings on a normal sitting day, from the meeting of the House to adjournment, under the ordinary order of business provided for in standing order 34. It also details the many interventions which can occur under specific standing orders and by way of tactical moves. The chapter also encompasses the division procedures and quorum provisions, which often play a significant part in the daily routine of the House.

SITTINGS

Definition

A sitting means the period commencing with the meeting of the House and concluding at the adjournment of the House.[1] A sitting commences when the Speaker takes the Chair.[2] If there is no quorum present at that time and the Speaker is compelled to adjourn the House in accordance with standing order 57, a sitting of the House has taken place in the terms of this definition. The only occasion of such a sitting was on 19 September 1913.[3]

The term 'sitting day' is not defined by the standing orders. However, the practice of the House is that a sitting day is a day on which the House commences a sitting following an adjournment, and continues until a motion for its adjournment is carried. In other words, a sitting day is taken to mean a day on which the House meets to begin a sitting and not any day on which the House sits. Thus a sitting day may continue for one or more calendar days.

Even where one sitting continues over two or more full days, for example, the sitting that commenced on Wednesday, 6 December 1933 and continued on the Thursday and Friday without adjournment, there would be only one sitting day. It is important to note in this context that, as a Notice Paper is only issued for each new sitting and as a notice of motion only becomes effective when it appears on the Notice Paper, a notice of motion to disallow a regulation, for example, which is given on the first day of a three day sitting, would not be effective until the next Notice Paper is issued.

Where two sittings of the House occur on one day 'this could only be regarded as one sitting day; there would be two sittings but one could hardly say that there were two sitting days'.[4]

The term 'sitting day' has special legal significance because of statutory requirements for the tabling of delegated legislation within a specified number of sitting days of being made, and in relation to the number of sitting days within which a notice of motion may be given for the purpose of disallowing delegated legislation and the number of sitting days within which such a notice of motion must be disposed of by the House.[5] Many

1 S.O. 2.
2 Or when the Clerk announces the absence of the Speaker, VP 1920–21/537 (25.5.1921).
3 VP 1913/63 (19.9.1913)—the record shows that the House met and was declared adjourned after 5 minutes.
4 Advice of Attorney-General's Department, dated 24 April 1970.
5 For more details *see* Ch. on 'Legislation'.

statutes also require a Minister to table a report or other document within a certain number of sitting days of its receipt.[6] There is no statutory definition of what constitutes a sitting day for these purposes.[7]

Two sittings commencing on the one day

On two occasions the House has commenced and concluded two sittings within the one day. The first occasion was on 11 April 1935 when leave was refused at the first sitting to allow a motion to be moved to grant leave of absence to all Members. Notice of such a motion was then given and following the alteration of the day of next meeting the House was adjourned until 5 p.m. A new Notice Paper was issued and, at the next sitting, the motion was moved, pursuant to notice.[8] Such a motion can now be moved without notice.

On the second occasion, on 2 September 1942, the House met at 3 p.m. and agreed to a motion of condolence in respect of the death of the Duke of Kent. Following the alteration of the day of next meeting, the House adjourned as a mark of respect until 7.30 p.m.[9]

There have been occasions when the House has adjourned after a lengthy sitting, only to meet again shortly afterwards but in a new sitting day. For example, the House met at 11.50 a.m. on Monday, 24 May 1965, and the sitting continued until 4.32 a.m. on Wednesday, 26 May. The next sitting commenced at 5 a.m. that day. The purpose of the new sitting was to enable new business to be taken.[10]

Length of sittings

The shortest sitting of the House was on 14 March 1928 when the House adjourned one minute after it met to enable Members to attend functions in honour of the eminent aviator, Captain Hinkler.[11] On 24 October 2002 the House adjourned 2 minutes after it met, to enable Members to attend a national memorial service in the Great Hall for the victims of terrorist attacks in Bali.[12]

The longest sitting of the House was from 11 a.m. on Friday, 18 January 1918 until 6.22 p.m. on Friday, 25 January 1918, a period of 175 hours 22 minutes. This period, however, included a suspension of the sitting from 3.09 a.m. on 19 January until 3 p.m. on 25 January.[13] In a sitting of the House that lasted from 2.30 p.m. on Thursday, 16 November 1905 until 12.05 p.m. on Monday, 20 November 1905 (the sitting was suspended over the Sunday) the House sat for a continuous period of 57 hours 30 minutes prior to the suspension at midnight on the Saturday.[14]

On the occasion of one lengthy sitting Hansard staff were discharged during the adjournment debate and Members forwarded precis of their remarks for inclusion in

6 *See* Ch. on 'Documents'.

7 *Odgers*, 14th edn, p. 202, notes in relation to a sitting of the Senate extending over more than one day, departments responsible for forwarding delegated legislation for tabling have been advised that to avoid any doubts they should assume that the days to which sittings are suspended are separate sitting days for the purposes of statutory tabling requirements.

8 VP 1934–37/253–7 (11.4.1935); NP 38 (11.4.1935); H.R. Deb. (11.4.1935) 1270–1.

9 VP 1940–43/377, 379 (2.9.1942).

10 VP 1964–66/325–38 (24.5.1965), 339 (26.5.1965); NP 91 (26.5.1965); *see also* VP 1937/49–55 (28–29.6.1937); H.R. Deb. (28–29.6.1937) 637; H.R. Deb. (29.6.1937) 674; NP 7 (29.6.1937).

11 VP 1926–28/509 (14.3.1928); H.R. Deb. (14.3.1928) 3791. A sitting of nil duration was recorded on the only occasion the House has adjourned because of a lack of quorum at the time of meeting, VP 1913/63 (19.9.1913)—*see* page 271.

12 VP 2002–04/535 (24.10.2002).

13 VP 1917–19/169–72 (18.1.1918).

14 VP 1905/167–70 (16.11.1905).

Hansard.[15] Modern practice allowing proceedings to be recorded would mean that such action would no longer be necessary.

Joint sittings

The Constitution provides for a joint sitting of members of both Houses for the resolution of disagreements between the Houses over legislation if such disagreements persist following a double dissolution—*see* Chapter on 'Double dissolutions and joint sittings'. The Commonwealth Electoral Act provides for a joint sitting of members of both Houses to choose a person to fill certain casual vacancies in places of Senators for Territories other than the Australian Capital Territory and the Northern Territory[16]—*see* Chapter on 'Elections and the electoral system'.

Joint meetings

On several occasions 'conferences', or alternatively 'joint meetings' (as used on these occasions the terms would appear effectively synonymous[17]), of all members of both Houses have been proposed. A meeting of this kind (as distinct from a joint sitting—*see above*) is not provided for in the standing orders or the Constitution but would not be prevented should both Houses agree and determine the procedure to be followed.

On 22 September 1903 the Prime Minister moved that a 'conference' be held of all members of both Houses to consider the selection of a site for the seat of Government, and that the Senate be requested to concur with the resolution. The motion was agreed to, after amendment, on 23 September.[18] On 30 September the Senate resolved not to concur with the House's resolution[19] and the proposal was not further proceeded with.

On three other occasions proposals for a conference or joint meeting of members of both Houses have been put forward, in each case on the subject of the site for a new and permanent Parliament House. On 28 May 1969 the Leader of the Opposition in the Senate moved that a 'conference' of both Houses be convened to express a point of view on the site of the new and permanent Parliament House.[20] The motion was debated and negatived by the Senate on 29 May.[21] On 6 May 1971 a similar motion was again moved and agreed to by the Senate.[22] The message from the Senate requesting consideration by the House of the Senate's resolution was received by the House on 7 May[23] but was never debated. On 23 August 1973 a motion was moved in the House proposing a joint meeting of both Houses to determine the site of the new and permanent Parliament House.[24] On 24 October the House agreed to the motion which was transmitted to the Senate.[25] The House received a message from the Senate not agreeing with the proposal on 20 November 1973.[26]

15 H.R. Deb. (6–8.12.1933) 5898.

16 Should any such Territories be represented in the Senate. The provision previously applied in relation to the ACT—joint sittings to select Senators for the ACT were held on 5 May 1981, J 1980–81/227 (5.5.1981) and 16 February 1988, J 1987–90/477–8 (16.2.1988).

17 For conferences of delegates representing the two Houses to resolve disagreements over legislation *see* Ch. on 'Senate amendments and requests'.

18 VP 1903/141–2 (22.9.1903), 146 (23.9.1903).

19 J 1903/189 (30.9.1903).

20 J 1968–69/490 (28.5.1969).

21 J 1968–69/495–6 (29.5.1969).

22 J 1970–72/574–5 (6.5.1971).

23 VP 1970–72/631 (6.5.1971).

24 VP 1973–74/289–90 (23.8.1973).

25 VP 1973–74/476 (24.10.1973).

26 VP 1973–74/545 (20.11.1973). *Odgers* notes Senate concerns that in conferences or joint meetings of this kind to resolve a matter in dispute, because of the disparity in numbers between the two Houses, the Senate could be over-ridden, and that such proceedings would compromise the authority and independence of the Senate, *Odgers*, 6th edn, p. 897.

On 14 May 1931 the Prime Minister made a statement to the House suggesting a 'conference' of all Members of Parliament to consider Australia's economic and financial problems.[27] His suggestion was that such a conference last for a week during which there would be 'a general frank discussion, devoid of party feeling'. Some days later the Leader of the Opposition made a statement in which he opposed such a conference[28] and the proposal was not further proceeded with.

On 9 May 2001 the House met with the Senate at the Royal Exhibition Building in Melbourne to mark the centenary of the first meetings of the Houses of the Commonwealth Parliament in 1901. At the end of the common proceedings the two Houses were adjourned separately by their respective Presiding Officers.[29]

Addresses to both Houses by foreign heads of state

The Parliament has adopted the practice of assembling to hear addresses from foreign heads of state or government.[30] This development has parallels to the practice of the United States Congress of receiving addresses from foreign leaders and dignitaries at a joint meeting of Congress.[31]

The initial practice on such occasions was that the House and the Senate would meet (concurrently rather than in joint session) in the House of Representatives Chamber to hear the address. The Senate met in the House Chamber at the House's invitation; having agreed that the Speaker would preside and that the procedures of the House would apply so far as they were applicable.[32]

However, at the close of the joint meeting on 23 October 2003, two Senators who had caused disruption to proceedings and who had refused to leave the House when ordered were named and suspended 'from the service of the House' for 24 hours for defying the Chair.[33] Following this incident the Senate endorsed the view of its Procedure Committee that in future such occasions should be conducted as sittings of the House to which Senators were invited.[34] The House Procedure Committee made a recommendation to the same effect.[35] Since then the practice has been that the visiting dignitary has addressed a sitting of the House, which Senators have attended as guests.

Secret sittings and meetings

During wartime the House has conducted a portion of a sitting in secret and has also held secret meetings and joint secret meetings with the Senate. These meetings are not regarded as sittings of the House. For the joint meetings a regulation under the National

27 VP 1929–31/621 (14.5.1931); H.R. Deb. (14.5.1931) 1935.

28 H.R. Deb. (21.5.1931) 2179.

29 VP 1998–2001/2259–60 (9.5.2001).

30 Joint meetings: President G. Bush, USA, 2 Jan. 1992 (VP 1990–92/1305, J 1990–92/1995); President W. Clinton, USA, 20 Nov. 1996 (VP 1996–98/841, J 1996–98/1058); President G. W. Bush, USA, 23 Oct. 2003 (VP 2002–04/1275, J 2002–04/2597); President Hu Jintao, China, 24 Oct. 2003 (VP 2002–04/1279, J 2002–04/2599). Sittings of House, Senators invited as guests: Prime Minister T. Blair, UK, 27 Mar. 2006 (VP 2004–07/1015); Prime Minister S. Harper, Canada, 11 Sep. 2007 (VP 2004–07/2093); President S. B. Yudhoyono, Indonesia, 10 Mar. 2010 (VP 2008–10/1674); Prime Minister J. Key, New Zealand, 20 June 2011 (VP 2010–13/663); President B. Obama, USA, 17 Nov. 2011 (VP 2010–13/1057); Prime Minister Lee Hsien Loong, Singapore, 12 Oct. 2016 (VP 2016–18/199).

31 The first occasion in 1992 reciprocated the address of Prime Minister Hawke to a joint meeting of Congress on 23 June 1988. The US practice is that the two houses of Congress, by resolution or by unanimous consent, declare themselves in recess for a joint gathering in the House Chamber.

32 VP 1990–92/1220–1 (27.11.1991), 1233 (28.11.1991); VP 1996–98/702 (17.10.1996), 742 (30.10.1996), 792 (6.11.1996), 806 (7.11.1996); VP 2002–04/1213–5 (8.10.2003), 1244 (13.10.2003).

33 Thus preventing their attendance at the joint meeting the following day. VP 2002–04/1276 (23.10.2003); J 2002–04/2597 (23.10.2003).

34 J 2002–04/3377–8 (11.5.2004). Senate Procedure Committee, *Joint meetings to receive addresses by foreign heads of state*, December 2003. *See also* Senate Committee of Privileges, *Joint meeting of the Senate and the House of Representatives on 23 and 24 October 2003*, April 2004; and *Odgers*, 14th edn, p. 184.

35 Standing Committee on Procedure, *Arrangements for joint meetings with the Senate,* June 2004.

Security Act was gazetted setting out the conditions of secrecy of any such meetings convened by a specific resolution agreed to by both Houses.[36]

While the estimates for the Department of Defence were being discussed in the Committee of Supply on the morning of 13 December 1940, notice was taken of the presence of strangers[37] who were then ordered to withdraw. The estimates were then discussed in secret and the recording of debates suspended from 12.32 a.m. until 3.30 a.m.[38] On two occasions in 1941 strangers were ordered to withdraw and the sitting suspended so that the House could meet in secret.[39] On such occasions Senators present were not regarded as strangers.

Joint secret meetings were held with the Senate on 20 February, 3 and 4 September and 8 October 1942. The meetings were held in the House of Representatives Chamber, the first during the suspension of a sitting, the others following the adjournment of the House.[40] Certain departmental staff were permitted to be present and the Serjeant-at-Arms remained in the Chamber. During World War I a secret meeting took place informally in the Senate Club Room where Members and Senators were asked to attend by the Prime Minister.

Suspension of sittings

A sitting is suspended by the Speaker leaving the Chair, usually after a direct or indirect declaration of the will of the House, for example to allow a meal break to be taken (*see* page 249). A suspension of a sitting can occur pursuant to standing orders, pursuant to a resolution of the House, or in accordance with accepted practice.

Pursuant to standing orders

The standing orders make provision for the suspension of a sitting in the following circumstances.

ELECTION OF SPEAKER AND DEPUTIES

If a special ballot for the election of Speaker, Deputy Speaker or Second Deputy Speaker is inconclusive because of an equality of votes and the equality continues, the sitting is suspended for 30 minutes.[41] No such case has ever occurred.

Once the Speaker has taken the Chair on being elected and has been congratulated, the Prime Minister or another Minister informs the House of the time that the Governor-General will receive the Members of the House and the Speaker[42] and the sitting is suspended until that time. The sitting was not formally suspended following the election of Speaker Rosevear in 1946 as the Governor-General received the new Speaker immediately.[43]

MEETING OF A NEW PARLIAMENT

After the Speaker has presented himself or herself to the Governor-General and reported that fact to the House, the standing orders provide that a Minister shall then inform the House of the time that the Governor-General will declare the causes of the calling of the Parliament together (the 'opening speech') and the House may then

36 National Security (Supplementary) Regulations, SR 78 of 1942.
37 In current standing orders referred to as 'visitors'.
38 VP 1940–43/72 (12.12.1940); H.R. Deb. (12–13.12.1940) 1054.
39 VP 1940–43/123 (29.5.1941), 166 (20.8.1941).
40 VP 1940–43/275 (20.2.1942), 393 (3.9.1942), 441 (8.10.1942). The meeting of 4 September was a continuation of that of 3 September.
41 S.O. 11(l).
42 S.O. 4(h); *and see* Ch. on 'The parliamentary calendar'.
43 VP 1946–48/5 (6.11.1946).

suspend its sitting until that time.[44] The contemporary practice of the House is that there is no suspension of the sitting at this point, as Members are summoned to hear the opening speech shortly after the presentation.

GRAVE DISORDER

In the case of grave disorder arising in the House, the Speaker may adjourn the House without any question being put,[45] or suspend the sitting until a time to be named.[46] Sittings have been suspended in these circumstances for a period as short as 15 minutes,[47] until the next day,[48] and until the ringing of the bells.[49] On one occasion the Mace, then normally left in the Chamber during the suspension of a sitting, was removed by the Serjeant-at-Arms at the direction of the Speaker.[50] On three occasions sittings have been suspended for short periods following grave disorder in the galleries.[51]

LACK OF QUORUM

Standing order 57 provides that, if it has been established that a quorum of Members is not present but the Speaker is satisfied that there is likely to be a quorum within a reasonable time, the Speaker may state the time at which he or she will resume the Chair. The sitting is then suspended until the Speaker resumes the Chair (*see* page 272).

Pursuant to resolution of the House

The House has agreed to a motion, moved pursuant to notice, to suspend the next day's sitting for a stated period.[52]

The sessional orders relating to the meeting of legislation committees adopted in 1978 required that, unless otherwise ordered, legislation committees would meet during a suspension of the sitting of the House arranged for that purpose.[53] The only occasion that a sitting was suspended for this purpose was on 27 September 1978. On all other occasions the committees were authorised to meet during the sittings of the House.

Practice of the House

The practice has been that, in cases not provided for by resolution of the House or by the standing orders, sittings are suspended with the concurrence of the House. Exceptions have been when the Chair has suspended a sitting for the duration of power failures or because of a fault in the loud speaker system.[54]

On three occasions the action of the Chair in suspending a sitting, without ascertaining the wish of Members, has been questioned. On two of these occasions, a motion critical of the Chair's action was rejected by the House. In 1912 the Chair acknowledged responsibility for curtailing the normal luncheon suspension by 15 minutes. A motion that the action of the Chair was a breach of the privileges of Members was negatived.[55] In 1917 the action of the Speaker in suspending a sitting without calling on business on the Notice Paper and without ascertaining the wish of the House was

44 S.O. 4(j); *and see* Ch. on 'The parliamentary calendar'.
45 E.g. VP 1985–87/1273 (23.10.1986).
46 S.O. 95.
47 VP 1917–19/453 (4.7.1919).
48 VP 1954–55/184 (3.5.1955).
49 VP 1970–72/76 (8.4.1970).
50 H.R. Deb. (3.5.1955) 362; VP 1954–55/184 (3.5.1955). Current practice is for the Mace to be left in the Chamber during a short suspension and removed during an overnight suspension.
51 VP 1970–72/209 (11.6.1970), 691–2 (7.9.1971); VP 2016–18/419 (30.11.2016).
52 VP 1909/135 (28.9.1909).
53 VP 1978–80/323 (8.6.1978).
54 VP 1976–77/598 (17.2.1977); H.R. Deb. (17.2.1977) 245; VP 1985–87/1258 (22.10.1986); H.R. Deb. (22.10.1986) 2538, 2561; H.R. Deb. (25.3.1985) 849.
55 VP 1912/227 (13.11.1912); H.R. Deb. (13.11.1912) 5500–8.

questioned. The Speaker replied that it was usual for the Speaker to suspend the sitting of the House temporarily at any time when requested to do so by the Minister in charge of business. He also stated that the Speaker might leave the Chair at any time and this was often done without any vote of the House.[56] On 17 December 1930 the Speaker, at the suggestion of the Acting Prime Minister, suspended the sitting at 3.38 p.m. The Leader of the Opposition objected. On the resumption of the sitting the Speaker referred to doubts that had been expressed as to his authority to suspend the sitting and ruled that, in vacating the Chair when the House had no business before it and was awaiting a message from the Senate, he had followed the practice of every previous Speaker. The ruling was subject to a motion of dissent which was later debated and negatived.[57]

MEAL BREAKS

In earlier years it was the common practice to suspend a sitting for lunch and dinner.[58] The (early rising) sitting timetable in effect in 1994 and 1995 did not provide for meal breaks, but meal breaks were taken on some occasions when the normal order of business had been departed from, such as to allow the main Budget bills to be presented,[59] to allow the Leader of the Opposition's reply to the Budget to be made,[60] or towards the end of sitting periods when the House sat into the evening.[61]

The timetables in effect from 1996 provided for evening meal breaks (6.30 p.m. to 8 p.m.) on scheduled late sitting days. The Chair was regarded as having some discretion as to the precise timing of the start of these suspensions (to accommodate Members who, for example, could complete a speech shortly after 6.30 or who did not wish to be called to start a speech just before 6.30). The sitting always resumed at 8 p.m.

When the early rising timetable was adopted in 2003 there was no provision for evening meal breaks, and this situation has continued since, even during periods of later sitting hours.

OTHER OCCASIONS

Sittings of the House have been suspended on other occasions for a variety of reasons. Sittings extending over more than one calendar day are usually suspended overnight.[62] During all-night sittings of the House the sitting has been suspended for supper[63] and breakfast.[64] Sittings have also been suspended from an early hour of the morning until a later hour that morning[65] or until afternoon.[66] On two occasions the House has suspended sittings over Sunday[67] and on another a sitting was suspended for almost a week.[68]

Sittings are often suspended to allow Members to attend functions. These suspensions are not necessarily recorded in the Votes and Proceedings.[69] It has been the regular practice of the House to suspend the sitting to allow Members to attend a social function

56 H.R. Deb. (12.7.1917) 133–4.
57 VP 1929–31/477 (17.12.1930); H.R. Deb. (17.12.1930) 1639–40; VP 1929–31/492 (17.3.1931); H.R. Deb. (17.3.1931) 276–81.
58 Past practice in regard to meal breaks is described at pages 281–2 of the second edition.
59 E.g. H.R. Deb. (9.5.1995) 67; H.R. Deb. (13.5.2008) 2600.
60 E.g. H.R. Deb. (11.5.1995) 400; H.R. Deb. (15.5.2008) 2997.
61 E.g. H.R Deb. (30.3.1995) 2614; H.R. Deb. (23.6.2005) 139.
62 E.g. VP 1996–98/3202 (2.7.1998); VP 2008–10/981 (19.3.2009).
63 H.R. Deb. (11–12.2.1943) 615.
64 H.R. Deb. (16.11.1905) 5386.
65 VP 1937–40/128 (10.6.1938); VP 1993–96/1717 (8.12.1994).
66 VP 1956–57/359 (31.10.1956).
67 VP 1905/168 (16.11.1905); H.R. Deb. (16.11.1905) 5425; VP 1925/97 (28.8.1925); H.R. Deb. (28–29.8.1925) 1964.
68 VP 1917–19/171 (18.1.1918); H.R. Deb. (18.1.1918) 3295.
69 *But see* VP 1973–74/458 (18.10.1973).

on the opening day of a Parliament,[70] and to enable Members to accompany the Speaker to present the Address in Reply to the Governor-General.[71] It has also been the practice that, if the House does not adjourn following a motion of condolence on the death of a sitting Member or a Minister, the sitting is suspended for a period.[72]

The Speaker has also suspended a sitting for the following reasons:

- because of power failures in Parliament House;[73]
- because of a fault in the loud speaker system;[74]
- (in lieu of adjournment) to avoid the possibility of the House not being able to meet next day through lack of a quorum;[75]
- as a mark of respect to a deceased Senator;[76]
- because of the illness of a Member in the House;[77]
- because the House was awaiting decisions by the Senate;[78]
- because of the inauguration of a wireless telephone service between Australia and Great Britain;[79]
- to enable Members to consider statements made by persons judged to be guilty of a breach of privilege;[80]
- to enable the House to hold secret meetings;[81]
- to enable secret meetings to be held jointly with the Senate;[82]
- to allow Ministers to attend a meeting of the Australian Advisory War Council;[83]
- to allow Members to watch or listen to the running of the Melbourne Cup;[84]
- to allow Members to attend such ceremonies as Remembrance Day;[85]
- because of the unveiling of a monument by the Duke of Edinburgh;[86]
- because of the swearing in of a Governor-General;[87] and
- when there was agreement to a later meeting, on a Monday, at which a special motion on terrorist attacks (occurring since the adjournment) would be debated.[88]

On 11 November 1992 the sitting was suspended from 11 a.m. to 11.02 a.m., pursuant to motion, to enable Members present to commemorate Remembrance Day with two minutes silence.[89] On 8 December 1998 the Speaker suspended the sitting immediately

70 E.g. VP 1978–80/9 (21.2.1978); VP 1998–2001/12 (10.11.1998); VP 2008–10/9 (12.2.2008).
71 E.g. VP 1993–96/111 (26.5.1993); VP 1998–2001/216, 220 (9.12.1998); VP 2008–10/389 (17.6.2008).
72 VP 1977/235 (23.8.1977); VP 1980–83/78 (24.2.1981); VP 1998–2001/1531 (19.6.2000).
73 VP 1976–77/598 (17.2.1977); H.R. Deb. (17.2.1977) 245; VP 1985–87/1258 (22.10.1986); H.R. Deb. (22.10.1986) 2538, 2561.
74 H.R. Deb. (25.3.1985) 849.
75 VP 1914–17/417 (12.11.1915); H.R. Deb. (12.11.1915) 7661.
76 VP 1976–77/391 (13.10.1976).
77 H.R. Deb. (8.6.1955) 1513.
78 E.g. VP 1968–69/317 (21.11.1968); VP 1987–90/1011 (21.12.1988); VP 1993–96/662 (21.12.1993) (suspended overnight); VP 2010–13/263 (25.11.2010) (from Thursday until the following Monday).
79 VP 1929–31/144 (30.4.1930).
80 VP 1954–55/269 (10.6.1955); H.R. Deb. (10.6.1955) 1627.
81 VP 1940–43/123 (29.5.1941).
82 VP 1940–43/275 (20.2.1942).
83 VP 1940–43/41 (5.12.1940); H.R. Deb. (5.12.1940) 476–7.
84 E.g. H.R. Deb. (6.11.1973) 2808; VP 1998–2001/1865 (7.11.2000); VP 2004–07/703 (1.11.2005).
85 VP 1926–28/407 (10.11.1927); VP 2002–04/1270 (16.10.2003) (ceremony to commemorate anniversary of bombing tragedy); VP 2013–16/1707 (11.11.2015).
86 VP 1973–74/52 (15.3.1973).
87 VP 1974–75/25–6 (11.7.1974).
88 VP 1998–2001/2595 (17.9.2001).
89 VP 1990–92/1877, 1878 (11.11.1992).

after the meeting of the House, after reading prayers, when a luncheon for a visiting dignitary had lasted longer than expected.[90]

On 11 November 1975, the House having agreed to a motion expressing its want of confidence in the Prime Minister (Mr Fraser) and requesting the Speaker to forthwith advise the Governor-General to call the Member for Werriwa (Mr Whitlam) to form a Government, the Speaker suspended the sitting at 3.15 p.m. The sitting did not resume as both Houses were dissolved by the Governor-General.[91]

On 1 March 2011 the House met at 10.48 a.m. in order to observe two minutes silence at the exact time of the earthquake in Christchurch, New Zealand, the week before. The sitting was then suspended at 10.53 a.m. until the normal time of meeting at 2 p.m.[92]

MEETING OF THE HOUSE

The standing orders,[93] often amended by sessional order, fix the times at which the House shall meet for the despatch of business, unless otherwise ordered. The timetable adopted in 2016 provided that the House would meet as follows:

Monday, at 10 a.m.
Tuesday, at 12 noon
Wednesday, at 9.30 a.m.
Thursday, at 9.30 a.m.

It is not uncommon for the days and hours of meeting to be changed by the House, especially towards the end of sitting periods.[94] At the rising of the House at the conclusion of each sitting, the Chair states the day and hour of the next meeting.

Preliminaries to meeting—the Daily Program

Except for the first sitting day of a session, a Notice Paper setting out the order of business to be followed is prepared under the authority of the Clerk of the House and issued prior to each sitting of the House.[95] The order of government business as it appears on the Notice Paper is determined by the Leader of the House on the evening prior to each issue of the Notice Paper, and the Table Office is informed accordingly.[96]

The Department of the House of Representatives also issues a Daily Program[97] under the authority of the Clerk of the House. This is issued for each calendar day on which the House sits, rather than for each sitting. The Daily Program is compiled by the Table Office using information provided by the Leader of the House, the Manager of Opposition Business, Ministers, whips and other Members who have business to bring forward and reflecting Selection Committee determinations in respect of private Members' and committee business. While the Notice Paper lists all unresolved business before the House, including questions in writing, the Daily Program shows only those items of business which the House is expected to deal with on that particular day. This can include business which is not on the Notice Paper—for example, certain types of bills or motions which are permitted to be introduced or moved without notice. If

90 VP 1998–2001/191 (8.12.1998) (suspension from 2.31 p.m. until 3 p.m.—the Speaker announced that the action was taken with the agreement of both the Government and the Opposition).
91 VP 1974–75/1125–7 (11.11.1975).
92 VP 2010–13/367 (1.3.2011).
93 S.O. 29.
94 S.O. 30; *see* Ch. on 'The parliamentary calendar'.
95 For a full description of the Notice Paper *see* Ch. on 'Documents'.
96 S.O. 45(a).
97 The Daily Program was first produced in 1950 and is also commonly known as the 'Blue Program' because of its distinctive colour.

variations are expected from the order of business shown on the Notice Paper, the Daily Program indicates the procedural motions necessary to enable these variations to be made. The Daily Program shows the expected sequence of items of business, but not the timing of the commencement of each item, as this is uncertain in most cases. If the Federation Chamber is sitting on that day, an attachment to the Daily Program lists the proposed Federation Chamber order of business. Another attachment gives details of public hearings of House and joint committees.

Unlike the Notice Paper the Daily Program is not a formal document and it does not fix the order of business or limit the scope of business.[98] It serves as a useful guide to Ministers and Members in planning their day's work in relation to the business of the House.

Meetings at hour other than pursuant to adjournment

When a delay or other change in the time of the next meeting is foreseen, the House alters the hour of meeting by resolution.[99] When the House is not sitting the Speaker may set an alternative day or hour for the next meeting, and must notify each Member of any change.[100]

In earlier Parliaments the Speaker did not have such power to vary the meeting times unless authorised by special adjournment resolution. Past cases of the House meeting at a time other than that specified pursuant to adjournment, including occasions not authorised by resolution of the House and occasions of changes by the Speaker in accordance with special adjournment resolutions, are described in previous editions.[101] A common factor is that in such matters Speakers have had regard to the wishes of the Government.

Meeting when House has not adjourned the previous sitting

On the evening of 16 August 1923, the Government having been twice defeated on the motion 'That the House do now adjourn', the Leader of the Opposition moved 'That Mr Speaker do now leave the Chair'. During the division on that question the Speaker, in reply to a question as to when he would resume the Chair if he left it, replied that he would resume at 11 a.m. the next day. The motion was agreed to and the Speaker left the Chair.[102] The House met at 11 a.m. the next day, and a Notice Paper had been issued. After Prayers the Leader of the Opposition contended that the proceedings were irregular as the House had not adjourned the previous evening and the sitting should have resumed from where it had left off. The Speaker ruled that, it being the day fixed by sessional order for the meeting of the House, he had taken the Chair according to the terms of the standing order which provided that 'The Chair shall be taken by the Speaker at the time appointed on every day fixed for the meeting of the House'.

98 For example, bills may be introduced although not listed on the program—e.g. tax bills, VP 2013–16/457–8 (13.5.2014).
99 See 'Days and hours of meeting' in Ch. on 'The parliamentary calendar'.
100 S.O. 30. *See also* Ch. on 'The parliamentary calendar', and 'Discretionary powers' in the Ch. on 'The Speaker, Deputy Speaker and officers'.
101 *See* 4th edn, pp. 245–6.
102 VP 1923–24/156–7 (16.8.1923); H.R. Deb. (16.8.1923) 2938–40.

ACKNOWLEDGEMENT OF COUNTRY AND PRAYERS

Upon taking the Chair of the House each day, and a quorum of Members being present (*see* page 271), the Speaker makes an acknowledgement of country[103] in the following terms:

> I acknowledge the Ngunnawal and Ngambri peoples who are the traditional custodians of the Canberra area and pay respect to the elders, past and present, of all Australia's Indigenous peoples.

The Speaker then reads the following prayers:

> Almighty God, we humbly beseech Thee to vouch safe Thy blessing upon this Parliament. Direct and prosper our deliberations to the advancement of Thy glory, and the true welfare of the people of Australia.
>
> Our Father, which art in Heaven: Hallowed be Thy Name. Thy Kingdom come. Thy will be done in earth, as it is in Heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive them that trespass against us. And lead us not into temptation; but deliver us from evil: For Thine is the kingdom, and the power, and the glory, for ever and ever. Amen.[104]

Prayers have not been read on the first day of a new Parliament or on other occasions when, because of death or resignation, the first item of business is the election of a new Speaker.[105] Prayers have not been read at the second sitting on a day when two sittings have been held[106] or when the Chair has been resumed on another day following a suspension of a sitting.[107]

On 7 June 1901 the House agreed to a motion 'That the Standing Orders should provide that, upon Mr Speaker taking the Chair, he shall read a prayer'. An amendment providing for the appointment of a chaplain for the purpose was withdrawn, as it was agreed that the Speaker was the most appropriate person to read prayers in the House.[108] The standing order was amended in 1918 when the initial prayer or preface was amended and an additional prayer was added before the Lord's Prayer for the duration of the war.[109] In its report of 21 March 1972 the Standing Orders Committee considered a submission from a Member which suggested a different form of prayer, and that prayers once a week would suffice. The committee agreed that there should be no change either in the frequency of offering prayers or in their content.[110] When the Procedure Committee reviewed the standing orders in 2002–2003, partly with a view to modernising their language, the committee made no recommendation in relation to the prayers, and the revised standing orders adopted in November 2004 retained the original wording.

Prayers are not read at the start of proceedings in the Federation Chamber, which is a subsidiary body. However, the timing of its meetings allows sufficient time for Members to attend prayers in the House.

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103 The acknowledgement of country was introduced in 2010 (43rd Parliament).

104 S.O. 38. At the direction of Speaker Makin the Votes and Proceedings entry was altered from 'read Prayers' to 'offered Prayers' in 1930, VP 1929–31/109 (25.3.1930), but reverted to the former style at the direction of Speaker Mackay in 1932, VP 1932–34/11 (18.2.1932).

105 VP 1956–57/259 (29.8.1956); VP 1985–86/665 (11.2.1986); VP 1987–90/1417 (29.8.1989); VP 1996–98/2753 (4.3.1998).

106 VP 1934–37/257 (11.4.1935); VP 1940–43/379 (2.9.1942).

107 VP 1905/169 (16.11.1905); H.R. Deb. (16.11.1905) 5425; VP 1993–96/1717 (8.12.1994); H.R. Deb. (8.12.1994) 4449; VP 1996–98/355 (27.6.1996), 2655 (4.12.1997); VP 2008–10/981 (19.3.2009); *but see* case of 17 August 1923 when Speaker Watt read prayers even though the House had not adjourned the previous evening, VP 1923–24/159 (17.8.1923); H.R. Deb. (17.8.1923) 2964–5.

108 VP 1901–02/41 (7.6.1901); H.R. Deb. (7.6.1901) 815–2; VP 1901–02/59 (13.6.1901); H.R. Deb. (13.6.1901) 1077.

109 VP 1917–19/241 (29.5.1918).

110 Standing Orders Committee, *Report*, PP 20 (1972) 13.

ORDER OF BUSINESS

Following the reading of prayers the House proceeds to its ordinary order of business,[111] as follows:

Monday

- Presentation of petitions
- Committee and delegation business and private Members' business
- Government business
- 90 second statements
- Question Time
- Presentation of documents
- Ministerial statements
- Government business
- Adjournment debate

Tuesday, Wednesday and Thursday

- Government business
- 90 second statements
- Question Time
- Presentation of documents
- Matter of public importance
- Ministerial statements
- Government business
- Adjournment debate

Business on Mondays

The arrangements for the presentation and consideration of reports from committees and delegations, private Members' business, Members' statements and grievance debate are described in detail in the Chapter on 'Non-government business'; the presentation of petitions is covered in the Chapter on 'Documents'.

Motions to set or vary the order of business

If, for a particular day, it is desired to vary the order of business provided by standing order 34—for example, to change the sequence or change a specified time—a motion is moved (usually by leave, or on notice) to suspend standing orders to provide for the change.[112]

If the House is to meet on a day not provided for in standing order 34—that is, on a Friday (or possibly on a Saturday), or if for a particular day it is desired to replace completely the normal order of business set down by standing order 34, a motion may be moved to suspend standing orders to set the order for that day.[113] If a change to the time or day of meeting is involved, provision for the new time of meeting and the proposed order of business for the day may be included in the one motion.[114] When such a motion

111 S.O. 34. The order of business listed above is that adopted in the 45th Parliament in force from September 2016. If the House meets for some special purpose the ordinary order of business may not be commenced. *See* VP 1920–21/187 (27.5.1920); H.R. Deb. (27.5.1920) 2452.

112 E.g. VP 1996–98/792 (6.11.1996); VP 2002–04/1549 (30.3.2004).

113 E.g. VP 1993–96/649 (17.12.1993) (Saturday sitting); VP 2002–04/689 (4.2.2004).

114 E.g. VP 2002–04/623 (9.12.2002); VP 2010–13/174 (15.11.2010).

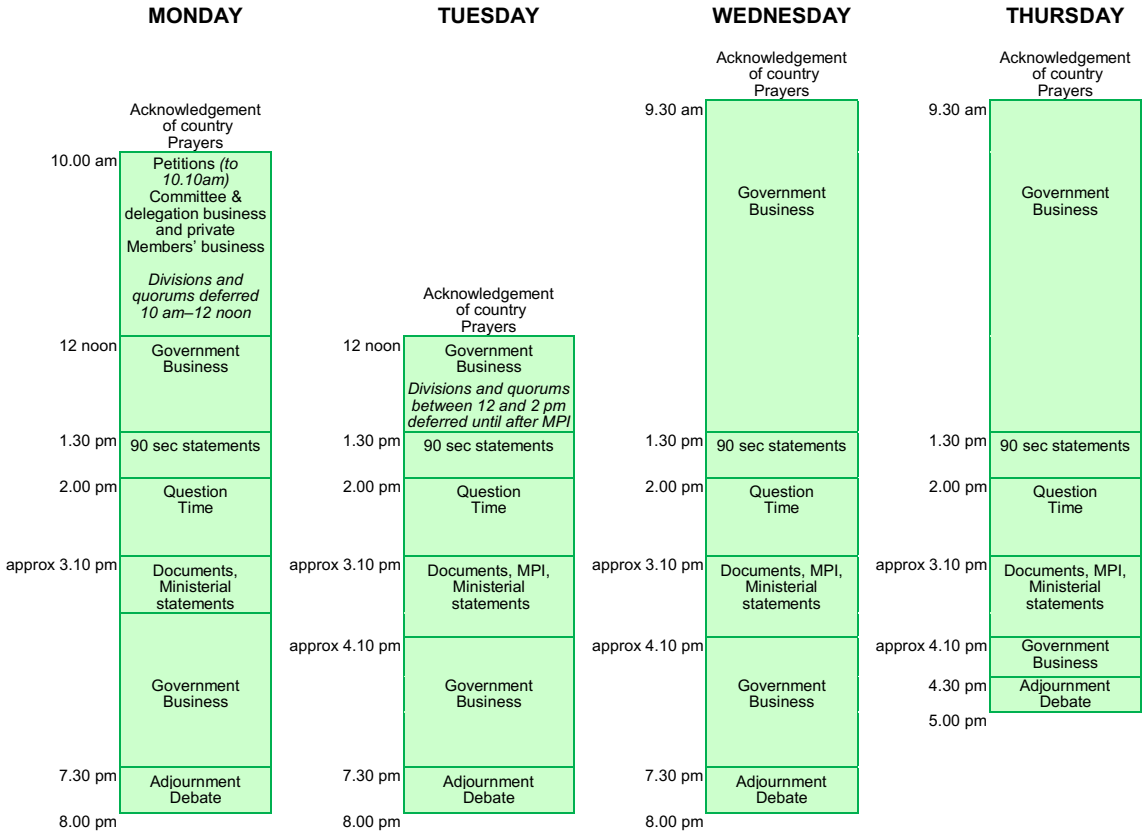
has been agreed to, it is not in order to move a further suspension of standing orders to vary the order of business which has just been agreed to.[115]

To allow for change of mind or circumstance it is common for the phrase 'unless otherwise ordered' to be included in motions to suspend standing orders for such purposes. A further variation can then be achieved by a second motion (on or without notice) without the need to rescind the original motion.

When a sitting continues over more than one day, the business of the initial day continues (i.e. continuation of government business)[116] unless a variation is agreed to.

House of Representatives order of business

(Operating from September 2016)



115 VP 2002–04/969 (18.6.2003); H.R. Deb. (18.6.2003) 16769–70. For an acceptable form of motion later in the sitting *see* VP 2002–04/973 (18.6.2003).

116 E.g. VP 2002–04/1390 (4.12.2003).

Ordinary order of business

Government business

NOTICES AND ORDERS OF THE DAY

Most of the time of the House is taken up with government notices and orders of the day. The term 'notices' refers to new items of business on the Notice Paper—that is, advice of motions to be moved or bills to be presented. 'Orders of the day' are items of business the House has ordered to be considered (or further considered) on a particular day.[117]

Notices and orders of the day have precedence of each other according to the order in which the Government has determined that they should be placed on the Notice Paper.[118] As each item is disposed of (or adjourned for future consideration) the Clerk calls on the next item in the order in which it appears on the Notice Paper. Other business may be interspersed between items on the Notice Paper when, for example, appropriation and supply bills, and bills and proposals dealing with taxation, are introduced. These bills and proposals may be brought in by a Minister without notice.[119] Although they are not listed on the Notice Paper, they would normally be included in the Daily Program at a point which reflects the wishes of the Government.

After the Speaker calls on the business of the day, the Clerk announces the first notice or order of the day. As each notice is called on, the Minister or Parliamentary Secretary responsible moves the motion for which notice has been given or presents the bill for which notice of presentation has been given. Upon an order of the day being read by the Clerk the Speaker calls the next Member to speak, giving priority to the Member who previously moved the adjournment of the debate or the Member who was speaking when the debate was previously interrupted and who is thus entitled to pre-audience. In most cases debate continues on an item of business until it is finally disposed of by the House, but on some occasions a debate, particularly a lengthy debate, may be interrupted and adjourned to enable other business to be dealt with.

If a government notice or order of the day is to be dealt with other than during time for government business leave is required.[120]

DETERMINATION OF PRECEDENCE

Government business takes precedence over all other business except for those times when, under standing or sessional orders, private Members' business (before 1988 known as general business) and other non-government business has precedence (*see* Chapter on 'Non-government business'). In recent years approximately 55 per cent of the time of the House has been taken up by government business.

The Leader of the House can arrange the order of government notices and orders of the day on the Notice Paper as he or she thinks fit.[121] The Selection Committee determines the order of precedence of private Members' business.

POSTPONEMENT OF NOTICES AND ORDERS OF THE DAY—RE-ARRANGEMENT OF ITEMS OF BUSINESS

The order in which items of business are taken in the House is determined by the order of the notices and orders of the day on the Notice Paper. Variation of the predetermined order is generally achieved by the selective postponement of items of

117 S.O. 2.

118 S.O.s 37(a), 45, 112. Standing and sessional orders have been suspended to enable several notices to be called on together and one motion being moved that the motions be agreed to; e.g. VP 1996–98/125–6 (21.5.1996).

119 S.O. 178.

120 E.g. VP 2008–10/1706 (17.3.2010).

121 S.O. 45.

business. The day for moving a notice of motion or a notice of intention to present a bill may be changed or the notice postponed:

- by the Member who gave notice moving a motion without notice to postpone the motion;[122]
- by the Member who gave notice changing the day proposed for moving the motion to a later day by notifying the Clerk in writing before the motion is called on;[123]
- by the Member who gave the notice setting a future time for moving the motion when the notice is called on;[124] or
- by another Member, at the Member's request, setting a future time when the notice is called on.[125]

The practice of the House is that one Minister may act for another and, accordingly, a Minister may move the postponement of a notice given by another Minister.

An order of the day may be postponed on motion without notice moved by the Member in charge of the order or, in the Member's absence, by another Member at the Member's request.[126] The Member in charge is the Member who moved the motion or presented the bill. As with a notice the practice of the House is that one Minister may act for another Minister in moving for the postponement of an order of the day. The motion should be moved before the order is called on.[127]

A private Member cannot move to vary the order of government business in the House,[128] nor can he or she move an amendment to a postponement motion which would have the effect of varying the order of government business.[129] An amendment expressing lack of confidence in the Prime Minister has been moved to a postponement motion.[130]

A Minister may not move for the postponement of an item of private Members' business. Standing orders have been suspended on the motion of a Minister to enable a particular private Member's business item to be called on during time when government business would normally be considered,[131] and to make alternative arrangements for private Members' business.[132]

Postponement of an order of the day may be until a later hour of the day, until the next sitting or until a specified day. When business has been postponed until a later hour it may be called back on at a convenient time without further action of a procedural nature. Consideration of an order of the day has been postponed until certain bills, which were themselves orders of the day, had become law.[133]

122 S.O. 112.
123 S.O. 110(b).
124 S.O. 113, e.g. VP 1974–75/790 (5.6.1975); VP 1993–96/2636 (27.11.1995); VP 2016–18/1015 (4.9.2017).
125 S.O. 113; e.g. VP 1956–57/89 (19.4.1956); H.R. Deb. (19.4.1956) 1479; VP 1974–75/959 (9.10.1975); H.R. Deb. (9.10.1975) 1932; VP 1993–96/2572 (20.11.1995); VP 2008–10/939 (16.3.2009); VP 2010–13/2160 (18.3.2013); VP 2013–16/883 (20.10.2014).
126 S.O. 37(b).
127 H.R. Deb. (22.7.1920) 2951.
128 VP 1968–69/297 (14.11.1968). This is permitted in the Federation Chamber, where private Members (usually committee chairs) may be rostered to have regard to government interests (a seconder is not required on these occasions), e.g. H.R. Deb. (23.6.2010) 6474.
129 VP 1951–53/285 (5.3.1952).
130 VP 1970–72/609 (6.5.1971). The relevance of such an amendment would be open to question.
131 E.g. VP 1978–80/133 (12.4.1978); VP 1990–93/918–9 (21.6.1991); VP 1993–96/2453 (17.10.1995); VP 1998–2001/675 (28.6.1999); VP 2008–10/970 (19.3.2009).
132 E.g. VP 1998–2001/1531–2 (19.6.2000).
133 VP 1907–08/381 (15.4.1908); NP 114 (22.4.1908) 541.

MEMBER ABSENT OR FAILING TO RISE WHEN NOTICE CALLED ON

A motion not moved when called on is withdrawn from the Notice Paper unless the Member who gave notice, or another Member at his or her request, sets (by orally informing the House) a future time for moving the motion.[134]

ORDERS OF THE DAY REFERRED TO THE FEDERATION CHAMBER

Government business orders of the day may be referred to or recalled from the Federation Chamber, for consideration at a later hour that day, by a programming declaration made in the House by the Leader of the House or the Chief Government Whip (or other whip on his or her behalf).[135] An order of the day may also be referred or recalled by motion moved without notice by a Minister.

DISCHARGE OF ORDERS OF THE DAY

An order of the day remains in the possession of the House and remains on the Notice Paper until the House disposes of it or a motion for its discharge is agreed to. On an order of the day being read, it may, on motion without notice moved by the Member in charge of it, be discharged.[136] In the case of government orders of the day a motion for discharge may be moved by any Minister.[137] In 1972 Speaker Aston ruled privately that a motion to discharge an order of the day must be moved immediately the order is read and there can be no debate on the order of the day after the order is read and a motion moved for its discharge.

Orders of the day may also be discharged by motion moved pursuant to notice[138] or by leave.[139] Generally, such motions encompass multiple orders of the day, and are moved periodically to clear the Notice Paper of items of government business on which no further debate is required. Less frequently, an individual item of business, or a group of items, may be discharged—for example, when the Government has decided not to proceed with bills.[140] Under standing order 42, private Members' notices and orders of the day not called on within eight consecutive sitting Mondays are automatically dropped from the Notice Paper.

NOTICES AND ORDERS OF THE DAY NOT CALLED ON

At the adjournment of the House each day any notices or orders of the day which have not been called on are set down on the Notice Paper for the next sitting, after any notices or orders of the day set down for that day.[141] These provisions operate subject to standing order 45 which provides that the Leader of the House can arrange the order of government notices and orders of the day on the Notice Paper as he or she thinks fit. The Selection Committee has a similar power in respect of private Members' notices and orders of the day (*see* Chapter on 'Non-government business').

90 second statements

At 1.30 p.m. the Speaker interrupts business and calls on statements by Members. Any Member except a Minister or Parliamentary Secretary may make a statement for no

134 S.O. 113. Withdrawal of notice, VP 1974–75/790 (5.6.1975); Member fixes future time, VP 1974–75/959 (9.10.1975); VP 1993–96/2572 (20.11.1995).
135 S.O. 45(b).
136 S.O. 37(c); e.g. VP 1976–77/524 (1.12.1976).
137 VP 1978–80/1497–8 (15.5.1980).
138 E.g. VP 1978–80/605–7 (24.11.1978); VP 1993–96/1362 (12.10.1994); VP 1998–2001/972 (14.10.1999).
139 E.g. VP 1978–80/983 (12.9.1979); VP 1993–96/2427–8 (27.9.1995); VP 1998–2001/1167 (9.12.1999).
140 E.g. VP 2013–16/1608 (17.9.2015); VP 2016–18/731 (10.5.2017).
141 S.O.s 37(d), 115.

longer than 90 seconds.[142] The period lasts until 2 p.m. For further information *see* Chapter on 'Non-government business'.

Question Time

Although Question Time is scheduled to start at 2 p.m., other matters sometimes intervene before the Speaker calls for questions without notice—for example, ministerial arrangements may be announced, the deaths of former Members may be reported or condolence motions may be moved, valedictory remarks made,[143] statements may be made by indulgence,[144] motions may be moved by agreement about significant events,[145] or the consideration of a bill completed.[146] Standing orders are from time to time suspended to alter the time[147]—for example, to 2.30 p.m. to permit Members to attend a lunch-time function, or to allow other business to be dealt with at 2 p.m.[148] It has been considered that standing orders should be suspended to allow a ministerial statement to be made at 2 p.m.[149]

The length of time the House devotes to Question Time is controlled by the Government.[150] The Prime Minister or a Minister[151] determines the time for questions to conclude by asking that further questions be placed on the Notice Paper,[152] and may do so even if a Member is in the process of asking a question or has received the call to ask a question.[153] After Question Time has concluded, a Minister may wish:

- to provide information which has come to hand in relation to a question asked earlier;[154]
- to provide additional information in respect of an answer given earlier; or
- to correct an answer given earlier.

It is within the province of the Chair to grant indulgence for this to be done.

Questions without notice, having been called on by the Chair, may not be proceeded with if the Prime Minister or a Minister in charge of arrangements[155] immediately asks that they be placed on notice. This may happen on occasions when the time of the House has been taken up by another matter, for example, when debate on a no confidence or censure motion has been given precedence.[156]

For more detail on Question Time procedures *see* Chapter on 'Questions'.

Presentation of documents

The presentation of documents follows Question Time. Documents may be presented by the Speaker or Ministers, pursuant to statute or otherwise, or by order of the House.[157] Formerly documents were presented individually, but arrangements in effect

142 S.O. 43 (90 second statements also occur in the Federation Chamber on Mondays from 4.00 to 4.45 p.m.).
143 E.g. H.R. Deb (27.9.2001) 31683.
144 E.g. VP 2004–07/646 (10.10.2005).
145 E.g. VP 2004–07/646–7 (10.10.2005).
146 E.g. H.R. Deb. (23.10.2002) 8456.
147 E.g. VP 1998–2001/1999, 2010 (7.12.2000); VP 2004–07/1712 (14.2.2007), 1878 (22.5.2007); VP 2008–10/845 (5.2.2009).
148 E.g. VP 2008–10/853 (10.2.2009).
149 E.g. VP 2008–10/1584 (4.2.2010).
150 For more detail *see* Chapter on 'Questions'.
151 Generally the senior Minister present or the Leader of the House.
152 *See* ruling VP 1973–74/69 (29.3.1973).
153 H.R. Deb. (4.5.1960) 1333; H.R. Deb. (9.10.1996) 5061–2.
154 E.g. H.R. Deb. (31.5.1973) 2938–9; H.R. Deb. (22.8.1996) 3589–90; H.R. Deb. (30.9.2010) 354.
155 VP 1993–96/814–6 (24.2.1994).
156 E.g. H.R. Deb. (29.10.1975) 2593; VP 1993–96/2689 (30.11.1995).
157 S.O.s 199–200.

since 1988[158] have permitted the presentation of documents together. The arrangements for this are:

- by 12 noon on the day of presentation a schedule of documents to be presented is made available to the Manager of Opposition Business and later circulated to all Members in the Chamber;
- following questions without notice a Minister presents the documents as listed on the schedule;
- documents so listed are recorded in the Votes and Proceedings and Hansard;
- if a schedule has not been circulated, or if documents have not been included on the schedule, the documents in question must be presented individually; and
- if a statement is to be made or a motion moved in relation to a document, a Minister may present the document separately.

There may be other business arising out of the presentation of a document, such as motions to take note of the document or to make it a Parliamentary Paper. The motion 'That the House take note of the document' is used as a device to enable a document to be debated, either at the time it is presented or, more usually, at a later sitting.

For documents presented at other times *see* page 264, *and see* Chapter on 'Documents'.

Matter of public importance

If a proposed matter of public importance has been given in a written statement to the Speaker and determined to be in order, the Speaker reads the statement to the House. If the matter is supported by eight Members, discussion ensues.[159] The discussion may be terminated at any stage by the House agreeing to the motion, moved by any Member, 'That the business of the day be called on'. The time for discussion is limited to one hour.[160]

For further information *see* Chapter on 'Non-government business'.

Ministerial statements

By leave of the House Ministers may make statements concerning government policy or other matters for which they have ministerial responsibility. Ministerial statements are usually made at the time indicated in the routine of business, following presentation of documents and discussion of matter of public importance, although they may also be made at other times. On occasions leave has not been sought by the Government[161] or has been refused by the Opposition[162] and standing orders have been suspended to enable a statement to be made.

When a Minister has been granted leave to make a ministerial statement, the Leader of the Opposition, or Member representing, is deemed to have been granted leave to speak in response to the statement for an equal amount of time.[163]

Ministerial statements are not an everyday occurrence, although their frequency has increased in recent years. For further detail, including comment on the need for leave, *see* 'Statements by leave' in Chapter on 'Control and conduct of debate'.

158 VP 1987–90/302–3 (9.12.1987).
159 S.O. 46.
160 S.O. 1.
161 E.g. VP 1978–80/40 (2.3.1978).
162 E.g. VP 1978–80/372 (24.8.1978).
163 S.O. 63A.

Matters accorded precedence

The ordinary order of business may be superseded by matters which are accorded precedence by practice or pursuant to the standing orders, or by other matters which may intervene or interrupt proceedings.

Censure or no confidence motions and amendments

A motion of which notice has been given or an amendment which expresses a censure of or no confidence in the Government takes precedence of all other business until disposed of by the House, and additional speaking time is provided, if it is accepted by a Minister as a censure or no confidence motion or amendment under standing order 48.

This form of motion has been accepted immediately after the notice has been given orally (when notices could be given orally)[164] or immediately after the notice has been reported to the House by the Clerk.[165] In these circumstances it is necessary to suspend standing orders or secure leave to enable the motion to be moved immediately. A no confidence amendment has been similarly accepted immediately it has been moved.[166] If it is not accepted by a Minister for the purposes of standing order 48, a notice of a no confidence motion does not attract any automatic precedence and is placed on the Notice Paper under private Members' business. However, even if it is not accepted by a Minister for the purposes of standing order 48, action may still be taken to bring the debate on early (in which case the normal time limits for a motion apply).[167] The notice may also be granted precedence on a later day when accepted by a Minister.[168]

For many years it was the practice of the House to adjourn until the next sitting following notice of a no confidence motion. This practice has not been followed since 1947.[169]

The House has considered other business before a censure or no confidence motion or amendment has been finally disposed of. In 1949 standing orders were suspended to enable a censure motion to take precedence of all other business until disposed of. The censure motion was then debated and adjourned to the next sitting. Prior to the resumption of the debate on the next sitting day, several items of business were dealt with including petitions, questions without notice, statements by leave, and the introduction of bills.[170] However, if it is the wish of the House to proceed with some of the normal order of business, such as questions without notice, petitions and other items of business, as in the above circumstances, it would be preferable to suspend standing orders to enable this to be done. This course was followed in 1961,[171] although the Speaker questioned whether other business should intervene during a no confidence debate.[172]

An amendment censuring the Government[173] and motions censuring or expressing no confidence in the Government[174] have been granted precedence following suspension of

164 VP 1985–87/23 (22.2.1985).
165 S.O. 106(c). VP 1985–87/81 (19.3.1985).
166 VP 1970–72/445 (18.2.1971).
167 E.g. VP 1987–90/678 (1.9.1988).
168 NP 114 (11.11.1975) 10502; VP 1974–75/1121 (11.11.1975).
169 VP 1946–48/250 (17.9.1947); H.R. Deb. (17.9.1947) 4; *and see* Ch. on 'Motions'.
170 VP 1948–49/303–5 (3.6.1949); *see also* VP 1904/174 (27.9.1904); H.R. Deb. (27.9.1904) 4918; VP 1962–63/411 (2.4.1963).
171 VP 1961/11 (9.3.1961).
172 H.R. Deb. (15.3.1961) 221.
173 VP 1978–80/600 (24.11.1978).
174 E.g. VP 1970–72/937 (29.2.1972); VP 1983–84/533 (8.3.1984); H.R. Deb. (8.3.1984) 733; VP 1987–89/678 (1.9.1988); VP 1996–98/2975–6 (12.5.1998).

the standing orders, even though they were not accepted by a Minister under standing order 48. In these cases the normal time limits for a motion apply.

Standing orders have been suspended to allow a motion of censure of a Minister, which does not attract any precedence, to be moved forthwith[175] and to be moved forthwith and to take precedence.[176] Such motions have also been moved without notice and debated immediately by leave.[177]

For a more detailed account *see* 'Motions of no confidence or censure' in Chapter on 'Motions'.

Matters of privilege

A Member may rise at any time to speak on a matter of privilege suddenly arising.[178] Until a matter of privilege is disposed of (for example, by the Speaker giving a decision immediately or stating that the matter will be considered), or unless debate on a motion arising from a matter is adjourned, it suspends the consideration and decision of every other question. However, precedence over other business is not given to any motion if, in the opinion of the Speaker, a prima facie case of breach of privilege has not been made out or the matter has not been raised at the earliest opportunity.[179]

When consideration of a substantive motion on a matter of privilege or a report from the Committee of Privileges and Members' Interests is made an order of the day, the practice is to place it on the Notice Paper with a note 'to take precedence'. If it is not desired to consider the motion or report as the first item of business, a positive motion to postpone the order is necessary.[180] It has been the practice of the House to proceed with the ordinary order of business up to, but not including, 'Government business' before a privilege motion or report is considered.

For further information *see* Chapter on 'Parliamentary Privilege'.

Motions of thanks or condolence

Precedence is ordinarily given, by courtesy, to a motion of thanks of the House or to a motion of condolence.[181] The practice of the House is that condolence motions or references to the deaths of certain persons are normally dealt with immediately following Prayers or at 2 p.m.,[182] after which the ordinary order of business may be proceeded with. Traditionally following a condolence motion the House could be adjourned, or suspended to a fixed hour, as a mark of respect; however, this is now unusual. If the House has been suspended, the ordinary order of business may be proceeded with on the resumption of the sitting.[183]

For further information *see* 'Motion of condolence' and 'Motion of thanks' in Chapter on 'Motions'.

175 E.g. VP 1985–87/1298 (13.11.1986); VP 1993–96/608 (16.12.1993).
176 E.g. VP 1968–69/301 (19.11.1968).
177 E.g. VP 2002–04/1514 (22.3.2004).
178 S.O.s 51, 66(b).
179 S.O. 51.
180 NP 18 (12.4.1978) 913; VP 1978–80/142 (12.4.1978); H.R. Deb. (12.4.1978) 1462–7.
181 S.O. 49.
182 Debate may be adjourned and resumed later in the House or be referred to the Federation Chamber. For more detail *see* 'Motion of condolence' in Ch. on 'Motions'.
183 VP 1976–77/391 (13.10.1976).

Motions for leave of absence to a Member

A motion to grant leave of absence to a Member can be moved without notice and has priority over all other business.[184] For convenience the motion is usually moved after presentation of documents, but it may be moved at other times.

Announcements of ministerial arrangements

The Prime Minister from time to time informs the House of changes in the Ministry, of the absence or illness of Ministers, of any acting and representational arrangements that are made within the Ministry, and of changes in departmental and administrative arrangements. It is the normal practice for such an announcement to be made before questions without notice to assist Members in directing their questions.[185] If the Prime Minister is not present the senior Minister present makes the announcement.[186] The Leader of the Opposition may make similar announcements in respect of the shadow ministry.[187] Ministry and shadow ministry lists may also be presented.[188]

Swearing-in of Members and announcements of returns to writs

Every Member of the House must make an oath or affirmation of allegiance before taking his or her seat.[189] Any Member absent at the opening of a Parliament is sworn in at the first opportunity.[190] On the election of a Member at a by-election the Speaker may announce the return to the writ immediately after Prayers, the new Member then being introduced and sworn in,[191] although on occasions the new Member has been sworn in just before Question Time.[192]

Other matters that can interrupt the ordinary order of business

Personal explanations

With the leave of the Chair, a Member may explain how he or she has been misrepresented or raise another matter of a personal nature.[193] The usual practice is for a Member desiring to make a personal explanation to inform the Speaker and for the Speaker to call on the Member at a convenient time after Question Time. This does not prevent Members making personal explanations at other times, subject to the overall authority of the Speaker, but such a course is not encouraged.[194]

For more detail *see* 'Misrepresentation' and 'Personal explanations' in Chapter on 'Control and conduct of debate'.

Acknowledgment and admission of distinguished visitors

The Speaker may acknowledge the presence of distinguished visitors in the gallery and, with the implied concurrence of the House, distinguished visitors have on occasion been admitted to a seat on the floor of the House.[195] This action has been taken by the Speaker immediately after Prayers but it can occur at any time during a day's

184 S.O. 26(a); *and see* Ch. on 'Members'.
185 However, the announcement has also been made after Question Time has started, H.R. Deb. (2.6.2008) 3953.
186 E.g. VP 1993–96/2118 (6.6.1995); H.R. Deb. (25.6.2008) 5888.
187 E.g. VP 2004–07/1619 (4.12.2006).
188 E.g. VP 2004–07/1657 (6.2.2007).
189 *See* Ch. on 'Members'.
190 E.g. VP 1978–80/75 (15.3.1978); VP 2002–04/49 (18.2.2002); VP 2008–10/26 (12.2.2008).
191 E.g. VP 1993–96/1613 (5.12.1994). *But see also* VP 1993–96/2012 (30.3.1995).
192 E.g. VP 1993–96/875 (24.3.1994); VP 1998–2001/1069 (22.11.1999); VP 2008–10/576 (25.9.2008).
193 S.O. 68.
194 *See* H.R. Deb. (7.3.1974) 149, 153–4 for ruling and further discussion on this matter in respect of personal explanations arising during the course of a debate.
195 S.O. 257.

proceedings. It is most common for distinguished visitors to be present during questions without notice.

Announcements and statements by the Speaker

The Speaker may be called upon to make a number of announcements during the course of a day's proceedings. These include messages from the Governor-General[196] notifying assent to bills and messages from the Senate. When such details are available prior to the meeting of the House, the announcements may be held until after the presentation of documents. When they become available later during the course of the sitting, they may be announced between items of business. The Speaker also makes statements to the House, for example, on matters of parliamentary administration; such statements are made between items of business[197] or occasionally at another time convenient to the Speaker.[198]

Committee reports and documents

Although the normal order of business provides periods on Mondays of each sitting week for the presentation of reports of parliamentary committees,[199] the standing orders also permit committee reports to be presented at any time when other business is not before the House.[200] When reports are presented in this way (that is, outside the allocated period), leave of the House must be obtained for a Member to make a statement on the report at the time of presentation. Leave is not required to move a motion in connection with the report (usually 'That the House take note of the document').

Documents may be presented by the Speaker or Ministers at any time when other business is not before the House.[201] For wider discussion on the presentation of documents *see* Chapter on 'Documents'.

Matter of special interest

At any time when other business is not before the House a Minister may indicate to the House that it is proposed to discuss a matter of special interest on which it is not desired to move a specific motion.[202] A matter of special interest has been discussed by the House on only one occasion when it was discussed early in the order of business prior to the giving of notices.[203] For more detail *see* 'Motion to discuss matter of special interest' in Chapter on 'Motions'.

Suspension of standing orders

It is not unusual in the functioning of the House for it to be found necessary to suspend standing orders, or a particular standing order, to permit certain action to be taken. Common instances are to grant unlimited or extended time for particular speeches, to permit the introduction of particular bills without notice and their passage without delay, or the consideration of certain bills together, to enable censure or other motions to be moved, and to enable the introduction of new business after the usual time of adjournment. The suspension of standing orders may also affect the ordinary order of

196 S.O. 182.

197 E.g. VP 1985–87/977 (26.5.1986); VP 1996–98/378 (21.8.1996); VP 1998–2001/26 (11.11.1998); H.R. Deb. (27.10.2010) 1828.

198 E.g. VP 1985–87/1526 (19.3.1987); VP 1996–98/360 (27.6.1996).

199 For the procedures applying to this period and the responsibilities of the Selection Committee in the allocation of time *see* Ch. on 'Non-government business'.

200 S.O. 39.

201 S.O. 199(b).

202 S.O. 50.

203 VP 1974–75/815–7 (9.7.1975); H.R. Deb. (9.7.1975) 3556.

business, for example, when it is to enable an item of private Members' business to be called on in other than the normal order, to allow a notice of motion to be called on immediately, the notice having been given for the next sitting, or to put in place a special routine.[204]

Having received the call from the Chair, a motion to suspend standing orders may be moved by any Member without notice, but to be passed it must be carried by an absolute majority of all Members[205] (76 votes in a House of 150 Members). If the motion is moved pursuant to notice, pursuant to contingent notice, or with the leave of the House, it may be carried by a simple majority of Members present. A motion for the suspension of standing orders may only be moved if the substance of the motion is relevant to the item of business before the House, or, alternatively, when there is no business before the House, that is, between items of business.[206]

For further information *see* 'Motion to suspend standing or sessional orders' in Chapter on 'Motions'.

Points of order

Any Member may raise a point of order at any time which, until disposed of, suspends the consideration and decision of every other question. A point of order may lead to a ruling being given by the Chair which may be objected to and a motion of dissent moved. A motion of dissent must be debated and determined immediately.[207]

For more detailed discussion *see* 'Speaker's rulings' in Chapter on 'The Speaker, Deputy Speakers and officers'.

Disorder

The proceedings of the House may also be interrupted by disorder arising in the House or in the galleries. In the case of grave disorder arising, the Speaker may adjourn the House or suspend the sitting until a time to be named.[208]

Absence of a Minister

There is a convention that a Minister (or Parliamentary Secretary) should be present in the Chamber at all times, and in practice Governments maintain a roster of 'Duty Ministers'.[209] It is of course desirable from the Government's point of view, and expected by Members, that there should be a Member present able to react with authority on behalf of the Government to any unexpected development. There is obviously a need for a government representative to be 'in charge of' items of government business. However, even when other matters are before the House—for example, during private Members' business, or adjournment or grievance debates—it is expected that a government representative will be available to take note of or to respond to matters raised. A short absence of a Minister may go unremarked, but sometimes a point of order will be taken and the Chair's attention drawn to the situation.[210] In such circumstances the Chair has sometimes intervened on his or her own initiative[211]—for

204 E.g. VP 2004–07/2009 (7.8.2007) (motion provided for routine to be in accordance with a document to be presented).
205 S.O. 47(c), e.g. VP 2010–13/215–6 (18.11.2010).
206 VP 1983–84/543 (27.3.1984); H.R. Deb. (27.3.1984) 803.
207 S.O.s 86–87.
208 *See* S.O. 95 and Chs on 'Parliament House and access to proceedings' and 'Control and conduct of debate'.
209 The informal government representative in the Federation Chamber may be a private Member. Usually committee chairs are rostered.
210 E.g. H.R. Deb. (1.5.1987) 2458; H.R. Deb. (26.11.2014) 13209.
211 E.g. H.R. Deb. (1.3.1950) 219; H.R. Deb. (11.5.1950) 2628; H.R. Deb. (12.4.1978) 1443; H.R. Deb. (29.6.1999) 7701–2; H.R. Deb. (27.2.2006) 40.

example, by asking a government whip to fetch a Minister—and on one occasion has even had the bells rung to secure a Minister's attendance.[212]

There is not a similar requirement for an opposition frontbencher to be present, although this does facilitate the business of the House and is desirable from the Opposition's point of view. In practice a roster is maintained.

NEW BUSINESS RULE

Standing order 33 provides that no new business may be taken after the normal time of adjournment unless the House otherwise orders. The normal time of adjournment is the latest time specified for the House to adjourn on any sitting day—that is, from September 2016, 8 p.m.[213] New business was defined by Speaker Johnson as a proposal relating to a matter not before the House.[214]

The following points are relevant to an understanding of the rule:

- as a general rule the only business which the House should proceed with after the normal time of adjournment is the matter which is immediately before the House or business of a formal nature;
- the rule has a purpose in protecting the minorities in the House from the introduction, perhaps by surprise late in a sitting, of new business upon which a vote may be taken;
- in cases of urgency or necessity the House may determine, prior to the normal time of adjournment, that new business be taken after that time, by suspending the standing order.

The following business, on which the House does not have to make a decision of substance, may be transacted after the normal time of adjournment without infringing the rule:

- a message from the Senate agreeing to a bill without amendment or requests may be announced by the Speaker;[215]
- a message from the Senate returning a bill with amendments may be reported and an order agreed to consider the amendments at the next sitting;[216]
- a message from the Senate forwarding a bill for the concurrence of the House may be announced by the Speaker and the bill read a first time; the second reading must be made an order of the day for the next sitting[217] and no debate on that motion is permitted;[218]
- a Minister may provide information, or additional information, in response to a question;[219] and
- a statement may be made by the Speaker.[220]

212 H.R. Deb. (11.5.1950) 2497.

213 Prior to September 2010 specific times were given in successive versions of the standing order. For many years the time was 11 p.m. and the rule was traditionally referred to as 'the eleven o'clock rule'.

214 H.R. Deb. (5.11.1913) 2932.

215 VP 1962–63/37 (6.3.1962).

216 VP 1996–98/838 (19.11.1996); H.R. Deb. (19.11.1996) 7138.

217 VP 1962–63/37 (6.3.1962). It is not new business to fix a future day for the second reading of a bill, H.R. Deb. (3.6.1930) 2432.

218 H.R. Deb. (16–17.11.1933) 4750.

219 H.R. Deb. (3.6.1930) 2432–3.

220 H.R. Deb. (29.6.2000) 18718.

A motion to suspend standing orders moved after the normal time of adjournment in relation to a matter which is before the House—for example, to enable the remaining stages of a bill to be passed without delay—is not regarded as new business.[221]

The House on occasions suspends the new business rule (sometimes together with standing order 31—automatic adjournment) to enable new business to be taken after the normal time of adjournment.[222] In order that the motion to suspend the standing order is not itself classed as new business, the motion must be moved before the normal time of adjournment. Although the standing order has been suspended after the specified time with the concurrence of an absolute majority[223] and the motion has been moved after the specified time by leave of the House,[224] Speaker Mackay stated the correct procedure to be followed:

> It would be well, however, that the Government, being in charge of the business of the House, should realise that a motion to suspend the Standing Orders is, in itself, 'new business' in a strict reading of the Standing Order.[225]

Earlier practice was that when a cognate debate was before the House at the time the new business rule cut in, bills in respect of which questions had not yet been put from the Chair—that is, the second or subsequent bills of the group—were treated as constituting new business for the purpose of the standing order (even though debate on them may have already occurred) and the new business rule was suspended. More recently, consistent with Speaker Johnson's view, and bearing in mind that the House has agreed that debate on the second reading of such bills should be taken together, cognate bills have been called on and dealt with without any suspension of standing orders.[226]

In 1931 the Speaker was questioned, during a division on a motion to suspend the new business rule, as to whether the vote would be effective if not completed before the specified time (then 11 p.m.). The Speaker replied that, as Members had crossed the floor and tellers had been appointed before 11 p.m., the vote was to be regarded as having taken place within the specified time.[227]

ADJOURNMENT

Standing orders provisions

The termination of a sitting is known as the adjournment. With certain exceptions the House can only be adjourned by its own resolution following either a motion moved by a Minister[228] or the Speaker automatically proposing the question 'That the House do now adjourn' pursuant to standing order 31. Matters irrelevant to the question may be debated, thus providing a valued opportunity for private Members to raise matters of concern to them.[229] For discussion of the 'adjournment debate' *see* Chapter on 'Non-government business'.

The Speaker may adjourn the House to the next sitting without putting the question under the following circumstances:

- lack of a quorum (S.O. 57); and

221 H.R. Deb. (5.11.1913) 2932.
222 E.g. VP 1985–87/579 (19.11.1985); VP 1998–2001/2019 (7.12.2000); VP 2008–10/976 (19.3.2009).
223 VP 1978–80/153 (13.4.1978).
224 VP 1968–69/458 (22.5.1969).
225 H.R. Deb. (25.5.1933) 1801.
226 E.g. VP 2004–07/2019–22 (7.8.2007).
227 H.R. Deb. (23.7.1931) 4332.
228 S.O. 32(a).
229 S.O. 76(a).

- grave disorder[230] (S.O. 95).

A further exception relates to the situation when the House is informed by the Clerk of the absence of the Speaker, the Deputy Speaker and Second Deputy Speaker. If the House does not proceed immediately to elect a Member to perform the duties of the Speaker, the House stands adjourned until the next sitting.[231]

Motion moved by a Minister

The motion 'That the House do now adjourn' can be moved only by a Minister (or Parliamentary Secretary) and no amendment can be moved to it.[232] The motion cannot be moved while another question is before the Chair.[233] The motion may be debated without limitation of time, subject to the closure (which, during this debate, may be moved only by a Minister[234]) and the automatic adjournment provisions. Debate on the motion cannot be adjourned.

As with other motions the reply of the mover closes the debate.[235] The mover has again addressed the House, by leave, without closing the debate.[236] After the mover has spoken in reply, individual Members have addressed the House, by leave,[237] and standing orders have been suspended to enable the debate to continue.[238] Also, during the course of the debate, the mover has made a statement, by leave, and later has spoken in reply.[239]

The motion for the adjournment has been withdrawn, by leave, to allow the presentation of a committee report,[240] and to allow a motion for the alteration of the hour of next meeting to be moved.[241] In 1959 the motion was moved immediately after questions without notice and debated while the House awaited certain legislation from the Senate. When the legislation had not arrived some four hours later, the motion was withdrawn, by leave, and a motion granting leave of absence to all Members and a special adjournment motion were agreed to. A further adjournment motion was then moved and agreed to.[242] In a similar situation in more recent years the adjournment was moved early and debated for some time after standing orders had been suspended, by leave, to enable Members to speak for a specified period (one period of 10 minutes each). This motion was then negatived on the receipt of awaited Senate messages. After consideration of the legislation concerned a second adjournment motion was moved and agreed to.[243]

Automatic adjournment

Standing order 31 provides that at the time set by standing order 29 for the adjournment to be proposed (that is, from September 2016, 7.30 p.m. on Mondays, Tuesdays, and Wednesdays and 4.30 p.m. on Thursdays), the Speaker shall propose the

230 E.g. VP 1985–87/1272–3 (23.10.1986).
231 S.O. 18(b).
232 S.O. 32(a). Standing orders have been suspended to enable a private Member to move the motion, VP 1998–2001/2692 (27.9.2001).
233 H.R. Deb. (9.4.1908) 10451.
234 S.O. 31(c).
235 S.O. 71.
236 VP 1967–68/143 (19.5.1967).
237 VP 1960–61/252 (9.11.1960).
238 VP 1960–61/252 (9.11.1960).
239 VP 1940–43/118 (3.4.1941); H.R. Deb. (3.4.1941) 703–11.
240 VP 1964–66/151 (3.9.1964).
241 VP 1929–31/803 (5.8.1931).
242 VP 1959–60/311 (27.11.1959); H.R. Deb. (27.11.1959) 3299, 3316. In 1993 on one sitting day the House twice debated, and negatived, adjournment motions while awaiting Senate messages; VP 1993–96/90–2 (13.5.1993).
243 E.g. VP 1993–96/1723, 1754 (8.12.1994); VP 2002–04/1579 (1.4.2004).

question 'That the House do now adjourn'. The question is open to debate but no amendment can be moved to it.

Other provisions relating to the automatic adjournment are:

- If a division is in progress at the time fixed for interruption, that division and any division consequent on that division[244] are completed and the result announced.
- If, on the question 'That the House do now adjourn' being proposed, a Minister requires the question to be put immediately without debate, the Speaker puts the question immediately. This provision provides the House with an opportunity to negative the adjournment in order to continue with the business before the House.[245]
- If the question 'That the House do now adjourn' is negatived, the House resumes its proceedings at the point at which they were interrupted.
- The business under discussion and not disposed of at the time of the automatic adjournment is set down on the Notice Paper for the next sitting.

The question has arisen of the situation of a Member who is making a statement, by leave, at the time of interruption. Leave of the House does not over-ride the provision in the standing orders for the automatic adjournment, and the adjournment motion must be proposed at the specified time. If the motion is negatived, the Member can then continue his or her remarks,[246] but not otherwise.[247] The same applies if standing orders are suspended to enable a Member to make a statement. Unless standing order 31 has been specifically suspended, the statement is interrupted at the specified time and the Member is only able to continue if the adjournment motion is negatived. A Member raising a matter of privilege at the time of interruption has been in a similar situation—his speech was interrupted and then resumed on the adjournment question being put immediately and negatived.[248]

The making of a statement by leave or a Member speaking to a matter of public importance do not fall within the meaning of business under standing order 31. As there is no question before the House, these items cannot be set down on the Notice Paper for the next sitting.

If a motion, such as a motion to suspend standing orders, is being moved, or has been moved but has not yet been seconded (where necessary) at the time of interruption, the question has not been proposed from the Chair. If the adjournment is not negatived at this point, the motion is not in the possession of the House, and it is therefore dropped and cannot appear on the Notice Paper (*see* 'Motion dropped' in Chapter on 'Motions').

Standing and sessional orders have been suspended, by leave, to enable the debate to extend beyond the normal time,[249] or to or for a specified time.[250]

Adjournment of the House

If, at the time set by standing order 29 for the House to adjourn (that is, from September 2016, 8 p.m. on Mondays, Tuesdays and Wednesdays, and 5 p.m. on Thursdays) the question before the House is 'That the House do now adjourn', or if

244 That is, if the division in progress is on the question 'That the question be now put', and this is agreed to, that question may then be put and divided on.

245 If aware of the wish of the House for business to continue, the Speaker may put the question without the Minister's intervention, e.g. VP 2004–07/2018 (7.8.2007).

246 VP 1977/72 (20.4.1977).

247 H.R. Deb. (22.2.1979) 334.

248 VP 1996–98/2100 (1.10.1997).

249 E.g. VP 1993–96/2567–8 (26.10.1995).

250 E.g. VP 2002–04/1508–9 (11.3.2004); VP 2004–07/2067 (14.8.2007).

debate concludes prior to this time, the Speaker immediately adjourns the House until the time of its next meeting.

Before the Speaker adjourns the House, a Minister may ask for the debate to be extended for 10 minutes to enable Ministers to speak in reply to matters raised during the debate; after 10 minutes, or if debate concludes earlier, the Speaker immediately adjourns the House until the time of its next meeting. This does not prevent a Minister from replying earlier in the debate, provided that no other Member rises to obtain the call.[251] If a Minister starts to reply earlier, at the time of the automatic adjournment he or she may then ask for the debate to be extended.

If all the business of the day is concluded before the time at which the question to adjourn would be automatically proposed, the adjournment motion is moved by a Minister immediately. Debate may continue until the provisions of standing order 31, relating to the extension of the debate by a Minister or the immediate adjournment of the House, apply.

Special arrangements may provide that the House stand adjourned at a specified point in proceedings—for example, at the conclusion of the Leader of the Opposition's speech in reply to the Budget.[252]

If the adjournment motion or question is negatived when first proposed and the business of the day concludes after the time specified for the adjournment of the House, a Minister moves the adjournment motion at the conclusion of ordinary business and debate may ensue without any limitation of time. If business does conclude before the time specified for the adjournment, the time available for the adjournment debate is reduced.

When the question 'That the House do now adjourn' has been agreed to, or when the time for debate has expired or the debate ceases, the sitting formally concludes and the Speaker adjourns the House until the time of its next meeting, either in accordance with standing order 29 or a resolution of the House agreed to under standing order 30.

On 29 August 2004, under the authority of the then standing order permitting the Speaker to fix an alternative day or hour of meeting when the House has adjourned for a routine two week break, the Speaker fixed 'the ringing of the bells' as the time for the next meeting, instead of the regular time of 12.30 p.m. the following day, 30 August. This action was in response to a request from the Prime Minister, who had advised the Speaker that the Governor-General had accepted his recommendation that Parliament be prorogued and the House dissolved on 31 August. Members were advised of the Speaker's decision, the prorogation and dissolution proceeded as stated and the sittings did not resume.

The Speaker has been prevented from formally announcing the time of next meeting by the disorderly conduct of a Member.[253] Until such time as the Speaker leaves the Chamber he or she is still in charge of the House and in control of proceedings.[254]

251 H.R. Deb. (23.8.1979) 613.
252 E.g. VP 2004–07/1855 (9.5.2007), 1867 (10.5.2007); VP 2008–10/243 (14.5.2008), 259 (15.5.2008).
253 H.R. Deb. (23.8.1974) 1168. The Member concerned was requested to apologise at the next sitting, VP 1974–75/154 (17.9.1974); H.R. Deb. (17.9.1974) 1239–40.
254 VP 1974–75/154–5 (17.9.1974). *See also* p. 274 for 1917 case of disobedience to Chair after count out.

Adjournment of the House for special reasons

The House has adjourned as a mark of respect on the death of a Prime Minister,[255] a former Prime Minister,[256] a reigning Monarch,[257] a Queen,[258] the Governor-General,[259] a former Speaker,[260] and others.[261] The House has also adjourned following the giving of a notice of a no confidence motion, the last occasion being in 1947.[262] On four occasions the Chair has adjourned the House until the next sitting when grave disorder has occurred.[263]

QUORUM

Section 39 of the Constitution states:

> Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

In 1989 the Parliament 'otherwise provided' by enacting the House of Representatives (Quorum) Bill 1988. The bill provided:

> The presence of at least one-fifth of the whole number of the members of the House of Representatives is necessary to constitute a meeting of the House for the exercise of its powers.[264]

Thus in a House of 150 Members the quorum is 30 Members, including the occupant of the Chair, being one-fifth of the total number of Members. The quorum is not reduced by any vacancy in the membership of the House.

Standing orders provisions

Quorum at time of meeting

If a quorum is not present when the Chair is taken at the commencement of each sitting, and if within five minutes, the bells having been rung, a quorum is still not present, the Speaker adjourns the House until the next sitting day. This is subject to the proviso that if the Speaker is satisfied there is likely to be a quorum within a reasonable time the Speaker announces that he or she will take the Chair at a stated time. If at that time there is not a quorum, the Speaker adjourns the House until the next sitting day.[265] No Member may leave the Chamber while the bells are ringing or until a quorum is present.[266]

The only time the Speaker has adjourned the House because of a lack of quorum at the time of meeting was on 19 September 1913, before the introduction of the proviso in the standing orders which gives the Speaker the discretion to take the Chair at a stated time. The Speaker declared the House adjourned because a quorum was not present either at the time fixed for the meeting of the House or within the prescribed time. The

255 Curtin, VP 1945–46/179 (5.7.1945); Holt, VP 1966–69/2, 4 (12.3.1968).

256 Reid, Deakin, Fisher, Lyons, Chifley, Hughes, Scullin, Menzies, McEwen, McMahon, Gorton, Whitlam, Fraser (for Watson and Page the House was suspended; for Barton, Cook, Bruce, and Forde the House was neither adjourned nor suspended).

257 VP 1951–53/257 (7.2.1952).

258 VP 1951–53/631 (25.3.1953).

259 VP 1961/6 (7.3.1961).

260 VP 1987/12 (14.9.1987) (Speaker Snedden).

261 In earlier times the practice was to adjourn on the death of any sitting Member. In 1957 the practice was changed to suspension of the House for one hour—*see* statement by Leader of House, H.R. Deb. (19.3.1957) 21. The House has adjourned as a mark of respect for victims of natural disasters, VP 2008–10/849 (9.2.2009), VP 2010–13/274 (8.2.2011).

262 VP 1946–48/250 (17.9.1947).

263 VP 1954–55/351 (13.10.1955); VP 1956–57/169 (24.5.1956); VP 1973–74/405 (27.9.1973); VP 1985–87/1273 (23.10.1986).

264 *House of Representatives (Quorum) Act 1989*.

265 S.O. 57.

266 S.O. 56(d).

Members present were listed in the Votes and Proceedings and the meeting was recorded as a sitting of the House.[267]

In 1905, on the last sitting day of a session, when there was no quorum present at the time fixed for the meeting of the House at 2.45 p.m., Speaker Holder took the Chair at 3.07 p.m. in view of the fact that a message from the Governor-General desiring the immediate attendance of Members in the Senate Chamber had been announced.[268] This action was explained as being taken in accordance with the then practice of the House of Commons that a message from the Crown 'makes a House'.[269]

Following one occasion when a quorum was not initially present but formed in response to the ringing of the bells, a Member raised the possibility of changing the standing orders so that those Members who wished to avoid Prayers could do so.[270]

Quorum during sitting

LACK OF QUORUM IN DIVISION

If a quorum of Members has not voted in a division, no decision of the House has been made on the question voted on.[271] As in the case of a lack of quorum at the time of meeting, the Speaker may then adjourn the House, or if satisfied there is likely to be a quorum within a reasonable time, state the time he or she will resume the Chair. If there is not a quorum then present, the Speaker adjourns the House until the next sitting.[272] If a quorum is present, the proceedings are resumed at the point at which they were interrupted.

There have been five occasions when the House has been adjourned following a lack of quorum on division. On four occasions the division was on the question for the adjournment of the House.[273] The other occasion was in 1907 when the Chairman of the Committee of Ways and Means reported that a quorum of Members was not present during a division of the committee and the Deputy Speaker adjourned the House.[274]

LACK OF QUORUM NOTICED

The fact that a quorum is not always present does not mean that the House cannot continue. The House regularly conducts its business when less than a quorum of Members is present in the Chamber. Because of the demands placed on Members generally, and Ministers and office holders in particular, it is essential that they spend a great proportion of their time on public duties outside the Chamber.[275] Provided that a quorum is present to constitute a meeting of the House and to record a vote of the House when one is called for, the practice of the House has been that it is not necessary to maintain a quorum continuously—for example, a quorum is not required when the House resumes sitting after a suspension. However, a quorum must be formed should any Member require it. It is the duty of all Members to form a quorum, not just government Members.[276]

267 VP 1913/63 (19.9.1913).
268 VP 1905/227 (21.12.1905); H.R. Deb. (21.12.1905) 7461.
269 *May*, 10th edn, p. 224; Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. II, pp. 68–9.
270 VP 1974–75/379 (28.11.1974); H.R. Deb. (28.11.1974) 4231–2.
271 S.O. 58.
272 S.O. 57.
273 VP 1901–02/545 (24.9.1902); VP 1909/70 (30.7.1909); VP 1934–37/23 (14.11.1934), 100 (12.12.1934).
274 VP 1907–08/205 (9.12.1907).
275 *See* Ch. on 'Members'.
276 H.R. Deb. (13.3.1973) 497.

Any Member is entitled at any time to draw the Chair's attention to what is termed 'the state of the House', although it is out of order to debate the situation[277] or to draw attention while the Speaker is in the process of putting a question.[278] It has been ruled that once a quorum has been called for there can be no withdrawal and the House must be counted.[279] It is considered to be highly disorderly for a Member to call attention to the state of the House when a quorum is in fact present. It is normal in these circumstances for the offending Member to be named and suspended from the service of the House.[280]

When the Chair is counting the Members present, the doors remain unlocked and the bells rung for four minutes.[281] The Chair has refused to hear a point of order during the ringing of the bells to form a quorum of Members[282] and on one occasion ordered the bells to be rung again after the Chair's attention was drawn to the fact that the bells were not ringing in some parts of the building.[283]

There are two general principles to be observed by the Chair in respect of a quorum:

- it is not the duty of the Chair to count the House until attention has been drawn by a Member to the state of the House;[284] and
- when attention is drawn, the Chair is obliged to make a count or have a count made.[285]

The following cases have occurred in conflict with these principles and are included for historical purposes. They are irregular and their validity as precedents must be carefully assessed in the context of the particular situation.

- the Speaker has adjourned the House during the adjournment debate without ringing the bells and counting the House;[286]
- the Speaker warned Members that, as soon as the numbers present fell below 40 (the quorum at the time), he would order the bells to be rung and did so on two occasions;[287]
- the Speaker stated that if the Members on his left adopted the practice of calling for a quorum as soon as the Members on his right rose to speak, he would take action to have a quorum present whenever Members on his left were speaking;[288]
- a Member having twice called attention to the state of the House within a short period of time, the Chair refused to count the House again until a reasonable period of time had elapsed, 15 minutes being considered reasonable;[289] on another occasion when a Member had made two quorum calls within a short period the

277 H.R. Deb. (5.4.1973) 1159.
278 H.R. Deb. (10.12.1930) 1247.
279 H.R. Deb. (5.12.1930) 1092; H.R. Deb. (1.6.2006) 94. However, this rule is now qualified by the possibility of deferring the count for a quorum called during specified periods under S.O. 55(b) and (c)—*see* page 275. A quorum call has been withdrawn, by leave, at the request of the Chair, additional Members having entered the Chamber, H.R. Deb. (13.5.2009) 3742.
280 E.g. VP 1974–75/695–6 (26.5.1975); VP 1993–96/194 (31.8.1993).
281 S.O. 56.
282 H.R. Deb. (13.3.1973) 497.
283 H.R. Deb. (7.8.1923) 2240.
284 H.R. Deb. (20.11.1951) 2263–4.
285 S.O. 55(a), now qualified by the deferring of the count during specified periods under S.O. 55(b) and (c)—*see* page 275.
286 VP 1951–53/466 (25.9.1952); H.R. Deb. (30.9.1952) 2313–14.
287 H.R. Deb. (21.10.1954) 2241, 2245.
288 H.R. Deb. (20.3.1953) 1473–4.
289 VP 1920–21/693 (22.7.1921); H.R. Deb. (22.7.1921) 10505. This practice was followed for some years—*see* H.R. Deb. (21.8.1923) 3176; H.R. Deb. (16–17.7.1925) 1149, 1151. The precedent has been rejected by the Chair, H.R. Deb (15.3.2000) 14796–8, but applied on later occasion, H.R. Deb. (13.10.2005) 92.

Deputy Speaker refused to give the call to the Member a third time (presuming that the Member wished to call another quorum);[290]

- the Chair refused to count the House, regarding the quorum call as an attempt to obstruct proceedings and embarrass a Member;[291] and
- the Chair, in order that business could be facilitated, asked Members not to cause annoyance by frequent quorum calls.[292]

On an occasion when a quorum call was made two minutes prior to the time for the adjournment of the House, the Speaker did not have the House counted, saying that he thought it would be ill-advised to interrupt the House in this way.[293]

When the attention of the Chair is called to the lack of a quorum no Member present may leave the Chamber while the bells are ringing, or until a quorum is present.[294] Every Member within the physical limits of the Chamber, including the Speaker, is counted.[295] The physical limits of the Chamber means the area inside the Chamber walls, on the floor of the Chamber. It does not include the galleries on the upper floors.[296]

On occasions when Members, including party whips, have sought to leave the Chamber at the time of a quorum call they have been ordered to return to their seats.[297] The Chair has directed the Serjeant-at-Arms to bring back Members leaving the Chamber.[298] A Member who, in these circumstances, disregards the authority of the Chair by refusing a direction may be named and suspended.

On the occasion of a count out of the House on 26 August 1971 the Chair ordered the doors to be locked after it was found that a quorum was not present after the bells had rung, in order that a precise final count could be made.[299]

If a quorum is not present, the same procedure is followed by the Chair as for a lack of quorum on division—the Speaker adjourns the House to the next sitting day or, at his or her discretion, states that he or she will take the Chair at a specified time, if satisfied that there is likely to be a quorum within that time.[300] The House has been adjourned because of the lack of a quorum on 65 occasions. On 54 of these occasions the question before the House was the adjournment motion.[301]

Once the House has been counted out the Speaker is still in control of proceedings until leaving the Chamber. On 22 February 1917 the House suspended a Member who had been named for disobeying the Chair after the House had been counted out at the previous sitting but before the House was formally adjourned by the Deputy Speaker.[302]

The time allocated to a Member speaking when a quorum call is made is not adjusted to account for the time taken by the count, but if the next speaker in a debate has not been called when the quorum is called, the timing clock is not set.[303]

290 H.R. Deb. (17.2.2005) 102.
291 VP 1934–37/210 (9.4.1935); H.R. Deb. (9.4.1935) 1052–3.
292 H.R. Deb. (13.5.1936) 1651.
293 H.R. Deb. (23.6.1999) 7258.
294 S.O. 56(d).
295 S.O. 56(c).
296 S.O. 2.
297 H.R. Deb. (30.9.1954) 1776.
298 H.R. Deb. (27.11.1959) 3314; H.R. Deb. (1.3.1973) 168; H.R. Deb. (23.4.1980) 2165.
299 PP 242 (1971) 44.
300 S.O. 57. E.g. VP 2010–13/549 (25.5.2011).
301 To July 2017. For the most recent precedent on the adjournment of the House *see* VP 1954–55/126 (27.10.1954). For precedents during other debates *see* VP 1904/157 (9.9.1904); VP 1912/216 (6.11.1912); VP 1920–21/254 (13.8.1920); VP 1934–37/252 (10.4.1935); VP 1970–72/688 (26.8.1971); VP 1993–96/2354 (30.8.1995).
302 VP 1914–17/567 (22.2.1917); H.R. Deb. (15.2.1917) 10550.
303 *See also* 'Time limits for speeches' in Ch. on 'Control and conduct of debate'.

QUORUM COUNT DEFERRED

On Mondays, if any Member draws the attention of the Speaker to the state of the House between the hours of 10 a.m. and 12 noon, the Speaker shall announce that he or she will count the House at 12 noon, if the Member then so desires. Similarly, quorums called before 2 p.m. on Tuesdays are deferred until after the discussion of the matter of public importance.[304]

Resumption of proceedings after count out

If the proceedings of the House have been interrupted by a count out they may, on motion after notice, be resumed at the point where they were interrupted.[305] Business interrupted by a count out has been resumed by motion moved pursuant to contingent notice,[306] by motion moved by leave,[307] and by motion moved pursuant to notice.[308]

DIVISIONS

Determination of questions arising

All questions arising in the House are determined by a majority of votes other than that of the Speaker. The Speaker does not vote unless the numbers are equal when he or she has a casting vote.[309] A question may be determined on the voices, by division, or by ballot. The only exception to this general rule is that by practice a vote or address of condolence is carried by all Members present rising in their places, in silence, thereby indicating approval of the motion.[310]

When debate upon a motion has concluded or has been interrupted in accordance with the standing orders, the Chair puts the question on the motion and states whether, in his or her opinion, the majority of voices is for the 'Ayes' or the 'Noes'. If more than one Member challenges this opinion, the question must be decided by division of the House.[311] The opinion of the Chair cannot be challenged later,[312] but the Chair has put the question again when an assurance was given that some misunderstanding had taken place[313] and by leave of the House following a protest by the Opposition.[314]

Recording dissent

In the event of only one Member calling for a division, that Member may tell the Chair that he or she wishes his or her dissent to be recorded, and the dissent is recorded in the Votes and Proceedings[315] and in Hansard. More than one Member cannot record dissent at this time, as a division would then have to be proceeded with.[316] However, on

304 S.O. 55. The matter lapses if the Member concerned is not present at the relevant time e.g. H.R. Deb. (20.6.2006) 83, 101. Standing orders have been suspended to defer quorum counts (and divisions) for a specified period—e.g. for the remainder of a sitting until the following day, VP 2010–13/1218 (14.2.2012). *See also* 'Deferred divisions' at p. 282.

305 S.O. 59.

306 VP 1907–08/207 (10.12.1907); NP 79 (23.11.1907) 357.

307 VP 1970–72/691 (7.9.1971); VP 1993–96/2360–1 (31.8.1995).

308 VP 1934–37/305 (17.10.1935).

309 Constitution, s. 40. For discussion of the casting vote *see* Ch. on 'The Speaker, Deputy Speakers and officers'. For discussion of the restrictions regarding voting at various times by Members for the Northern Territory and the Australian Capital Territory *see* p. 168 of the second edition.

310 VP 1978–80/959 (28.8.1979); *and see* Ch. on 'Motions'.

311 S.O. 125.

312 H.R. Deb. (27.7.1922) 895–6.

313 VP 1923–24/43 (27.6.1923).

314 VP 1970–72/987 (28.3.1972); H.R. Deb. (28.3.1972) 1239.

315 S.O. 126.

316 H.R. Deb. (25.10.1977) 2349–50.

one occasion the dissent of the Opposition as a whole was recorded by leave,[317] and more recently the dissent of two Members was recorded by leave.[318]

Members cannot have their dissent recorded under this provision if they have in fact not called for a division—a request to have dissent recorded made after the question has been resolved is not effective (although the words of the Member making the request would be recorded in Hansard).[319]

Vote recorded when no dissentient voice

Under standing order 126 a division may take place only after more than one Member challenges the Chair's opinion by calling for a division.[320] An exception to this rule is a division on the third reading of a constitution alteration bill, on which the agreement of an absolute majority of Members is required to be established. In this case the bells are rung as for a division and Members' names recorded, even when there may be no opposition to the bill.[321] A further exception has occurred when the Speaker, in accordance with a prior order of the House, directed the bells to be rung even though there was no dissentient voice, appointed tellers and directed that the names of those Members agreeing to a motion be recorded.[322]

On a later occasion, a motion was agreed to unanimously and the bells were not rung, but, at the Speaker's request, the names of all Members, including that of the Speaker, were recorded as supporting the motion. The Speaker stated that she understood this to be the wish of the House.[323]

Number of divisions

The highest number of divisions held in any one year was 359 in 1975 and the highest number during one sitting was 83 on 9 and 10 April 1935.[324] In recent years there has been an average of about two divisions each sitting day.[325]

Entitlement of Members to vote

A Member is not entitled to 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 (*see* Chapter on 'Members'). A Member's vote may not be challenged except by substantive motion moved immediately after the division is completed; the vote of a Member determined to be so interested is disallowed.[326]

Members must be within the area of Members' seats at the commencement of the count (that is, when the tellers are appointed) for their vote to be counted—*see* page 279.

317 VP 1978–80/686 (22.3.1979).
318 VP 2016–18/147 (14.9.2016).
319 E.g. H.R. Deb. (29.11.2005) 107.
320 H.R. Deb. (26.2.1953) 428.
321 VP 1987–89/531–6 (18.5.1988). An absolute majority is also required to suspend standing orders without notice under S.O. 47(c). On occasion, division bells have been rung, although the action was unopposed, to bring the necessary number of Members to the Chamber (the count not being proceeded with once sufficient arrived), e.g. H.R. Deb. (4.4.1974) 1071.
322 VP 1968–69/165 (22.8.1968).
323 VP 2013–16/1111 (12.2.2015), H.R. Deb. (12.2.2015) 713.
324 VP 1934–37/209–40 (9.4.1935). In the new Parliament House the most divisions in a sitting was 32 on 22.11.2011, VP 2010–13/1083–1114.
325 Average of 2.3 for 1991–2016. However, between 20% and 60% of sittings in these years had no divisions.
326 S.O. 134; *see also* Ch. on 'Members' for discussion of pecuniary interest.

Divisions not proceeded with

Request for division withdrawn

The traditional practice of the House has been that once a division has been called for by at least two Members the division call cannot be withdrawn[327] unless by leave of the House.[328] However, divisions have sometimes not been further proceeded with at the request of Members who called for the division—on these occasions leave of the House has been implicit.[329] This course cannot be taken if other Members object or if leave is formally sought and refused.[330] Closure motions have been withdrawn, by leave, as the House was proceeding to a division, and the divisions not further proceeded with.[331]

A division which has been deferred pursuant to standing order 133 (*see* page 282) is likely not to be proceeded with when it relates to a procedural motion which is no longer relevant at the time the deferred division is due to occur.[332]

If a division call is withdrawn, the question under consideration is regarded as having been disposed of according to the Chair's declaration on the voices. On an occasion in 2004 when the Chair had declared for the 'Noes', the side which did not call for the division (the 'Noes') requested that the division not proceed, in effect changing their vote. The Chair put the question again and it was decided on the voices for the 'Ayes'.[333]

Discretion of Chair

In 1933, on a call for a division on the motion that the House, at a later hour, again resolve itself into committee, the Speaker held the view that the division call was obstructive[334] and, citing House of Commons practice, informed the House that it was within the discretion of the Chair to regard unnecessary calls for divisions on what are termed formal motions as obstructing the business of the House.[335] The Chair has no such discretion in the House of Representatives and the so-called discretion has not been claimed by subsequent Speakers. In fact, the Chair has dismissed points of order that certain calls for a division were disruptive.[336]

Procedure during divisions

Ringing of bells and locking of doors

Once a division has been called for and the call accepted by the Chair, the Clerk causes the division bells to be rung and the relevant sand glass kept on the Table is turned. At the lapse of four minutes as indicated by the sand glass, the doors are locked at the direction of the Chair.[337] House staff act immediately on the Chair's instruction to lock the doors. So as not to injure Members who are in the process of passing through the doors, staff will allow those Members to enter before locking the doors. However,

327 H.R. Deb. (22–23.6.1950) 4824.
328 E.g. H.R. Deb. (24.9.1936) 501; VP 2008–10/620 (16.10.2008); VP 2010–13/2445 (20.6.2013); VP 2013–16/356 (6.3.2014).
329 H.R. Deb. (12.8.1999) 8579; VP 1998–2001/761 (12.8.1999); H.R. Deb. (23.6.1997) 6073; VP 1996–98/1745 (23.6.1997); H.R. Deb. (12.10.2005) 8; VP 2004–07/669 (12.10.2005); VP 2013–16/188 (9.12.2013).
330 H.R. Deb. (13.12.1996) 8456.
331 VP 1960–61/46 (28.4.1960); VP 1996–98/235 (30.5.1996), 1600 (4.6.1997).
332 E.g. VP 1998–2001/2555 (27.8.2001); H.R. Deb. (22.11.2010) 3253–4.
333 The question was on an opposition motion to suspend standing orders which the Government had initially opposed. VP 2002–04/1550 (30.3.2004); H. R. Deb. (30.3.2004) 27592–3.
334 H.R. Deb. (30.11.1933) 5290.
335 VP 1932–34/839 (30.11.1933); H.R. Deb. (30.11.–1.12.1933) 5310–12.
336 H.R. Deb. (13.3.1956) 714.
337 S.O. 129(a)(b).

they do not continue to hold the doors open for approaching Members.[338] When successive divisions are taken and there is no intervening debate, tellers are appointed immediately and the bells for the ensuing divisions are rung for one minute only.[339] The period for which the bells are rung was increased to four minutes when the new building was occupied in 1988.[340]

Members calling for a division must not leave the area of Members' seats.[341] In 1935 a Member who called for a division and then left the Chamber against the express direction of the Chair was subsequently named and suspended.[342]

After the doors are locked no Member may enter or leave the Chamber until after the division.[343] Both the Prime Minister and Leader of the Opposition, however, have been allowed to leave when they have found that they should not be voting because of pairing arrangements.[344] Other Members have been permitted to leave for the same reason.[345] When the doors have been locked and all Members present are in their places, the Chair re-states the question to the House and directs the 'Ayes' to pass to the right of the Chair and the 'Noes' to the left.

Federation Chamber proceedings are suspended to enable Members to attend divisions in the House.[346]

Four or fewer Members on a side

If there are four or fewer Members on one side after the doors are locked, the Chair declares the decision of the House immediately without completing the count. The names of the Members in the minority are recorded in the Votes and Proceedings.[347]

Appointment of tellers

Voting does not commence until the tellers are appointed.[348] When Members have taken their seats, the Chair appoints tellers for each side to record the names of Members voting.[349] The number of tellers is at the Chair's discretion; recent practice has generally been to appoint two on each side.[350] The Chair's attention has been drawn to the fact that a teller appointed for the 'Ayes' did not move from his place with the 'Noes' to join Members voting 'Aye' until after his nomination; he was directed to return to his place and the Chair then appointed another teller for the 'Ayes'.[351] The tellers are usually, although not invariably, appointed from the party whips or deputy or assistant whips. A Prime Minister, on the occasion of a free vote, has been appointed as a teller.[352]

338 Votes of Members entering the Chamber after the doors have been ordered locked have not been counted, H.R. Deb. (23.5.2001) 26930; H.R. Deb. (24.5.2001) 27042; H.R. Deb. (12.5.2004) 28443; H.R. Deb. (13.5.2004) 28668; H.R. Deb. (13.10.2005) 94–6; H.R. Deb. (1.11.2005) 11; H.R. Deb. (22.10.2014) 11709–11; H.R. Deb. (26.11.2014) 13327–8. When the Deputy Speaker believed there had been a delay in the response to his direction that the doors be locked, he drew attention to the fact that a Member had entered the Chamber later and the Member left the Chamber, H.R. Deb. (28.3.2007) 130.

339 S.O. 131(a).

340 VP 1987–89/799 (20.10.1988). Originally 2 minutes; increased to 3 minutes in 1985 following the housing of some Members in an annexe to the provisional Parliament House.

341 S.O. 128. S.O. 129(a) permits Members who did not call for the division to leave the area (and thus not vote).

342 H.R. Deb. (20–21.11.1935) 1861; H.R. Deb. (21.11.1935) 1863–4.

343 S.O. 129(b).

344 H.R. Deb. (6.5.1976) 2073.

345 H.R. Deb. (14.11.1974) 3533.

346 S.O. 190(a).

347 S.O. 127, e.g. VP 1996–98/1523 (27.5.1997); VP 1998–2001/1745 (7.9.2000).

348 H.R. Deb. (5.4.1978) 1055.

349 S.O. 129(c).

350 Before 1998 two tellers a side were specified. Additional tellers have been appointed in the case of a free vote, H.R. Deb. (25.9.1902) 7166. In 2003 a trial was held using additional tellers, *see* p. 286.

351 H.R. Deb. (13.12.1934) 1253.

352 VP 1970–72/289 (3.9.1970).

From time to time those appointed as tellers have refused to act, and the following action has been taken by the Chair:

- when tellers for the 'Noes' refused to act, and all Members of the Opposition took the same position, tellers were appointed from the 'Ayes' to count the 'Noes'; their votes were recorded with the 'Noes';[353]
- the Speaker noted that whether a Member so declining could be compelled to do so or was to suffer a penalty was a matter which he would consider;[354]
- when tellers for the 'Noes' refused to act, the Chair stated that it was an act of contempt for a Member to refuse to do his duty and appointed tellers from the 'Ayes' to count the 'Noes'; their votes were recorded with the 'Ayes';[355] and
- after a teller for the 'Noes' refused to act, the Speaker stated that any disobedience to the call of the Chair was an offence, and that the Member rendered himself liable to be named.[356]

When the tellers for the 'Noes' refused to act in 1918, Speaker Johnson made a statement from which has evolved the modern practice for dealing with this situation. After drawing attention to the standing order which referred to a Member wilfully disobeying an order of the House, the Speaker stated that a direction by the Chair to any Member to act as a teller is a lawful order of the House through the Speaker as its mouthpiece. He added that, as the House had no special standing order dealing with the refusal of a teller to act, he would draw on the practice of the House of Commons which provides that, if two tellers cannot be found for one of the parties in a division, the division cannot take place and the Chair immediately announces the decision of the House.[357]

The current practice, derived from that background, is that if those Members appointed by the Chair, usually a whip and deputy whip, refuse to act as tellers, it is taken to mean that no Members of that party will act as tellers, the division is not proceeded with and the Chair immediately declares the question resolved in the affirmative or the negative as appropriate.[358] On 30 November 2000 after opposition Members had left the Chamber in protest, there being no tellers for the Ayes, the Speaker declared the question resolved in the negative.[359]

Members to be within area of Members' seats to vote

Members not within the area of Members' seats are not counted.[360] However, the Chair, on the suggestion of the whips, has agreed that the vote of an indisposed Member who had left the Chamber be recorded.[361] On another occasion, with the concurrence of the former committee of the whole, the Chair directed that the vote of a Member who had tried to enter the Chamber while the bells were ringing but found the doors locked be recorded.[362]

353 H.R. Deb. (12.11.1909) 5803–4.
354 H.R. Deb. (24.11.1909) 6259.
355 VP 1917–19/244–6 (29.5.1918); H.R. Deb. (29.5.1918) 5246.
356 H.R. Deb. (5.4.1933) 869–70.
357 VP 1917–19/245 (29.5.1918); H.R. Deb. (29.5.1918) 5247–8.
358 VP 1970–72/518 (20.4.1971); VP 1974–75/430 (5.12.1974).
359 VP 1998–2001/1936 (30.11.2000). In similar circumstances in 2008 when opposition Members left the Chamber while the bells were ringing the Chair ruled that there was no need to proceed with the division, H.R. Deb. (19.3.2008) 2251; VP 2008–10/193 (19.3.2008).
360 S.O. 2 stipulates that the advisers' box and the special galleries are not included in this area, but that the seat where the Serjeant usually sits is included.
361 H.R. Deb. (5.6.1979) 2934.
362 VP 1934–37/720 (5.11.1936).

Members not to move places during vote

On the tellers being appointed no Member may move from his or her place until the result of the division is announced.[363] (These restrictions on Members' movements do not apply in the case of a successive division—*see* page 281.) The Chair has drawn attention to the movement of Members during a division which may confuse the tellers.[364]

The rule against Members moving after tellers have been appointed can mean that a Member may be recorded as voting other than in accordance with his or her wish. Members realising that they have been sitting on the wrong side after tellers have been appointed have been obliged to remain in their seats and have their votes recorded for the side where they were sitting.[365] A Member who has crossed the floor after tellers have been appointed has been directed to return to his place.[366] On another occasion two Members were named and suspended for disregarding the authority of the Chair in connection with the rule. The Members had left their seats after the appointment of tellers, moving to the back of the Chamber with the intention of not voting, and disregarded the Chair's direction during the division that they return to the seats they had been occupying when the tellers were appointed.[367]

However, the Chair has directed that the vote of an infirm Member who wished to vote with the 'Ayes' but was sitting with the 'Noes' be recorded with the 'Ayes'.[368] On another occasion, on the understanding that it should not constitute a precedent, a Member was allowed to cross the floor after tellers were appointed as there had been a degree of confusion on a free vote.[369]

Following a division on 3 September 1975, the Speaker upheld a point of order that the vote of a Member who had been occupying the Chair as Deputy Speaker when the tellers were appointed, and who had then left the Chair and voted in the division, should not be counted.[370]

Recording the vote

Standing order 130 requires the tellers to record the name of each Member voting, count the total number of Members voting, sign their records, and present their records to the Speaker, who declares the result to the House. In practice the names are marked off on printed division lists which are not signed by the tellers until their count and counts made by the Clerk and Deputy Clerk are in agreement. The signed lists are then handed to the Clerk who passes them to the Speaker for the declaration of the result. In marking the list for each side, a teller for the 'Ayes' operates with a teller for the 'Noes' but the two tellers for the 'Ayes' sign the 'Ayes' list and those telling for the 'Noes', the 'Noes' list.

Requirement to vote a certain way

Members calling for a division must not leave the area of Members' seats and must vote with those Members who, in the Speaker's opinion, were in a minority when the

363 S.O. 129(d).
364 H.R. Deb. (6.4.1976) 1361.
365 E.g. H.R. Deb. (2.6.2004) 29924.
366 H.R. Deb. (18–19.11.1959) 2885.
367 VP 1996–98/1002–3 (9.12.1996).
368 H.R. Deb. (26.6.1931) 3098.
369 H.R. Deb. (19.8.1976) 430.
370 VP 1974–75/892 (3.9.1975). The Member had left the Chair on the Speaker entering the Chamber and taking the Chair. After ruling, the Speaker commented that the objectors had 'just gained a technical point which lowers the dignity of the House'. H.R. Deb. (3.9.1975) 961–3.

Members called 'Aye' or 'No'.[371] When no Members have passed to the 'Noes' side, the Speaker has directed those Members who called 'No' to vote accordingly.[372] The Speaker ruled in 1944 that it was not within the province of the Chair to direct attention to the fact that those who called for a division did not vote with the minority but that the Chair's attention must be directed to the situation at the time.[373]

It is in order for a Member to vote against his or her own motion[374] or amendment,[375] or against a motion or amendment he or she has seconded.

Points of order and Members' remarks during a division

While the House is dividing, Members may speak, while seated, to a point of order arising out of or during the division.[376] Because Members are required to be seated during a division, if a Member wishes to raise or speak to a point of order, it is the traditional practice of the House for the Member to hold a sheet of paper over the top of his or her head in order to be more easily identified by the Chair.[377] Decorum should prevail during a division, and it is not in order for Members to engage in debate[378] or exchange remarks across the Chamber.[379] Conversation audible to the Chair has been regarded as disorderly.[380] Remarks made during a division are not regarded as part of the proceedings of the House and are not recorded by Hansard.[381] The Speaker has pointed out to Members that such remarks might not be covered by privilege and that this also has implications for media reports.[382]

Successive divisions

When successive divisions are taken, and there is no intervening debate after the first division, the Chair appoints tellers immediately and the bells are rung for one minute only.[383] Successive divisions often occur when a closure motion is moved or when a closure of debate motion follows one or two closures of Member (for example, of the mover and seconder of a motion attempting to suspend standing orders). However, a successive division may also relate to a new item of business if no debate occurs on it,[384] and amendments can be moved formally without constituting intervening debate.[385]

With successive divisions tellers may record Members' votes as being the same as for the immediately preceding division unless Members report different voting intentions—this applies to Members who voted in the preceding division and who then wish not to vote or to vote differently, as well as to Members who did not vote in the preceding division and who then wish to vote. Members who intend to vote the same way as they did previously must remain seated until the result of the division is announced. A full

371 S.O. 128.
372 H.R. Deb. (8.5.1952) 219–20.
373 H.R. Deb. (15–16.3.1944) 1416.
374 E.g. H.R. Deb. (7.5.1908) 11010. *And see May*, 23rd edn, p. 404.
375 E.g. VP 1978–80/1308 (5.3.1980) (Mr Simon's amendment).
376 S.O. 86(c).
377 This tradition has developed from past practice of the UK House of Commons—*see* John Hatsell, *Precedents of proceedings in the House of Commons* (1818) Vol 2, p. 199; Select Committee on the Modernisation of the House of Commons, *Fourth report: Conduct in the Chamber*, 1998, paras 63–65.
378 H.R. Deb. (10.8.1923) 2597.
379 H.R. Deb. (7.9.1909) 3099.
380 H.R. Deb. (29.3.1950) 1325.
381 H.R. Deb. (13.10.1983) 1801.
382 H.R. Deb. (8.10.1984) 1875.
383 S.O. 131(a). In the 44th Parliament the requirement was 3 minutes between divisions rather than no intervening debate; the time was measured with a 3 minute sandglass.
384 E.g. H.R. Deb. (10.12.1998) 1850 (new bill).
385 H.R. Deb. (29.10.1997) 10150–51; (30.10.1997) 10374–5.

count can be carried out if it is clear to the Chair that the majority of Members wish to vote differently or if there is any confusion or error in the count by the tellers.[386]

Deferred divisions

On Mondays, any division called for in the House between the hours of 10 a.m. and 12 noon, on a question other than on a motion moved by a Minister during that period, stands deferred until 12 noon. Similarly, such divisions called before 2 p.m. on Tuesdays are deferred until after the discussion of the matter of public importance.[387] Unless a decision on a matter subject to a deferred division is necessary before any further consideration can be given to the matter, debate may continue on another question.[388] Debate under way at 12 noon is adjourned to allow the deferred division to occur. However, if a Member is speaking at that time, the adjournment of the debate and thus the division is postponed until the end of the Member's speech.[389]

Suggestions have sometimes been made that divisions should take place at a set time each day, in order to save the time of the House and to avoid the disruption that unpredictable divisions can cause to Members and Ministers.[390] Although such a procedure has some attractions, the legislative program could be affected, as each subsequent stage of a bill is dependent on a decision having been reached on the previous stage, and each division called could necessitate postponement of further consideration of a bill, perhaps for a significant period. Another consideration is the range of procedural motions which can be moved without notice at any time, which need to be resolved before business can continue and which are often divided on. During the short-lived experiment with Friday sittings at the start of the 42nd Parliament, standing orders provided for divisions on Friday to be postponed until the next sitting. The resulting situation in which procedural motions could not be resolved contributed to making the experiment unworkable.[391]

This is not to say that divisions could not in many cases be arranged to occur at times which suited Members generally, but this would result from consultation and cooperative timetabling of business (such as usually occurs during the evening meal times when divisions tend to be avoided by timing of business rather than by deferral[392]) rather than from the setting of an arbitrary time for the holding of all divisions.[393]

Record of divisions

Lists of divisions are recorded in the Votes and Proceedings[394] and in Hansard. The Speaker may direct the record to be corrected if a Member complains to the House that a division has been wrongly recorded.[395] The Chair has directed that the Leader of the

386 S.O. 131(b)(c).

387 S.O. 133. The standing order has been suspended, e.g. VP 2008–10/10 (12.2.2008)—for this sitting; VP 2010–13/2278 (27.5.2013)—until completion of consideration of certain bills; VP 2013–16/1555 (8.9.2015)—until 2 p.m.

388 E.g. VP 2010–13/2178 (19.3.2013)—further amendments moved to a bill after division deferred on earlier amendments,

389 E.g. H.R. Deb. (13.10.2003) 21260; H.R. Deb. (1.9.2008) 6760. The Member speaking may initiate an early adjournment of the debate by seeking leave to continue his or her remarks, e.g. H.R. Deb. (16.9.2010) 2574.

390 *See* A. R. Browning 'The ringing of the bells causes some divisions', *Canberra Times,* 27.9.87, p. 2.

391 S*ee* Friday sitting proceedings H.R. Deb. (22.2.2008) 1238–43, 1282–5; VP 2008–10/119–22 (22.2.2008). For deferred division proceedings *see* H.R. Deb. (11.3.2008) 1287–92; VP 2008–10/125–30 (11.3.2008).

392 E.g. VP 2002–04/1206–8 (7.10.2003) (debate on bill adjourned and resumed later to allow the expected division to occur at a convenient time).

393 E.g. proceedings on the Euthanasia Laws Bill 1996 (a private Member's bill) were postponed by agreement so that divisions would occur at a convenient time. H.R. Deb. (9.12.1996) 8037. E.g. to allow uninterrupted debate on a bill for the remainder of a late sitting, standing orders were suspended by leave to give precedence to government business, and to defer divisions and quorum counts until the next day, VP 2010–13/1218 (14.2.2012).

394 S.O. 135(a).

395 S.O. 135(b).

Opposition's vote be deleted as he was paired with the Prime Minister who was not in the Chamber.[396] In practice, discrepancies are corrected prior to publication by agreement between the tellers or by consultation between the relevant whip and staff of the House after a division when a name has been recorded incorrectly in the tellers' sheets. The Speaker has directed that the official record be corrected when a Member's name has been recorded incorrectly[397] and the name of a Member has been omitted.[398] Similarly, corrections have been made when Members not present have been recorded as having voted.[399]

Division repeated

If any confusion, or error concerning the numbers reported by the tellers, occurs and cannot be corrected, the House divides again.[400]

In 1974, the third reading of a bill to alter the Constitution not having been carried by an absolute majority, the Speaker made a statement explaining that for some inexplicable reason the bells had been rung for only one minute 26 seconds (instead of 2 minutes). The vote on the third reading of the bill was later rescinded and taken again.[401]

If a division has miscarried through misadventure caused by a Member being accidentally absent or some similar incident, any Member may move on the same sitting day, without notice and without the need for a seconder, 'That the House divide again'. If this motion is agreed to the question is put again and the result of the subsequent division is the decision of the House.[402]

Pairs

The pairs system, a practice of some antiquity,[403] is an unofficial arrangement between Members, organised by party whips, which can be used to enable a Member on one side of the House to be absent for any votes when a Member from the other side is to be absent at the same time or when, by agreement, a Member abstains from voting. By this arrangement a potential vote on each side of a question is lost and the relative voting strengths of the parties are maintained. The system also allows the voting intentions of absent Members to be recorded.[404]

With the development of the modern party system pairing arrangements were facilitated and Members have been paired not only on particular questions or for one sitting of the House, but sometimes for extended periods. In some periods the Prime Minister and the Leader of the Opposition have been automatically paired unless one indicated that he or she wished to vote on a particular issue.

396 H.R. Deb. (7.4.1978) 1239–40.

397 VP 1932–34/121 (15.3.1932).

398 VP 1940/105 (21.6.1940).

399 VP 1990–92/1093 (17.10.1991).

400 S.O. 132(a); VP 1977/145 (25.5.1977) (because of a dispute between the tellers over the numbers recorded); VP 1998–2001/1935–7 (30.11.2000) (on a motion of dissent from a ruling of the Speaker the initial result was a tied vote, but the Speaker said that, as the matter of the ringing of the bells had been raised—they had rung for 1 minute, not 4, although there had been intervening debate—there was the possibility of confusion, and so he put the question again; further dispute arose, and a motion of no confidence in the Speaker was moved, but defeated); VP 2013–16/21 (18.4.2016) (confusion in the numbers reported by the tellers).

401 VP 1974/19, 28 (6.3.1974); H.R. Deb. (6.3.1974) 111–2.

402 S.O. 132(b), e.g. VP 2016–18/980–2 (15.8.2017); 1245–7 (4.12.2017). On the latter occasion, in response to a point of order the Speaker stated that in his interpretation 'misadventure' was 'pretty much everything other than deliberately not voting'. He also called on the two Members concerned to explain to the House the reason they had missed the initial vote. H.R. Deb. (4.12.2017) 12415–6.

403 N. Wilding & P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 515.

404 Pairs are now recorded only in Hansard.

The closer the relative strength of the parties the more crucial the pairing arrangements have become. In these circumstances disputations on pairing arrangements are more likely to occur, especially on vital votes, and have been the cause of protracted disorderly proceedings. Statements have been made to the House on guidelines for the granting of pairs.[405] Pairs have been cancelled by the Government because of the need for an absolute majority to pass a bill to alter the Constitution.[406] The Opposition has cancelled the arrangements for the remainder of the session as a consequence of its view on the manner in which the proceedings of the House were being conducted.[407] Pairing may be suspended if mutually agreeable arrangements between the two sides of the House are not possible.[408]

Although there is no rule or order of the House requiring a Member to observe a pair, there is a considerable moral and political obligation on his or her part to adhere to such an agreement. The consistent attitude of the Chair on this question was summed up by Speaker Watt when, in reply to a question as to whether it would be a breach of honour if a Member did not observe a pair, he observed that the Chair knew nothing of pairs, the question of honour being a matter for the Members and not the Chair to decide.[409]

During a division, it is the practice that Members who are paired leave the Chamber before the doors are locked so as to avoid voting. However, if a paired Member calls for a division, he or she is bound not to leave the area of Members' seats, and to vote.[410] Both the Prime Minister and Leader of the Opposition have been allowed to leave the area of Members' seats after the doors have been locked when they have found that they should not be voting because of pairing arrangements.[411] Other Members have been permitted to leave for the same reason.[412]

Proxy voting

In 2008 the House agreed to a resolution making special provisions for nursing mothers, recognising that Members required to nurse infants may not always be able to attend the Chamber to vote in divisions. A Member nursing an infant at the time of any division (except that on the third reading of a bill to alter the Constitution) may give her vote by proxy—to the Chief Government Whip in the case of a government Member and to the Chief Opposition Whip in the case of a non-government Member. The proxy vote is treated as if the Member were present in the Chamber.[413]

The resolution also expressed the opinion that the special provisions should not be extended or adapted to apply to Members not able to be present in the Chamber for other reasons.[414]

Free votes

Most decisions of the House are determined on party lines, but occasionally a question before the House is decided by what is termed a 'free vote'. A free vote may occur when a party has no particular policy on a matter or when a party considers that

405 VP 1974–75/596 (17.4.1975); H.R. Deb. (17.4.1975) 1760–2.
406 VP 1974–75/789 (5.6.1975); H.R. Deb. (5.6.1975) 3405–6.
407 H.R. Deb. (15.8.1923) 2783.
408 E.g. between 2004 and 2007. The practice recommenced in the 42nd Parliament.
409 H.R. Deb. (14.7.1925) 1007, *and see* H.R. Deb. (16.5.2013) 3439 and (31.8.2016) 14, 15.
410 S.O. 128.
411 H.R. Deb. (6.5.1976) 2073.
412 H.R. Deb. (14.11.1974) 3533.
413 Proxy votes are identified in the Votes and Proceedings.
414 H.R. Deb. (12.2.2008) 150–2. The terms of the resolution are reproduced as an attachment to the Standing Orders.

Members should be permitted to exercise their responsibility in accordance with conscience.[415] Within the committees of the House party lines are less rigid and questions are often decided by what is, in effect, a free vote.

A free vote is a political rather than a procedural matter and is not specifically identified as such in the Votes and Proceedings nor, apart from any comments by Members during debate, in Hansard. Items of business described in debate as being subject to a free vote may not necessarily be formally voted on at all, perhaps being carried without division.[416] Even though a party may allow a free vote of its Members on a particular issue the vote may, in fact, follow party lines substantially or completely.[417] A free vote may be permitted by one side of the House but not the other.[418]

Free votes have been held on questions pertaining to the Parliament itself, such as those arising out of reports of the Privileges or the Procedure Committee. They are also occasionally held on social issues where the vote is governed by conscience.

Examples of a free vote have included:

- *New and Permanent Parliament House*
  Motions as to site—1968,[419] 1973;[420]
  Parliament Bill 1974 (private Member's bill).[421]
- *Privileges Committee report*
  1955—Browne and Fitzpatrick case.[422]
- *Standing Orders Committee or Procedure Committee reports and related matters*
  Reports dated: 10 June 1970,[423] 19 August 1971,[424] 20 March 1972;[425]
  House of Representatives (Quorum of Members) Bill 1970;[426]
  Motion endorsing Procedure Committee recommendation to alter quorum of the House, 1987.[427]
- *Private Members' bills and motions*
  Medical Practice Clarification Bill 1973;[428]
  Euthanasia Laws Bill 1996;[429]
  Sexual relationships—Social educational and legal aspects—Proposed Royal Commission (motion);[430]
  Homosexual acts and the criminal law (motion);[431]
  Termination of pregnancy—Medical benefits (motion);[432]

415 *See* H.R. Deb. (19.8.1970) 172.
416 E.g. VP 1985–87/1627 (6.5.1987) (Parliamentary Privileges Bill 1987); VP 1987–89/1732 (21.12.1989) (Family Law Amendment Bill 1989).
417 VP 1970–72/901–2 (8.12.1971).
418 E.g. Marriage Amendment Bill 2012, H.R. Deb. (19.9.2012) 11203–4.
419 VP 1968–69/242 (17.10.1968).
420 VP 1973–74/476 (24.10.1973).
421 VP 1974–75/198, 199, 199–200, 200 (26.9.1974).
422 VP 1954–55/270–1 (10.6.1955). Leader of the Opposition Evatt informed the House that the matter of privilege in the Browne and Fitzpatrick case did not involve party consideration and that on no occasion had a question of privilege been discussed at a party meeting by Australian Labor Party Members, H.R. Deb. (10.6.1955) 1630.
423 VP 1970–72/243 (19.8.1970), 252–3 (20.8.1970).
424 VP 1970–72/686, 687 (26.8.1971).
425 VP 1970–72/1009, 1010 (13.4.1972).
426 VP 1970–72/294, 295 (4.9.1970).
427 VP 1987–89/303–4 (9.12.1987).
428 VP 1973–74/172, 172–3 (10.5.1973).
429 VP 1996–98/998–1003 (9.12.1996) (on the subject of the bill, not on the procedural questions relating to it).
430 VP 1973–74/327, 327–8, 328 (13.9.1973).
431 VP 1973–74/458 (18.10.1973).
432 VP 1978–80/692, 692–3 (22.3.1979).

Fluoridation of Canberra water supply (motion).[433]

- *Others*
  Matrimonial Causes Bill 1959;[434]
  Death Penalty Abolition Bill 1973 (Senate bill);[435]
  Family Law Bill 1974 (Senate bill);[436]
  Family Law Amendment Bill 1983 (Senate bill);[437]
  Sex Discrimination Bill 1984 (Senate bill);[438]
  Constitution Alteration (Establishment of Republic) Bill 1999;[439]
  Research Involving Embryos and Prohibition of Human Cloning Bill 2002;[440]
  Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 (Senate bill);[441]
  Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment Bill 2006 (Senate bill);[442]
  Marriage Amendment (Definition and Religious Freedoms) Bill 2017 (Senate bill).[443]

Proposals for change in division procedure

There have been a number of proposals for changing the procedure used by the House during divisions. Most proposals have been aimed at either avoiding problems of overcrowding or reducing the time taken by divisions. Both these problems are especially noticeable during periods when the Government has a large majority.[444] In the 37th Parliament the time taken to record and tally a division (not including the time of the ringing of the bells) was about five or six minutes. In the 38th Parliament, when there was a very large government majority, this time increased to approximately eight minutes. This situation gave rise to the 1996 Procedure Committee inquiry into the conduct of divisions.[445] Measures introduced following this review included:

- the number of tellers left to the Speaker's discretion (previously two per side);
- Members presumed to vote the same way in successive divisions unless tellers notified otherwise (*see* page 281);
- count not completed when four or fewer Members on a side (*see* page 278).

After the introduction of these streamlining procedures, and with a reduced government majority, in the following Parliament the average time taken to record a division dropped to about four minutes.

In 2003 a trial was conducted involving doubling the number of tellers to eight, with two pairs of tellers (each pair counting a specific block of seats) to count each side. Evaluating the trial the Procedure Committee concluded that while the trial had been

433 VP 1964–66/251 (18.3.1965).
434 VP 1959–60/261 (2) (17.11.1959), 264–5, 265, 265–6 (18.11.1959).
435 VP 1973–74/329, 330 (2) (13.9.1973)
436 VP 1974–75/384 (28.11.1974) (and on subsequent divisions during proceedings on the bill).
437 VP 1983–84/305–10 (19.10.1983).
438 VP 1983–84/528–30 (7.3.1984).
439 VP 1998–2001/733 (9.8.1999).
440 H.R. Deb. (27.6.2002) 4541–4; VP 2002–04/305 (27.6.2002). Free votes also on the division of the bill and subsequent proceedings on the resultant bills, Prohibition of Human Cloning Bill 2002 and the Research Involving Embryos Bill 2002.
441 VP 2004–07/954–7 (16.2.2006).
442 VP 2004–07/1635–7 (6.12.2006).
443 VP 2016–18/1284–8 (7.12.2017).
444 The time taken for a division also increased in the 43rd Parliament when numbers were close, due to the need for extreme care in the count.
445 Standing Committee on Procedure, *Conduct of divisions*, PP 290 (1996).

successful in saving time, there was a systemic problem (the use of four tellers sheets) which had caused an unacceptable level of errors.[446]

Proposals put forward over the years which have not been adopted include:

- that the Chair should have discretionary power, as in the House of Commons, to reject the call for a division, thus minimising 'unnecessary' divisions called primarily as a tactical measure;[447]
- the adoption of systems whereby Members file past the Chair or tellers and have their votes counted while the bells are ringing;[448]
- the introduction of electronic voting as a time-saving device and to enable Members to vote without leaving their seats and obviating the need to appoint tellers.[449]

Electronic voting

Of all these proposals the question of electronic voting has received the most attention. In 1970 the Joint Select Committee on the New and Permanent Parliament House agreed that, although the installation of electronic voting was not desirable at that time, the Chambers in the new Parliament House should be provided with all necessary conduits and ducts in preparation for the possible installation of electronic voting cabling at a later date.[450] In 1993 the Speaker and a small group of parliamentary staff members inspected electronic voting facilities in operation in various overseas Parliaments. In its report to the House[451] the inspection team stated that it was impressed with the equipment inspected, its speed of operation, accuracy and stated reliability. The report recommended that the Government, Opposition and other non-government Members should confer to seek in-principle agreement to the installation of electronic voting equipment in the House of Representatives Chamber. The voting system proposed was to retain the traditional voting method of Members dividing to the right or left of the Chair, with Members recording their votes, irrespective of where they actually sat for the division, by means of personal electronic cards.

In 1996 the Procedure Committee looked at electronic voting as part of its wider review of the conduct of divisions, but decided to defer consideration of the option in the belief that the costs involved precluded it at that time. However, the committee's report included a dissenting report which recommended the implementation of electronic voting. The dissenting committee members argued that the benefits of the system would outweigh the costs and noted that the cost of technology was falling.[452]

In 2003 the Procedure Committee, in declining to recommend the introduction of electronic voting at that time, reported its belief that the general principles of electronic voting should be considered by and debated in the House before the technological alternatives and costs were examined in detail.[453] In 2013 the committee prepared a short

446 Standing Committee on Procedure, *Trial of additional tellers*. PP 408 (2003). The time taken to record normal (4 minute bell) divisions had been reduced by about 2 minutes per division. However, for 31% of divisions the initial record contained errors. Statement by Speaker, H.R. Deb. (10.2.2004) 24090.

447 H.R. Deb. (14.10.1976) 1926; *see also* the address to the National Press Club on 8 June 1978 by Speaker Snedden (unpublished) and Selwyn Lloyd, *Mr Speaker, Sir*, Jonathan Cape, London, 1976, pp. 96–8; *but see also* comments by Speaker Snedden, *Report of 4th Conference of Commonwealth Speakers and Presiding Officers, 1976, London*, p. 9.

448 H.R. Deb. (10.9.1975) 1214. Standing Committee on Procedure, *Conduct of divisions*, PP 290 (1996) 5. Also examined in the Committee's 2003 report *Review of the conduct of divisions*, PP 163 (2003) 4–5.

449 *See* H.R. Deb. (19.4.1966) 955.

450 'Proposed New and Permanent Parliament House for the Parliament of the Commonwealth of Australia', *Report of Joint Select Committee*, PP 32 (1970) 30.

451 *Electronic voting: report of inspection of equipment used in the Parliaments of Belgium, Finland, Sweden and the United States of America and in the European Parliament building in Brussels, October/November 1993*. Misc. Paper 7743.

452 Standing Committee on Procedure, *Conduct of divisions*, PP 290 (1996) 5, 16.

453 Standing Committee on Procedure, *Review of the conduct of divisions*. PP 163 (2003) 6–9.

report reviewing the existing evidence and commended a more in-depth inquiry to a future Procedure Committee.[454] In 2016 the committee recommended that electronic voting to record divisions be implemented.[455]

BALLOTING

Apart from ballots for the election of the Speaker, the Deputy Speaker and the Second Deputy Speaker,[456] the standing orders make provision for the taking of a ballot to elect a Member to a position or to perform a function—for example, to serve on a committee, statutory body or delegation—whenever the House thinks fit. However, the system has not been used for many years. Before the House proceeds to a ballot, the bells are to be rung for four minutes, as in a division.[457] The manner of taking a ballot, unless otherwise expressly provided, is also detailed.[458]

In 1905 the House agreed to appoint Members to a proposed select committee by ballot.[459] The ballot did not eventuate as the motion to appoint the committee was negatived.[460] On three occasions, in 1903, 1904 and 1908, the House resolved to hold open exhaustive ballots to determine the opinion of Members as to the site of the seat of government of the Commonwealth.[461] On each occasion the House agreed to specific resolutions determining the method of taking the ballot.

Consideration has been given to the possible use of secret ballots on certain conscience issues which were to be decided by free vote, but no such procedure has been proposed to the House.

454 Standing Committee on Procedure, *Electronic voting in the House of Representatives*, June 2013.

455 Standing Committee on Procedure, *Division required? Electronic voting in the House of Representatives*, April 2016.

456 *See* Ch. on 'The Speaker, Deputy Speakers and officers'.

457 S.O. 136.

458 S.O. 137.

459 Members to serve on parliamentary committees are regularly elected by ballot in the party rooms.

460 VP 1905/135–6 (26.10.1905); H.R. Deb. (26.10.1905) 4169. The method of appointment of Members was agreed to pursuant to a standing order (no longer operative) which provided that, if six Members so required, a committee was to be appointed by ballot.

461 VP 1903/161–2 (7.10.1903); VP 1904/129 (27.7.1904); VP 1908/29–30 (2.10.1908). The 1904 ballot was to determine the opinion of Members as to the district in New South Wales in which the seat of government should be; the other two were for actual sites.

9
Motions

DEFINITION OF A MOTION

In its widest sense a motion is any proposal made for the purpose of eliciting a decision of the House. It may take the form of a proposal made to the House by a Member that the House do something, order something to be done or express an opinion with regard to some matter. It must be phrased in such a way that, if agreed to, it will purport to express the judgment or will of the House. Almost every matter is determined in the House by a motion being moved, the question[1] being proposed by the Chair, the question then being put by the Chair after any debate and a decision being registered either on the voices or by a division (counted vote) of the House. There is provision for some questions to be resolved by ballot[2] and condolence motions are generally resolved not on the voices but by Members, at the suggestion of the Chair, rising in their places to indicate their support (*see* page 330). When a question on a motion is agreed to, that motion becomes an order or resolution of the House (*see* page 314).

A motion does not necessarily lead to a decision of the House. In some circumstances it may be dropped, it may be withdrawn, or the question before the House may be superseded or deferred. The procedures involved in dealing with a motion, covered in detail in the following text, are outlined in diagrammatic form on page 290.

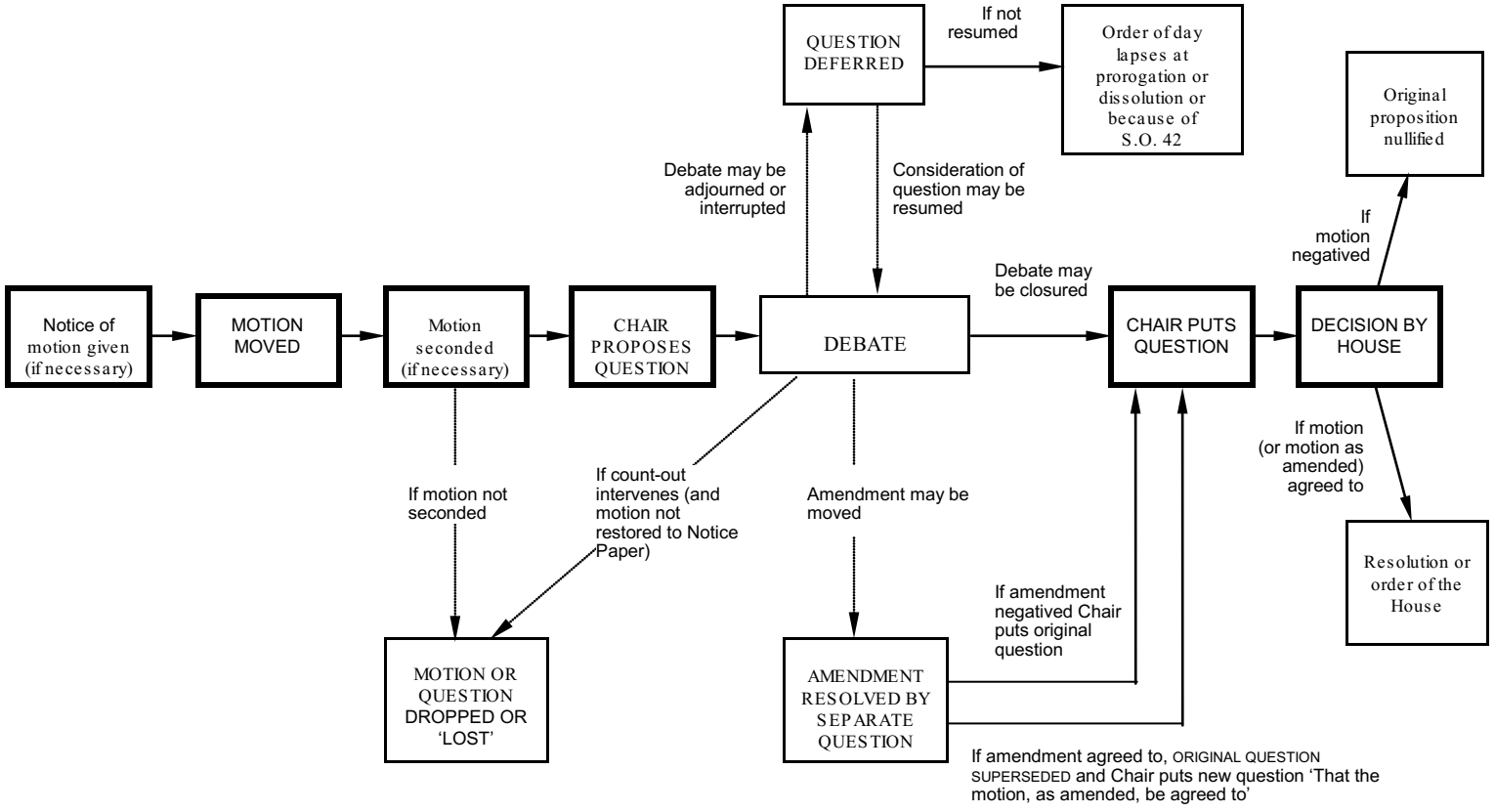
Motions may be conveniently classified into two broad groupings:[3]

- **Substantive motions**: These are self-contained proposals drafted in a form capable of expressing a decision or opinion of the House.[4]
- **Subsidiary motions**: These are largely procedural in character. The term covers:
  - ancillary motions dependent upon an order of the day, for example, a motion that a bill be read a second or third time;
  - a motion made for the purpose of deferring a question, for example, a motion that the debate be now adjourned;
  - a motion dependent upon another motion, such as an amendment; and
  - a motion flowing from an occurrence in the House, for example, that a ruling be dissented from or that a Member be suspended from the service of the House after having been named.

  Standing order 78 specifies a number of these procedural motions which are not open to debate or amendment.

1 'Question' in this sense means the matter to be voted on.
2 *See* Ch. on 'Order of business and the sitting day'.
3 *See also May*, 24th edn, p. 392. The motion providing for the discussion of a matter of special interest under S.O. 50 (*see* p. 334) really fits neither of these definitions.
4 S.O. 2.

The procedure for dealing with a motion



NOTICE

A notice is a declaration of intent to the House by a Member to either move a motion or present a bill on a specified day. A notice must contain the terms of the motion or the long title of the bill. The standing orders are applied and read to the necessary extent as if a notice of presentation of a bill were a notice of motion (*see also* Chapter on 'Legislation').

Motions requiring notice

It can generally be said that substantive motions require notice, whereas subsidiary motions do not. However, whether a motion requires notice or not depends to a large extent upon practical considerations relating to the efficient operation of the House, and the standing orders and practice of the House have been developed accordingly.

It is normal meeting procedure for notice to be given of motions proposed to be moved. This action alerts interested persons and avoids the possibility of business being conducted without the knowledge or due consideration of interested parties. The standing orders provide that a Member must not move a motion unless he or she has given a notice of motion and the notice has appeared on the Notice Paper, or he or she has leave of the House, or as otherwise specified in the standing orders.[5] It is further provided that a notice of motion becomes effective only when it appears on the Notice Paper.[6] When notice is required, the terms in which a motion is moved must be the same as the terms of the notice. (However, there are mechanisms by which the terms of a notice may be altered—*see* page 295.)

A motion for the purpose of rescinding a resolution or other vote of the House during the same session requires seven days' notice; however, to correct irregularities or mistakes, one day's notice is sufficient, or the corrections may be made at once by leave of the House.[7]

A notice of motion appearing under government business is usually moved on the first sitting day that it appears on the Notice Paper, and is normally debated immediately. On the other hand, a notice given by a private Member appears under private Members' business and, because not all such notices are dealt with, may remain on the Notice Paper without consideration until removed (*see* Chapter on 'Non-government business') or until the Parliament is prorogued or the House is dissolved, when it will lapse.

Motions moved without notice

The standing orders and practice of the House permit certain substantive motions to be moved without notice. The following are some examples:

- Address to the Queen or the Governor-General (in case of urgency only);
- Address of congratulation or condolence to members of the Royal Family;
- motion of thanks or motion of condolence;
- a motion declaring that a contempt or breach of privilege has been committed;
- referral of a matter to the Committee of Privileges and Members' Interests;

5 S.O. 111.
6 S.O. 108.
7 S.O. 120 (*see* page 317).

- a specific motion in relation to a committee report;
- a proposal dealing with taxation, for example, a customs or excise tariff proposal;
- leave of absence to a Member;
- leave of absence to all Members, prior to a long adjournment; and
- a motion fixing the next meeting of the House.

From time to time other substantive motions have been moved without notice or leave of the House, for example:

- The Speaker having informed the House of the presentation of a resolution of thanks to representatives of the armed services after World War I, a motion that the record of proceedings of the occasion be inserted in Hansard was moved and agreed to.[8]
- The Speaker having sought the direction of the House on a matter, a motion clarifying the practice of the House was moved and agreed to.[9]
- Two motions for the commitment of offenders found guilty of a breach of privilege were moved together and agreed to.[10]

Subsidiary motions which are moved without notice include:

- adjournment of House;
- Member be heard now;
- Member be further heard;
- Member be no longer heard;
- Member be granted an extension of speaking time;
- adjournment of debate;
- further proceedings (on item of Federation Chamber business) be conducted in the House;
- adjournment or suspension (under S.O. 187(b)) of Federation Chamber;
- question be now put;
- business of the day be called on;
- guillotine (questions relating to urgency and the allotment of time);
- allotment of time for debate on a matter of special interest;
- dissent from ruling;
- postponement of a government notice of motion;
- postponement of order of the day;
- discharge of order of the day on the order of day being read;
- motions on the various stages of bills, including questions in the consideration in detail stage, and motions arising from messages from the Senate and the Governor-General;
- motion by Minister to take note of document;
- document be made a Parliamentary Paper;
- suspension of a Member after naming; and
- suspension of standing or sessional orders.

8 VP 1920–21/184 (20.5.1920).
9 VP 1954–55/180 (28.4.1955); H.R. Deb. (28.4.1955) 230–1.
10 VP 1954–55/269–70 (10.6.1955); H.R. Deb. (10.6.1955) 1629.

The standing orders require a dissent motion to be submitted in writing,[11] and for practical reasons this is also expected by the Chair in the case of other subsidiary motions of any length or complexity, such as an allotment of time under a guillotine or a motion to suspend standing orders.[12]

Giving notice

A notice of motion is given by a Member delivering it in writing to the Clerk at the Table. In practical terms, notices are often delivered to the Table Office, from where they are transmitted to the Clerk at the Table.

The notice may specify the day proposed for moving the motion (which may be the next day of sitting or any other suitable day[13]) and must be authorised by the Member and a seconder. A notice which expresses a censure of or no confidence in the Government, or a censure of any Member, has to be reported to the House by the Clerk at the first convenient opportunity.[14] Other notices are not reported to the House.

A notice is not regarded as having been received until delivered to the Clerk in the Chamber and thus cannot be received when the House is not sitting. A notice lodged on a non-sitting day or outside the Chamber—for example, with the Table Office or with the Clerk of the Federation Chamber—is taken to the Chamber at the first opportunity.

A Minister has referred to the terms of a notice, which he handed to the Clerk, during an answer to a question.[15]

Member absent

If a Member is absent, another Member, at his or her request, may give a notice of motion on behalf of the absent Member. The notice must show the name of the absent Member and the signature of the Member acting for him or her.[16] However, a Member may not lodge a notice while on leave, nor may another Member give a notice on his or her behalf.

Member suspended

In 1984 the Speaker held that to allow a suspended Member to hand notices to the Clerk for reporting to the House would not accord with the intention of the House in suspending the Member.

Notices of matters sponsored by more than one Member

The standing orders make provision for notices from individual Members only. In a situation where two or more Members have jointly sponsored a private Member's bill, the notice has been given by one of the Members concerned, and that Member has presented the bill, but the bill has been printed with the names of both or all sponsoring Members as sponsors.[17]

11 S.O. 87.
12 H.R. Deb. (15.9.2008) 7362.
13 H.R. Deb. (29.5.1908) 11702.
14 S.O. 106(c), e.g. H.R. Deb. (22.5.2012) 5073.
15 H.R. Deb. (29.3.2004) 27401, 27511.
16 S.O. 107.
17 E.g. Protection of Australian Flags (Desecration of the Flag) Bill 2003, sponsored by 2 Members, H.R. Deb. (18.8.2003) 18671–3, VP 2002–04/1085 (18.8.2003); Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011, sponsored by 3 Members, H.R. Deb. (4.7.2011) 7271–4, VP 2010–13/713 (4.7.2011); Marriage Legislation Amendment Bill 2015, sponsored by 7 Members, H.R. Deb. (17.8.2015) 8409, VP 2013–16/1513 (17.8.2015); Marriage Legislation Amendment Bill 2016 [No. 2], sponsored by 3 Members, H.R. Deb. (12.9.2016) 418, VP 2013–16/97 (12.9.2016). (Senate S.O. 76(4) provides for joint notices.)

Need for seconder

The standing orders require that a notice of motion must be signed by the Member proposing the motion and a seconder.[18] For practical reasons the Chair does not insist that the actual seconder of the motion be the same Member who signed the notice of motion as seconder. A notice of motion given by a Minister, a Parliamentary Secretary or, in certain circumstances, the Chief Government Whip does not require a seconder (*see* page 300). In 1992 the Procedure Committee recommended that standing orders be amended to allow Members to lodge a notice of motion without the need for a seconder. No action was taken on the recommendation.[19]

If the Member who has signed a notice as a seconder formally withdraws his or her support the notice is removed from the Notice Paper.

The act of seconding a notice indicates support for the motion being put to the House and debated; it does not necessarily indicate support for the motion.

Contingent notice

Contingent notices are notices conditional upon an event occurring in the House which in fact may not eventuate. The practice of using contingent notices has operated from the very beginnings of the House, a contingent notice appearing on the first Notice Paper issued.[20] In practice, the significance of the procedure is that a motion to suspend standing orders moved pursuant to a contingent notice only needs to be passed by a simple majority, whereas the same motion moved without notice would require an absolute majority.

A set of contingent notices, each for the purpose of facilitating the progress of legislation, are normally given in the first week of each session. For example:

> *Contingent on any bill being brought in and read a first time*: Minister to move—That so much of the standing orders be suspended as would prevent the second reading being made an order of the day for a later hour.[21]

The use of these contingent notices is discussed in the Chapter on 'Legislation'. Contingent notices of motion are not now mentioned in the standing orders, nor do they form part of UK House of Commons practice. However, the contingent notices to aid the passage of legislation have been lodged as a matter of course for a considerable time. Because the device of a contingent notice may cut across or defeat the normal operation of certain standing orders, which generally have been framed for sound reasons and which provide safeguards against hasty or ill-considered action, any extension of its use is questionable.[22]

Order on the Notice Paper

As a general rule notices are entered on the Notice Paper, in priority of orders of the day, in the order in which they are received.[23] There are important provisos however in that:

18 S.O. 106.
19 PP 102 (1992).
20 NP 1 (21.5.1901) 1. The contingent factor was 'When the Standing Orders are submitted for the approval of the House'.
21 Such notices of continuing effect remain on the Notice Paper, even though moved and agreed to.
22 For examples of other contingent notices relating to specific occasions or items of business *see* NP 145 (8.12.1971) 11529; NP 180 (15.8.1972) 14646; NP 45 (5.12.1974) 4942, VP 1974–75/422 (5.12.1974); NP 84 (16.2.2006) 3769.
23 S.O. 108.

- In relation to government business, the Leader of the House can arrange the order of notices on the Notice Paper as he or she thinks fit[24] and, as government business has priority on sitting days other than Monday, government notices will normally take priority over notices given by private Members.
- In relation to private Members' business, the Selection Committee can cause changes to the order of private Members' notices on the Notice Paper as a result of arranging the order of private Members' business for each sitting Monday.[25] Private Members' notices not called on after eight sitting Mondays are removed from the Notice Paper.[26]

Subject to these provisos, notices appear on the Notice Paper as Notice No. 1, 2, 3, and so on, and must be called on and dealt with by the House in that order, before the orders of the day are called on. If it is desired not to proceed with a notice or with notices generally, an appropriate postponement motion may be moved, without notice.[27] However, in the case of private Members' business, as a notice is the possession of the Member who gave it, notices may only be taken otherwise than according to the order of precedence determined by the Selection Committee by:

- withdrawal of the notice, before being called on, by the Member who gave the notice (S.O. 110(c));
- postponement by motion moved (without notice) by the Member who gave the notice (S.O. 112); or
- the Member not moving the motion when it is called on, or the Member, or another Member at his or her request, setting a future time for moving the motion (S.O. 113).[28]

Notice amended or divided by Speaker

The Speaker must amend any notice of motion which contains inappropriate language or which does not conform to the standing orders.[29] *See* 'Authority of the Speaker to amend or disallow' at page 296. The Speaker may divide a notice of motion which contains matters not relevant to each other.[30] This would not necessarily be done in the House.[31] *See also* 'Complicated question divided' at page 305.

Notice altered by Member

A Member may alter the terms of a notice of motion he or she has given by notifying the Clerk in writing in time for the change to be published in the Notice Paper.[32] The altered notice becomes effective only after it appears on the Notice Paper.[33] An amended notice must not exceed the scope of the original notice. Provided that these rules are observed a notice may be altered at any time after it has been given. When a notice has been amended, the fact that it has been amended is indicated on the Notice Paper after the

24 S.O. 45.
25 S.O.s 41, 222.
26 S.O. 42.
27 *See* Ch. on 'Order of business and the sitting day'.
28 E.g. a later hour, the next sitting, the next sitting Monday, or a specified date.
29 S.O. 109(a).
30 S.O. 109(b).
31 H.R. Deb. (23.10.1975) 2447.
32 S.O. 110(a).
33 S.O. 108.

notice, together with the date that the alteration was made.[34] Leave has also been granted to amend a notice when it has been called on to be moved.[35]

Withdrawal or removal of notice

A Member may withdraw a notice of motion he or she has given by notifying the Clerk in writing before the motion is called on.[36] The withdrawal of a notice is effective immediately notification is received. The Clerk is not required to announce the withdrawal of a notice to the House but may do so if it affects the programming of business before the House. A notice of motion is also withdrawn from the Notice Paper, with immediate effect, if the Member who gave the notice does not move the motion when it is called on,[37] unless he or she, or another Member at his or her request, sets a future time for moving the motion—*see below*. However, once the question on the motion has been proposed from the Chair it is in possession of the House and cannot be withdrawn without leave.[38]

Under standing order 42 the Clerk removes from the Notice Paper any item of private Member's business which has not been called on for eight consecutive sitting Mondays. A notice is also removed if the sponsoring Member ceases to be a Member (or in the case of a private Member's notice, ceases to be a private Member).

Postponing of notice

If a Member is not ready to proceed when his or her notice is called on, he or she may set a future time for the moving of the motion or presentation of the bill,[39] or at his or her request another Member may set a future time.[40] This has proved convenient during the private Members' business period when a Member is not present when the notice is called on but is expected later during the period. Another Member, on behalf of the absent Member, may postpone the notice until a later hour, enabling it to be called on after the Member's arrival and the Member to move the motion or present the bill.[41] If the absent Member is not expected that day, another Member may postpone the notice to the next sitting Monday.[42]

FORM AND CONTENT OF MOTIONS

Authority of the Speaker to amend or disallow

The standing orders direct the Speaker to amend any notice of motion which contains inappropriate language or which does not conform to the standing orders.[43] The House in effect places an obligation on the Speaker to scrutinise the form and content of motions

34 NP 91 (4.4.1979) 4984; NP 92 (5.4.1979) 5011. This is also a case of where a notice, first given over a year earlier, was altered by omitting all words after 'That' and substituting other words as subsequent events had overtaken the purpose of the original notice. The amendment was considered acceptable as it covered the same subject matter, together with subsequent events. A proposal to substitute words which had no relationship to the original notice would not have been in order.

35 E.g. VP 1973–74/124 (12.4.1973); VP 1998–2001/1118 (6.12.1999); VP 2004–07/602 (12.9.2005), 1150 (29.5.2006); VP 2010–13/1016 (31.10.2011); VP 2013–16/957 (30.10.2014), 773–4 (1.9.2014).

36 S.O. 110(c). A private Member's notice may be withdrawn even after it has been accorded priority by the Selection Committee.

37 S.O. 113, e.g. VP 1983–84/915 (4.10.1984); VP 2008–10/1768 (24.5.2010); VP 2016–18/284 (7.11.2016).

38 S.O. 117(b), H.R. Deb. (19.3.1908) 9352.

39 S.O. 113, e.g. VP 2010–13/811 (22.8.2011).

40 S.O. 113.

41 E.g. VP 2016–18/165, 166 (10.10.2016).

42 E.g. VP 2016–18/97, 98 (12.9.2016).

43 S.O. 109(a).

which are to come before the House. The Speaker's action in so amending a notice cannot be challenged by a motion of dissent, as the Speaker is exercising an authority given by the standing orders rather than making a ruling.

In 1912 a motion stating that the Speaker's action in endeavouring to prevent a Member from reading a notice of motion, and in refusing to accept the notice (ruled out of order on the grounds that it was frivolous—*see* page 298) ' . . . was a breach of the powers, privileges and immunities of Members' was moved and negatived.[44] Reinforcing this precedent was a decision of the House in 1920 negativing a motion that the Speaker had infringed the privileges of Members by ruling a notice of motion out of order, thus preventing the notice coming before the House.[45]

Length

It has been ruled that a notice of motion practically incorporating a speech cannot be given.[46] In 1977 the Speaker referred to the form of notices (then given orally), noting that notices which were inordinately and unnecessarily long continued to be given, and that Members were tending to use notices to narrate a long argument rather than to put a concise proposition for determination by the House. The Speaker said that if Members continued to misuse the procedure he would have to intervene to have Members reform their notices or to have the Clerks eliminate the argument and unnecessary statements.[47] The view and direction put forward by the Speaker were adhered to and came to constitute the practice of the House.

In more recent times Members have been cautioned about the length of motions, particularly in relation to censure motions[48] and motions without notice to suspend standing orders to debate a matter,[49] which, like the former oral notices, sometimes tend to 'narrate a long argument'. A motion to suspend standing orders has been ruled out of order on the grounds that it was unnecessarily long and not a concise proposition for determination by the House.[50]

Wording

As long as their language is not unparliamentary (*see below*), it is up to the movers of motions to choose their own language to express their intentions, not a matter for the Speaker or the Chair. The Speaker's role with regard to the content of motions is to administer the rules and practices of the House, which do not cover grammar. Within the rules, Members may use whatever wording they think appropriate, and different degrees of formality,[51] to best meet their intentions.

The Speaker has ruled a proposed motion out of order because the written motion submitted differed substantially from the terms stated by the Member in seeking to move the motion.[52]

44 H.R. Deb. (1.10.1912) 3621–3; VP 1912/161 (8.10.1912); H.R. Deb. (8.10.1912) 3911–33.
45 H.R. Deb. (25.3.1920) 881–2; VP 1920–21/91 (26.3.1920); H.R. Deb. (26.3.1920) 906–10.
46 H.R. Deb. (1.10.1912) 3623.
47 H.R. Deb. (4.5.1977) 1510.
48 E.g. H.R. Deb. (1.4.1998) 2128.
49 E.g. H.R. Deb. (17.9.2003) 20229; H.R. Deb. (10.10.2006) 19–20.
50 A motion dissenting from the ruling was negatived. H.R. Deb. (4.9.1997) 7796–805; VP 1996–98/1949–51 (4.9.1997).
51 As a general observation, the subjunctive mood is routinely used when a motion proposes that the House order something to be done—for example: 'That the bill be read a second time'; 'That debate be adjourned'; 'That standing orders be suspended'. When a motion expresses an opinion it is more usual to use the indicative mood, as the words of the motion are descriptive (i.e. of a view held)—for example, 'That the House *is* of the opinion that . . .'.
52 VP 2004–07/1447 (10.10.2006).

Rules regarding subject matter

A number of general rules of debate have equal application to the content of a motion.

Unparliamentary words

A motion should not contain offensive or disorderly words. In 1938 the Speaker stated that he would not allow a notice of motion of privilege accusing a Member of 'blasphemous and treasonable statements of policy and intention' to be placed on the Notice Paper in that form.[53] The Speaker did not state his reasons but presumably it was ruled out of order because of the use of unparliamentary words. In 1980 the Speaker directed the Clerk to remove a notice from the Notice Paper when his attention was drawn to unparliamentary words contained in it.[54] In 1999 the Speaker held that a notice which referred to another Member in ironic terms could not be published without amendment.

Frivolous or rhetorical content

In 1912 a notice of motion to the effect that an Address be presented to the Governor-General informing him that the Opposition merited the censure of the House and the country for a number of stated reasons (which parodied the Leader of the Opposition's amendment to the Address in Reply) was ruled out of order on the ground that it was frivolous.[55] In 1983 a notice was removed from the Notice Paper, with the authority of the Speaker, on the ground that it was frivolous.[56]

The Speaker has ruled out of order part of a motion, after a point of order had been taken that it was rhetorical.[57]

Sub judice

A motion may not be brought forward which relates to a matter awaiting, or under, adjudication by a court of law. In 1995 the Speaker wrote to a Member, drawing the Member's attention to the fact that certain matters relevant to a notice lodged by the Member were sub judice and expressing the view that discussion of the matter should not take place. In the event the notice was amended and eventually debated.[58]

Same motion rule

The Speaker may disallow any motion (or amendment) which is the same in substance as any question which has already been resolved in the same session. The application of the same motion rule is totally at the Chair's discretion.[59] The rule, in serving the purpose of preventing unnecessary obstruction or repetition, should not be held to restrict or prevent the House from debating important matters, particularly during a long session which can be of two to three years' duration.

The same motion rule has rarely been applied. A motion to suspend standing and sessional orders to enable consideration of a private Member's notice of motion was ruled out of order as the same motion had been negatived on each of the two previous sitting

53 VP 1934–37/38 (28.11.1934); H.R. Deb. (28.11.1934) 582–3, 610. The Speaker first ruled that the Member was in order in giving the notice, but later made a statement that in its present form he would not allow it to be placed on the Notice Paper.
54 H.R. Deb. (17.9.1980) 1364.
55 H.R. Deb. (1.10.1912) 3621–3.
56 NP 26 (5.10.1983) 1044 (the notice did appear once before being removed).
57 H.R. Deb. (24.3.2011) 3245.
58 NP 167 (28.9.1995) 8994; NP 176 (20.11.1995) 9443–4; VP 1993–96/2573 (20.11.1995).
59 S.O. 114(b).

days.[60] The Chair has prevented a Member moving for the suspension of standing orders to enable another Member to continue his speech as a motion for that purpose had been negatived previously.[61] More recently a proposed motion to suspend standing and sessional orders was ruled out of order because it was the same in substance as a question already resolved earlier that day.[62] A motion of dissent from a ruling has also been ruled out of order on the ground that a motion of dissent from a similar ruling had just been negatived.[63]

Standing order 150(e) applies a further specific provision to the detailed stage of bills which prevents an amendment, new clause or new schedule being moved if it is substantially the same as one already negatived or inconsistent with one already agreed to. This provision does not apply when a bill is being reconsidered.

The same motion rule does not prevent the provisions of section 57 of the Constitution from being fulfilled, and a second bill the same as one passed previously but which the Senate has rejected, failed to pass or passed with amendments not acceptable to the House may be introduced and passed by the House.[64] In February 2009, after the Senate had negatived at the third reading stage bills in a package, a replacement package in which some of the bills were identical to those already passed was introduced in and passed by the House without any issue being raised in respect of the same motion rule.[65]

Two particular occurrences are worthy of note. On the first occasion, a notice of motion was placed on the Notice Paper in exactly the same terms as a previously defeated amendment to a motion to adopt a Standing Orders Committee report. The notice remained on the Notice Paper until, following a suspension of standing orders, it was moved in the form of an amendment to a later motion proposing amendments to the standing orders and changes in practice. The amendment was again defeated.[66] On the second occasion, a notice of motion which was the same in substance as a second reading amendment negatived earlier in the session was placed on the Notice Paper. Prior to the notice being called on; however, it was substantially altered and the necessity for a decision in the House did not arise.[67]

A question may be raised again if it has not been definitely decided. Thus, a motion or amendment which has been withdrawn or, in certain circumstances, has been superseded[68] (*see* page 303) or, for example, where no decision was reached because of a lack of quorum in a division, may be repeated. Private Members' bills which have been removed from the Notice Paper under the provisions of standing order 42 have been reintroduced, no decisions of substance having been taken on them.[69]

An extension of the same motion rule is contained in standing order 78 where a number of subsidiary motions and questions of a procedural nature are listed which, if put

60 VP 1946–48/119 (18.3.1947); H.R. Deb. (18.3.1947) 741.
61 H.R. Deb. (12.8.1954) 225.
62 VP 2008–10/1184 (24.6.2009).
63 H.R. Deb. (9.10.1936) 1013.
64 E.g. VP 1950–51/189 (4.10.1950); VP 1985–87/1307–9 (14.11.1986), 1512 (18.3.1987), 1541–2, 1544–8 (25.3.1987); VP 1996–98/1786 (26.6.1997), 2665–74 (4.12.1997), 2769 (5.3.1998), 2176 (23.10.1997), 2675 (4.12.1997), 2794 (10.3.1998).
65 VP 2008–10/869–76 (12.2.2009).
66 VP 1970–72/673–4 (24.8.1971), 1014 (18.4.1972); NP 111 (26.8.1971) 8230; NP 165 (19.4.1972) 13196.
67 VP 1973–74/171–2 (10.5.1973), 325–6 (13.9.1973); NP 29 (24.5.1973) 1149; NP 32 (30.5.1973) 1294–5; NP 42 (13.9.1973) 1657–8.
68 *See* VP 1912/56 (23.7.1912), 165–6 (10.10.1912) where a motion approving the electoral distribution of a State was superseded when the House agreed to an amendment referring the report back to the commissioners. A motion approving the fresh distribution was later submitted and agreed to.
69 E.g. VP 1993–96/172 (19.8.1993), 211 (2.9.1993), 1616 (5.12.1994); VP 1998–2001/183 (7.12.1998), 1067 (22.11.1999).

to the House and negatived, cannot be put to the House again if the Speaker or Chair is of the opinion that it is an abuse of the orders or forms of the House, or the motion is moved for the purpose of obstructing business.[70] This provision is of somewhat transient character as a motion may be out of order in its purpose and timing at one time but in order if moved for a different purpose or at a different time.

PROGRESS OF MOTION IN HOUSE

Motion moved

A Member must not move a motion unless he or she has given notice of the motion and the notice has appeared on the Notice Paper, unless he or she has leave of the House, or unless as otherwise specified in the standing orders.[71] A Member cannot move a motion while another Member is speaking,[72] except a closure motion pursuant to standing order 80 or 81. A Member cannot move a motion on behalf of another Member,[73] except that a motion standing in the name of a Minister may be moved by any other Minister.[74] Any motion before the House must be disposed of (or withdrawn—*see* page 303), or debate on the motion adjourned, before another (substantive) motion can be moved.[75]

While a Member is formally moving the terms of a motion allowed under the standing orders, a motion 'That the Member be no longer heard'[76] may not be moved, but such a motion may be moved after the Member has formally moved the motion and is speaking to it. A motion 'That the question be now put' may only be moved after the principal motion has been moved (and, where necessary, seconded) and the question has been proposed from the Chair.[77]

Motion seconded

After the mover of a motion has resumed his or her seat, if a seconder is required, the Chair calls for a Member to second the motion. If a motion is not seconded when a seconder is required it must not be debated, and it is not recorded in the Votes and Proceedings.[78] The Chair is not entitled to propose the question on a motion to the House until it has been moved and, if required, seconded.[79]

Because a Minister in proposing business to the House is assumed to have the backing of the Government, it has been the continuing practice of the House that motions (and amendments) moved by Ministers do not require a seconder,[80] and this exemption is now

70 E.g. VP 1998–2001/832 (1.9.1999); VP 2008–10/191–2 (19.3.2008).

71 S.O. 111. *See* Ch. on 'Order of business and the sitting day' for the order in which the Chair calls on motions.

72 VP 1974–75/338 (21.11.1974); H.R. Deb. (21.11.1974) 3899.

73 However, this has been done by leave, e.g. VP 2002–04/1648 (31.5.2004); VP 2010–13/916 (19.9.2011); VP 2013–16/972 (24.11.2014), 1769, 1770 (30.11.2015). Standing orders have been suspended to permit a private Member's bill to be presented by another Member, VP 2002–04/510 (21.10.2002).

74 H.R. Deb. (15.6.1918) 6206.

75 H.R. Deb. (17.3.1944) 1563–4.

76 S.O. 80.

77 S.O. 81.

78 S.O. 116(a). Standing orders have been suspended to allow the revival of a private Member's bill that had lapsed when there had not been a seconder for the motion that the bill be read a second time, VP 2010–13/2192–3 (20.3.2013).

79 H.R. Deb. (4.5.1978) 1814.

80 H.R. Deb. (21.9.1909) 3608. This practice was formally extended to Assistant Ministers in 1972, VP 1970–72/1009–10 (13.4.1972); *Standing Orders Committee report*, PP 20 (1972) 1, 6–7; and, in 1990, to Parliamentary Secretaries, VP 1990–93/38 (9.5.1990), 1083–4 (16.10.1991).

a provision of the standing orders.[81] The Chief Government Whip does not require a seconder to move motions relating to the sitting arrangements or conduct of business of the House or Federation Chamber.[82] A seconder is not required in the Federation Chamber when a private Member rostered to have regard to government interests moves a motion to vary the order of government business.[83] Also it is not the practice to require a seconder for most procedural motions,[84] or for motions in respect of the various stages of a private Member's bill except the motion for the second reading.[85] The contemporary practice in the case of privilege motions is that, because of their special nature, possibly only affecting an individual Member, the Chair does not call for, or insist upon, a seconder. Similar considerations could be seen as applying to motions to grant leave of absence to a Member, where the practice is not to require a seconder if the motion is moved by a party leader other than a Minister. A motion moved during the consideration in detail stage of a bill, or during consideration of Senate amendments, need not be seconded.[86]

Seconders are specifically required for motions without notice to suspend standing orders and motions of dissent to a ruling of the Speaker.[87] In the case of a motion of condolence, a seconder is always called for to indicate the general support of the House, even though the motion is moved by a Minister. Motions of condolence are traditionally seconded by the Leader of the Opposition; the name of the seconder is recorded in the Votes and Proceedings.

When a Member seconds a motion (or amendment) without speaking to it immediately, he or she may reserve the right to speak later during the debate.[88] For practical reasons it is the practice of the House for the Chair not to insist that the seconder of the motion be the same Member who signed the notice of motion.

Motion dropped or lapsed

A motion which is not seconded (when seconding is required) cannot be debated and is not recorded in the Votes and Proceedings.[89] In certain circumstances, interruptions may occur before a motion is seconded or the question is proposed by the Chair, which would also result in the motion being dropped. These circumstances are the Speaker adjourning the House because of a count out or grave disorder. In these cases the matter may be revived by renewal of the notice of motion.

A motion may also be dropped if, for some reason, the time permitted by standing order 1 for a whole debate expires before the question has been proposed from the Chair.

81 S.O. 116(b).

82 S.O. 116(c). The exemption was originally provided by resolution of the House in 1994, VP 1993–96/982–3 (12.5.1994).

83 That is, the Member performing the role equivalent to that of the Duty Minister in the House, usually a committee chair, e.g. H.R. Deb. (23.6.2010) 6474.

84 For example, the following motions: that a Member be heard now (S.O. 65(c)), that a Member be further heard (S.O. 75), that the debate be now adjourned (S.O. 79(a)), that a Member be granted an extension of time (S.O. 1), that the question be now put (S.O. 81), that a Member be no longer heard (S.O. 80) and that the business of the day be called on (S.O. 46(c)).

85 E.g. H.R. Deb. (26.9.1974) 1859; H.R. Deb. (17.10.1974) 2507–9; H.R. Deb. (28.10.2010) 1990. A Member has seconded the motion for the second reading of a bill so that it could be debated, even though opposing the bill, H.R. Deb. (12.6.2012) 6838–9.

86 S.O.s 151, 159.

87 S.O.s 47, 87.

88 S.O. 70.

89 S.O. 116(a), e.g. second reading amendment not seconded, H.R. Deb. (13.10.2003) 21260; motion for suspension of standing orders not seconded, H.R. Deb. (22.6.2011) 6910. However, the Votes and Proceedings have on occasion noted a motion having lapsed when it has been necessary to give context to related proceedings: VP 2010–13/2173 (18.3.2013), 2192–3 (20.3.2013)—order of the day for the second reading of bill lapsed for want of a seconder, as in this case the bill was restored to the Notice Paper after the House agreed to suspend standing orders; VP 2016–18/982–3 (15.8.2017)—closure of mover of motion to suspend standing orders divided on, but the motion then lapsed for want of seconder (text of lapsed motion not recorded).

For example, motions for suspension of standing orders have been dropped, the question not having been proposed to the House because the time for the debate was taken up by proceedings resulting from a motion of dissent,[90] or by divisions on procedural motions.[91] In such cases the Votes and Proceedings record that the motion lapsed. A motion to suspend standing orders moved during debate of another item of business is dropped if a closure of the question before the House is agreed to before the question on the suspension motion is proposed from the Chair.[92]

In some cases a motion may also be dropped because of the automatic adjournment provision. If, for example, the mover, or the seconder, is speaking to a motion to suspend standing orders, and is interrupted by the automatic adjournment provisions, the motion is dropped,[93] unless the motion for the adjournment is immediately negatived in order to allow debate on the motion to continue. However, if the mover or seconder of a substantive business motion or amendment is still speaking to the motion or amendment at the time of interruption by the automatic adjournment provisions, the motion or amendment is not dropped. The motion or the motion and amendment are set down automatically as an order of the day for the next sitting.[94] This action is pursuant to the provision of standing order 31(c) that 'any business under discussion and not disposed of at the time of adjournment shall be set down on the Notice Paper for the next sitting'. In this context an item of business is treated as 'under discussion' even if the question has not yet been put from the Chair.

If the mover or seconder of a private Member's motion is still speaking to the motion at the expiry of the time available, the Member is given leave to continue his or her remarks by the Chair, and the motion is set down automatically as an order of the day for the next sitting. The motion is not dropped in these circumstances.[95]

Question proposed—motion in possession of House

Standing order 117 provides that once a motion has been moved and seconded (if necessary), the Speaker shall propose the question to the House. Once the question has been proposed by the Chair the motion is deemed to be in possession of the House and, with the exception of those motions which under standing order 78 may not be debated, open to debate. The House must dispose of the motion in one way or another before it can proceed with any other business. It cannot be withdrawn without the leave of the House or altered, even to correct an error, except by leave of the House or by amendment.[96]

If the terms of a motion do not appear on the Notice Paper or have not been previously circulated in the Chamber, the Chair usually proposes the question in the full terms of the motion, otherwise the simple form 'That the motion be agreed to' may suffice. If the terms of a question or matter under discussion have not been circulated among Members, a Member, at any time, except when another Member is addressing the House, may request the Speaker to state the question or matter under discussion.[97]

90 VP 1998–2001/1936 (30.11.2000).
91 E.g. VP 2010–13/539 (24.5.2011), 1890 (11.10.2012).
92 H.R. Deb. (12.8.2004) 32979–80.
93 H.R. Deb. (2.4.1981) 1316 (motion to suspend standing orders moved immediately prior to the automatic adjournment dropped).
94 E.g. VP 2010–13/177 (15.11.2010).
95 E.g. VP 1987–90/978 (1.12.1988); VP 1996–98/1327 (24.3.1997).
96 H.R. Deb. (11.11.1913) 3008–9.
97 S.O. 67. E.g. H.R. Deb. (10.6.1999) 6655–6; H.R. Deb. (25.9.2008) 8689. The Speaker has directed the Clerk to read the terms of a matter under discussion, H.R. Deb. (7.12.1904) 8016.

The normal position is that the mover of a motion, with the exceptions in standing order 1 and subject to any determination by the Selection Committee in respect of private Members' business, may speak for a maximum of 15 minutes and any other Member for 10 minutes. When speaking in reply the mover may speak for 10 minutes only.

Withdrawal of motion

A motion can be withdrawn by the Member who moved it[98] in the case of a private Member's motion or by a Minister in the case of a government motion. However, after the question on a motion (or amendment) has been proposed from the Chair, the motion (or amendment) is in possession of the House, and cannot be withdrawn without leave of the House.[99] A motion has been withdrawn, by leave, before being seconded.[100] A Member has withdrawn a motion to suspend standing orders, the question not having been stated to the House.[101] When leave was not granted to withdraw a motion of dissent from a ruling of the Chair, standing orders were suspended to enable the Member to move a motion for the withdrawal of the motion.[102] Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived, as the question on the amendment stands before the main question.[103]

In the case of a matter of special interest a Minister, without leave, may withdraw the motion at the expiration of the time allotted to the debate by previous order of the House.[104] On the one occasion that a matter of special interest has been considered the motion was withdrawn by a Minister other than the mover. The withdrawal meant that an amendment which had been moved to the motion was automatically lost.[105]

Question superseded or dropped

The principal means by which a question may be superseded is by way of amendment. Once an amendment is moved and the question on the amendment proposed to the House the original question is temporarily superseded. If the amendment is negatived, the original question is again proposed to the House. If the question on the amendment is agreed to, the Chair must then propose the question 'That the motion, as amended, be agreed to', the original question having been superseded. If the question 'That the bill be now read a second (or third) time' is superseded by an amendment omitting the word 'now' and substituting the words 'this day six months' being agreed to, the bill is regarded as finally disposed of.[106]

In certain circumstances questions may be dropped. If the Speaker adjourns the House following a count out the order of the day (or motion) under discussion becomes a dropped order. An order dropped in these circumstances may be revived on motion after notice or by leave[107] (*see* page 301 regarding motions dropped).

98 *See also* 'Withdrawal or removal of notice' at p. 296.
99 S.O. 117(b).
100 VP 1970–72/127 (8.5.1970).
101 H.R. Deb. (20.9.2007) 95.
102 VP 1929–31/302 (10.7.1930).
103 *May*, 24th edn, p. 402.
104 S.O. 50.
105 VP 1974–75/815–7 (9.7.1975).
106 S.O.s 146, 155(b); *and see* Ch. on 'Legislation'.
107 E.g. VP 1993–96/2360 (31.8.1995).

Question deferred

The question before the House may be deferred by the House agreeing to the adjournment of the debate and setting a time for its resumption. The automatic adjournment provisions automatically defer any question in the possession of the House. The deferred item of business is set down on the Notice Paper for the next sitting, but if a Minister requires the question for the adjournment of the House to be put immediately and the adjournment is negatived, consideration of the interrupted question is immediately resumed at the point at which it was interrupted. Consideration of an item of private Members' business which the Selection Committee has determined should continue on another day is deferred when the debate concludes or the time expires. Consideration of a matter before the House at the time of interruption for Question Time is also deferred.[108]

A question in the Federation Chamber may be deferred by the motion 'That further proceedings be conducted in the House',[109] by the Federation Chamber being unable to reach agreement on a matter and reporting the question back to the House as 'unresolved', or by interruption in order that an adjournment debate may be held.

Consideration of question interrupted

Consideration of a question may be interrupted by a motion arising out of a matter of order, a motion to suspend standing orders, or a matter of privilege. As these matters have their own question or requirement, they must be resolved first by the House. Such an interruption is of a temporary nature and once resolved consideration of the original question is resumed.

Motion declared urgent

The limitation of debate or 'guillotine' procedure applies to motions per se as well as motions connected with the passage of a bill.[110] The only precedent for this procedure in relation to a motion was in 1921 when a motion was declared urgent merely as a precaution to ensure that a vote was taken by a certain time.[111]

Once a motion of any kind has been moved a Minister may at any time declare it to be urgent and, on such a declaration being made, the question 'That the motion be considered an urgent motion' is put immediately without amendment or debate. If the question is agreed to, a Minister may move immediately a motion specifying times for the motion. The provisions for the motion for the allotment of time are the same as for a bill. At the end of the time allotted, the Chair puts immediately any question already proposed from the Chair followed by any other question required to dispose of the urgent motion. A motion 'That the question be now put' may not be moved while a motion is under guillotine.[112]

108 S.O. 97.
109 S.O. 197(a).
110 S.O. 83.
111 VP 1920–21/498 (21.4.1921), 499–500 (22.4.1921); H.R. Deb. (21.4.1921) 7663. The declaration was made on a motion to print a paper relating to the League of Nations mandate for the German possessions in the Pacific.
112 For further discussion on the limitation of debate procedure *see* Ch. on 'Legislation'.

Complicated question divided

A Member may move that a complicated question be divided.[113] Relevant precedents for divided questions are:

- a complex motion to endorse in principle certain sections of a Standing Orders Committee report and amend other standing orders as recommended;[114]
- a motion for leave of absence to two Members;[115]
- a motion to ratify a report of a conference on dominion legislation;[116]
- a motion proposing a conference to select the site of the Federal Capital;[117]
- motions proposing the appointment of a select,[118] and a joint select committee;[119] and
- a motion that a Printing Committee report, recommending that certain papers be printed and that the House reconsider its decision to print a paper, be agreed to.[120]

The usual procedure is that, following the suggestion of a Member, the Chair ascertains, either on the voices or by division, whether it is the wish of the House that the question be divided as suggested.[121]

Standing orders have been suspended to allow separate questions to be put on two distinct propositions contained in the two paragraphs of a motion. To suit the convenience of the House the question on an amendment to the original motion which related only to paragraph (2) of the motion was put after the question on paragraph (1) had been put and agreed to.[122] Standing orders were suspended in this instance because it was not considered that the motion could be regarded as complicated.

Question put and result determined

Once debate upon a question has been concluded—by no Member rising to speak, the mover of the original question having spoken in reply, the House agreeing to the motion 'That the question be now put', or the time allotted under guillotine or the standing orders having expired—the Chair must put the question to the House for decision.[123] The question is resolved in the affirmative or negative, by the majority of voices, 'Aye' or 'No'. The Speaker then states whether the 'Ayes' or the 'Noes' have it and, if the Speaker's opinion is challenged, the question must be decided by division of the House.[124] Decisions in the Federation Chamber can only be decided on the voices—if any Member dissents from the result announced by the Chair, the question is recorded in the minutes as unresolved and reported back to the House for decision there.

Apart from the occasions when a motion has been withdrawn, there have been other occasions when the Chair has not put the question, for example when an amendment to omit words has made the motion meaningless (*see* page 310).

113 S.O. 119.
114 VP 1970–72/242–3 (19.8.1970).
115 VP 1906/55 (18.7.1906).
116 VP 1929–31/748 (17.7.1931).
117 VP 1903/144 (23.9.1903).
118 VP 1905/136 (26.10.1905).
119 VP 1978–80/366 (23.8.1978).
120 VP 1920–21/659 (7.7.1921).
121 H.R. Deb. (18.11.1959) 2822. A Member objecting to a suggestion that a question be divided, the Speaker has ruled that the motion be voted on as submitted, H.R. Deb. (18.12.1914) 2269.
122 VP 2002–04/1550–2 (30.3.2004), H.R. Deb. (30.3.2004) 27592–5.
123 S.O. 117(c).
124 S.O. 125. For a full discussion of division procedures *see* Ch. on 'Order of business and the sitting day'.

AMENDMENTS TO MOTIONS

How to move

An amendment is a subsidiary motion moved in the course of debate upon a principal motion, with the object of either modifying the question in such a way as to increase its acceptability or presenting to the House a different proposition as an alternative to the original question. Amendments may be moved by:

- omitting certain words; and/or
- inserting or adding words.[125]

An amendment may not be moved to certain questions and motions:

- the motion for the adjournment of the House;[126] and
- the procedural questions and motions listed in standing order 78.

With these exceptions, an amendment may be moved to any other question, after it has been proposed by the Chair, provided that the amendment is relevant to the question to which the amendment is proposed.

An amendment must be in writing and must be signed by the mover and (if a seconder is required—*see below*) a seconder.[127] Notice is not required of an amendment, but notice has been given on occasion.[128] The modern practice is to have an amendment printed and circulated to Members to enable it to be assessed before the question on it is put to the House, although this is not required by the standing orders. In the absence of a Member who has circulated an amendment, another Member, with the proposer's permission, may move it on his or her behalf.[129]

Any amendment must be moved before the mover of a motion speaks in reply to the original question.[130] The Member speaking in reply cannot propose an amendment.

Restrictions on Members in moving and speaking to amendments

A Member cannot move an amendment:

- to his or her own motion[131] unless he or she does so by leave;[132]
- if debate on a question has been closed by the mover speaking in reply;[133]
- if he or she has already spoken to the main question,[134] or the original question and an amendment;[135] or
- if he or she has seconded the motion (even formally) which he or she proposes to amend.[136]

It is a strictly observed parliamentary rule that, except when a reply to the mover is permitted (or during the consideration in detail stage of a bill or consideration of Senate amendments or requests), a Member may not speak more than once to the same question,

125 S.O. 121(a).
126 S.O. 32(a).
127 S.O. 121(b).
128 E.g. NP 78 (22.11.1907) 352.
129 VP 1951–53/133 (18.10.1951).
130 H.R. Deb. (19.11.1914) 841.
131 H.R. Deb. (23.9.1903) 5437.
132 H.R. Deb. (25.8.1910) 2088; VP 2010–13/83–4 (18.10.2010).
133 H.R. Deb. (19.10.1905) 3814.
134 H.R. Deb. (24.7.1903) 2609.
135 H.R. Deb. (13.4.1961) 894.
136 H.R. Deb. (5.7.1906) 1056.

unless he or she has been misquoted or misunderstood in regard to a material part of a speech, when he or she may again be heard to explain the correct position. Accordingly, when a Member speaks to a motion and resumes his or her seat without moving an amendment that had been intended, the Member cannot subsequently move the amendment, as he or she has already spoken to the question before the House.

If a Member has already spoken to a question, or has moved an amendment to it, he or she may not be called to move a further amendment, but may speak to any further amendment which is proposed by another Member.

A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the House and before the question on the amendment has been proposed by the Chair.

When an amendment has been moved, and the question on the amendment proposed by the Chair, a Member speaking subsequently is considered to be speaking to both the original question and the amendment. Accordingly, the Member cannot speak again to the original question after the amendment has been disposed of.

A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment but must confine his or her remarks to the amendment.

A Member who has spoken to the original question and an amendment may speak to the question on any further amendment but must confine his or her remarks to the further amendment.

Seconder required

A seconder is required for an amendment except in the following cases:

- an amendment moved by a Minister or Parliamentary Secretary;[137]
- an amendment moved during the consideration in detail stage of a bill;[138]
- an amendment moved during the consideration of Senate amendments.[139]

A Member who has already spoken to the original question may not second an amendment moved subsequently.[140] An amendment moved, but not seconded, must not be debated and is not recorded in the Votes and Proceedings.[141] An amendment has lapsed after the seconder, by leave, withdrew as the seconder.[142]

The seconder has the right to speak to the amendment at a later period during the debate,[143] or may choose to speak immediately after seconding the amendment.

Closures and expiry of time during moving of amendment

While a Member is moving an amendment, the motion 'That the Member be no longer heard' may not be moved, but a Member speaking to an amendment he or she has moved may be so interrupted. The closure motion 'That the question be now put' *may* be moved while a Member is moving an amendment. If this is agreed to, the question on the

137 S.O. 116(b).
138 S.O. 151.
139 S.O. 159.
140 H.R. Deb. (11.8.1910) 1439.
141 S.O. 121(b).
142 VP 1929–31/581 (21.4.1931); H.R. Deb. (21.4.1931) 1065. The amendment was recorded in the Votes and Proceedings.
143 S.O. 70.

original question is then put immediately.[144] The motion for the closure of question may also be moved while the Member who has seconded an amendment is addressing the House and, once again, the closure applies to the original question as, in both cases, the question on the amendment has not yet been proposed from the Chair.[145] Similarly, if the time allowed for a debate expires before the question on an amendment has been stated, the question before the House is the original one.[146]

Amendment in possession of House

Once an amendment is moved and seconded, the question on the amendment must then be proposed by the Chair. It is then in the possession of the House.

Form and content of amendment

Relevancy

An amendment must be relevant to the question which it is proposed to amend.[147] The only exception to this rule is that an irrelevant amendment may be moved to the question 'That grievances be noted'.[148]

Intelligible and legible

An amendment proposed to be made, either to the original question or to a proposed amendment, must be framed so that, if it is agreed to, the question or amendment, as amended, would be intelligible and internally consistent.[149] The Chair has refused to accept an illegible amendment.[150]

Length

An amendment should not be accepted by the Chair if, when considered in the context of the motion proposed to be amended, and with regard to the convenience of other Members, it could be regarded as of undue length. It is not in order for a Member to seek effectively to extend the length of his or her speech by moving a lengthy amendment, without reading it, but relying on the fact that the amendment would be printed in Hansard.[151] The Chair has directed a Member to read out a lengthy second reading amendment in full and for the time taken to do so to be incorporated into the time allocated for his speech, giving as the reason that the amendment was larger than that which would normally be accommodated and that he did not want lengthy amendments to become the norm.[152]

Consistency

An amendment must not be moved which is inconsistent with a previous decision on the question.[153] The Chair having been asked whether a proposed amendment upon an amendment was inconsistent with an amendment already agreed to, the Speaker stated

144 E.g. H.R. Deb. (13.10.2005) 93–6.
145 *See* H.R. Deb. (12.4.1956) 1332. The amendment was recorded in the Votes and Proceedings as it had been properly moved and seconded, VP 1956–57/74 (12.4.1956). For more recent example *see* VP 2002–04/1625 (26.5.2004).
146 E.g. H.R. Deb. (10.10.2006) 28.
147 S.O. 121(c); *and see* Ch. on 'Legislation' regarding second reading amendment.
148 S.O. 192B(b); *and see* Ch. on 'Financial legislation' regarding scope of amendment on appropriation and supply bills.
149 *See also May*, 24th edn, p. 409.
150 H.R. Deb. (27.5.1975) 2872.
151 Private ruling, Speaker Halverson.
152 H.R. Deb. (7.12.1998) 1503, 1509–10. An extension of time was agreed to permit the Member to read out the amendment.
153 S.O. 123(a).

that as the proposed amendment was an addition and did not cut down on the words agreed to, he could see no alternative but to accept it.[154] After an amendment proposing to limit the application of a motion (granting precedence to government business by making it apply only after a certain date) had been negatived, a further amendment seeking to impose a lesser limitation (an earlier date) was ruled to be in order.[155]

Same amendment

The Speaker may disallow any motion or amendment which he or she considers is the same in substance as any question already resolved in the same session[156] (*see* page 298).

Amendment to earlier part of question

The standing orders provide that an amendment may not be moved to an earlier part of a question after a later part has been amended, or after an amendment to a later part has been proposed, and the proposal has not, by leave, been withdrawn.[157] It has been the practice to interpret this rule so as to allow an amendment back to the point in the motion where the last amendment was actually made. If an amendment to a later part of the motion has been moved but not yet decided, it may be withdrawn, by leave, to allow a new amendment to an earlier part of the motion—that is, either back to previously decided amending words, or back to the beginning of the motion if there aren't any.[158]

Leave of the House has been granted to allow an amendment to be moved to an earlier part of the question. When notice has been given of amendments or Members have declared their intention of moving amendments, the Chair has declined to put the question on an amendment in a form which would exclude the moving of other amendments. The Chair has divided an amendment into parts and submitted only the first part so as not to preclude other Members from submitting amendments which they had expressed a desire to propose.[159] When several Members have proposed to move amendments to an earlier part of a motion, the Chair has declined to submit an amendment to a later part until these amendments were disposed of.[160] When notice has been given of amendments proposing to add words to a motion, the Chair has given precedence to an amendment proposing to omit all words after 'That' with a view to inserting other words.[161]

Amendment to words already agreed to

Only an amendment which adds other words may be moved to words which the House has resolved stand part of the question or which have been inserted in, or added to, a question.[162]

Direct negative

Although there is no reference in the standing orders to an amendment which is a direct negative of the question before the House, the House has followed the

154 H.R. Deb. (16.11.1905) 5383.
155 H.R. Deb. (15.9.1909) 3496.
156 S.O. 114(b), (subject to S.O 150 in relation to the consideration in detail stage of bills).
157 S.O. 123(b).
158 *See also* Josef Redlich, *The procedure of the House of Commons,* vol. II, Archibald Constable, London, 1908, p. 231, and *May*, 24th edn, p. 410.
159 H.R. Deb. (21.11.1905) 5512, 5514.
160 VP 1929–31/903 (14.10.1931).
161 H.R. Deb. (26.7.1922) 785; NP 12 (26.7.1922) 65.
162 S.O. 123(d).

parliamentary rule that such amendments are not in order if they are confined to the mere negation of the terms of a motion. The proper mode of expressing a completely contrary opinion is by voting against a motion without seeking to amend it.[163] Many amendments are moved which seek to reverse completely the thrust of motions. Whilst it may be claimed that such amendments are out of order as direct or expanded negatives, they usually seek to put an alternative proposition to the House and so are in order (*see below*). A working rule for determining whether an amendment is a direct negative is to ask the question whether the proposed amendment would have the same effect as voting against the motion. If it would, it is a direct negative.

Omission of all words

It is not in order to move for the omission of all words of a question without the insertion of other words;[164] the initial word 'That' at least must be retained. Amendments have been moved to omit all words after 'That'[165] without the substitution of other words in their place. On one such amendment being successful, the Speaker agreed with the proposition that the omission of the words was the same as if the motion had been directly negatived and it was so recorded in the Votes and Proceedings.[166] On another occasion, words having been omitted from a motion with a view to inserting other words, and two proposals to insert other words having been negatived, the Speaker drew attention to the fact that what was left of the motion was meaningless. He then said that he presumed the House would not desire him to put the question. The House agreed with this assessment.[167]

Alternative propositions

Amendments may be moved, however, which evade an expression of opinion on the main question by entirely altering its meaning and object. This is effected by moving the omission of all or most of the words of the question after the word 'That' and substituting an alternative proposition which must, however, be relevant to the subject of the question.

This practice of the House has been supported since 1905 when, on a motion that an Address be presented to the King expressing the hope that a measure of home rule be granted to Ireland, an amendment was moved to omit all words after 'That' in order to insert words to the effect that the House declined to petition His Majesty either in favour of or against a change in the parliamentary system which then prevailed in the United Kingdom. Having been asked for a ruling as to whether the amendment was in effect a negative of the motion, the Speaker stated that the amendment was in order as it came between the two extremes of either declaring in favour of the petition (motion) as it stood or negating the proposal altogether.[168]

Other relevant rulings have been:

- In 1949, a want of confidence motion having been moved in the Deputy Speaker (listing four reasons), an amendment was moved to omit all words after 'That' with a view to inserting words 'this House declares its determination to uphold the dignity

163 *See also* statement by Speaker Aston to the House, H.R. Deb. (2.6.1970) 2712–16. The precedents recorded with this statement generally indicate that the rule is best interpreted in a very precise way.

164 *May*, 24th edn, p. 409.

165 VP 1908/79 (10.11.1908); VP 1913/204 (11.12.1913).

166 VP 1908/79 (10.11.1908); H.R. Deb. (10.11.1908) 2140. The amendment resulted in the fall of the Deakin Government, *see* p. 322.

167 VP 1908/53–4 (21.10.1908).

168 H.R. Deb. (28.9.1905) 2967–8.

and authority of the Chair . . .'. The Chair dismissed a point of order that the amendment was a direct negative of the motion and ruled it in order.[169]

- In 1970 an amendment was moved adding words to a motion to take note of a paper (relating to Commonwealth–State discussions on off-shore legislation) which expressed a lack of confidence in the Prime Minister and his Cabinet for their failure to honour a commitment made to the States. This was accepted as a want of confidence amendment. To this amendment a further amendment (to omit words with a view to inserting other words) was moved declaring that the House did not believe there had been any failure on the part of the Government to honour any commitments; that the House acknowledged that when the Government decided to change its policy it did not, at that time, inform the States of the change, and the House was of the opinion that this had led a Member (a former Cabinet Minister) into believing that an undertaking he had given to the States had been dishonoured. A point of order was taken that the amendment was a direct negative of the proposed amendment. The Speaker ruled that it was not a direct negative and not materially different in form from amendments moved and accepted in previous years. The ruling was upheld by the House when a motion of dissent was negatived.[170]

Following the latter ruling, as subsequent comment showed, there was some misunderstanding of the practice on which the ruling was based. Speaker Aston made a statement referring to relevant precedents and practice in the House of Representatives and the House of Commons—that is, on the acceptability of amendments proposing alternative propositions.[171] There have been a number of subsequent precedents.[172] It is now not uncommon for motions critical of or censuring the Government or a Minister to be amended by way of an alternative proposition changing the target of the criticism or censure to the Opposition or Leader of the Opposition—*see* 'Censure of a Member or Senator' (page 325) and 'Censure of the Opposition' (page 326).

Other restrictions

Certain matters that cannot be debated except on a substantive motion cannot be raised by way of amendment, nor can an amendment infringe upon the sub judice rule.[173]

An amendment has been ruled out of order on the ground that it:

- was frivolous;[174]
- was tendered in a spirit of mockery;[175]
- was ironical;[176]
- did not comply with an Act of Parliament;[177] or
- concerned a matter which was the exclusive prerogative of the Speaker.[178]

169 VP 1948–49/381 (8.9.1949); H.R. Deb. (8.9.1949) 119.

170 VP 1970–72/153–4 (15.5.1970); H.R. Deb. (15.5.1970) 2304–23.

171 VP 1970–72/171 (2.6.1970); H.R. Deb. (2.6.1970) 2712–17.

172 E.g. VP 1974–75/879 (28.8.1975); VP 1977/406 (4.11.1977); VP 1978–80/1283–4 (27.2.1980), 1290 (28.2.1980); VP 1990–931352 (4.3.1992); H.R. Deb. (4.3.1992) 708; VP 1990–93/1752–3 (8.10.1992); H.R. Deb. (8.10.1992) 1769.

173 *See* Ch. on 'Control and conduct of debate'.

174 H.R. Deb. (26.10.1927) 749; H.R. Deb. (26.3.1931) 665.

175 H.R. Deb. (21.5.1914) 1392, 1395; *and see* VP 1929–31/503 (26.3.1931).

176 H.R. Deb. (10.11.2005) 38; VP 2004–07/768 (10.11.2005).

177 VP 1970–72/264 (26.8.1970). The amendment was to enable a recommendation of the Public Works Committee to be referred to a select committee of the House. The Speaker ruled that the proposed amendment did not comply with the provisions of the Public Works Committee Act.

178 VP 1929–31/601–2 (30.4.1931).

Order of moving amendments

Each proposed amendment must be disposed of before another amendment to the original question can be moved.[179]

An amendment may not be moved to words already agreed to, except by way of an addition, or moved to an earlier part of a question after a later part has been amended or such an amendment has been proposed (and not by leave been withdrawn)[180]—*see* page 309. Members may thus be precluded from moving proposed amendments because they have not received the call early enough and other decisions of the House or amendments have effectively blocked their proposals. This problem is overcome by the circulation of amendments beforehand, which assists the Chair in allocating the call. However, it has been ruled that prior circulation of a proposed amendment does not confer on a Member any right to the call and that the Member first receiving the call has the right to move his or her amendment.[181]

In cases where a number of amendments have been foreshadowed to a particular motion, standing orders have been suspended to enable a cognate debate on the motion and the circulated amendments, and, at the conclusion of the debate, to enable the Chair to put questions on the circulated amendments such as were capable of being put, in the order determined by the Chair.[182]

Withdrawal of proposed amendment

A proposed amendment may be withdrawn, by leave.[183] Amendments may be withdrawn temporarily, and then moved again at a later stage.[184] An amendment has been moved subject to the temporary withdrawal of another amendment.[185]

Amendment to proposed amendment

Amendments may be moved to a proposed amendment as if the proposed amendment were an original question.[186] In effect not only is the original question temporarily superseded but so is the question on the first amendment. The questions put by the Chair deal with the first amendment as if it were a substantive question itself and with the second amendment as if it were an ordinary amendment. An amendment to a proposed amendment is moved after the question 'That the amendment be agreed to' has been proposed by the Chair. The effect of moving the subsidiary amendment is to interpose a further question 'That the amendment to the proposed amendment be agreed to'.[187] The latter question must be disposed of before the question on the primary amendment is put to the House.

179 S.O. 123(e).
180 S.O. 123(b).
181 VP 1943–44/93 (15.3.1944); H.R. Deb. (15.3.1944) 1360–1.
182 VP 1974–75/639–40 (15.5.1975) (committee); VP 1978–80/683 (21.3.1979); H.R. Deb. (21.3.1979) 960; H.R. Deb. (22.3.1979) 1103 (House).
183 S.O. 121(d).
184 VP 1973–74/221–2 (24.5.1973).
185 VP 1917–19/23 (26.7.1917).
186 S.O. 124.
187 E.g. VP 2010–13/1754 (10.9.2012).

Putting question on amendment

The standard practice is for the question on an amendment to be put in the form 'That the amendment be agreed to',[188] despite the traditional alternatives technically available in the standing orders—*see below*.

When the House considers Senate amendments to bills, the question 'That the amendment be agreed to' is put when it is proposed that the House accept a Senate amendment. When it is proposed that the House reject a Senate amendment, the question 'That the amendment be disagreed to' is put.[189] This is the only context in which the 'disagree to' form is used.

Question on amendment—traditional forms

The traditional practice was for a question to be put in a form reflecting the purpose of the proposed amendment, as follows:

- if the purpose of a proposed amendment is to omit certain words, the Chair puts the question 'That the words proposed to be omitted stand part of the question';[190]
- if the purpose of a proposed amendment is to omit certain words in order to insert or add other words, the Chair first puts the question 'That the words proposed to be omitted stand part of the question' and if this is resolved in the affirmative, the amendment is disposed of. If the question is resolved in the negative, the Chair must then put the question 'That the words proposed be inserted (added)';[191]
- if the purpose of the proposed amendment is to insert or add certain words the Chair puts the question 'That the words proposed be inserted (added)';[192]
- if no Member objects, the Chair may put the question 'That the amendment be agreed to' in place of the question or questions stated above.[193]

In 2011, as part of a wider review, the Procedure Committee reported that it saw merit in trialling the shortened form 'That the amendment be agreed to' for all amendments.[194] Following the report the Speaker made a statement to the House, noting that the traditional process for putting the question on amendments proposing to omit words had its advantages, but that it had caused confusion, and, in a finely balanced House, could lead to a meaningless outcome. He announced that he intended to use the simplified form for the remainder of the Parliament and would ask all occupants of the Chair to do the same. It would remain open to any Member to object and require the traditional form to be used in a particular case.[195]

In subsequent Parliaments the use of the simplified form has become standard. Although, for the moment, still provided for under standing order 122(a), the traditional forms of putting the question on amendments can probably be considered obsolete. Discussion of their history and use, and perceived advantages and disadvantages, may be found in earlier editions (6th edition at pages 314–6).

188 S.O. 122(b). In order to avoid confusion as to which amendment is before the House, the Chair may include the name of the mover when putting the question, e.g. VP 1962–63/279–80 (7.11.1962); VP 1974–75/646–8 (19.5.1975).

189 S.O. 161(c)—*see* Ch. on 'Senate amendments and requests'.

190 S.O. 122(a)(i).

191 S.O. 122(a)(ii).

192 S.O. 122(a)(iii).

193 S.O. 122(b).

194 Standing Committee on Procedure, *Interim report: monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, pp. 56–7.

195 VP 2010–13/614 (2.6.2011); H.R. Deb. (2.6.2011) 5790.

Main question put as amended

When amendments have been made, the main question is then put as amended.[196] The fact that an amendment has been made does not necessarily preclude the moving of a further amendment, providing it is in accord with the standing orders, nor does it preclude debate on the main question, as amended, taking place.[197] With the concurrence of the House the Chair has declined to put the question on a motion, as amended, when it had been amended so that what remained of the motion was meaningless.[198] On another occasion, the effect of an amendment was seen as having negatived a motion, as only the word 'That' remained.[199]

When amendments have been moved but not made, the main question is put as originally proposed.[200] Debate may then continue on the original question or a further amendment moved, providing it is in accord with the standing orders.[201]

MOTIONS AGREED TO—RESOLUTIONS AND ORDERS OF THE HOUSE

A motion proposed to the House must be phrased in such a way that, if passed, it will purport to express the judgment or will of the House. Every motion, therefore, when agreed to, assumes the form of an order or of a resolution of the House.

An order has been described as a command, and a resolution as a wish.[202] By its orders the House directs its committees, its Members, its staff, the order of its own proceedings and the acts of all persons whom they concern. By its resolutions the House declares its own opinions and purposes.[203] In practice, however, the terms are often used synonymously,[204] resolution being the term most generally used.

Duration

Ordinarily the orders and resolutions of the House are singular or 'one off' in effect. There are those orders that are of a machinery nature—for example, an order of the House that a bill be read a second or third time—and there are those that are more specific in nature—for example, an order that the Speaker, in the name of the House, take some particular action.[205] An example of a 'singular' resolution of the House would be one agreeing to a motion of condolence. The great majority of the orders and resolutions of the House are of the singular type.

Orders and resolutions of the non-singular type may be of unspecified, limited or continuing duration. Traditionally, resolutions or orders of the House of Commons, unless otherwise provided, were considered to have effect only during the session in which they were passed.[206] Some resolutions are seen to have effect from one session to the next, prorogation notwithstanding. For example, on 17 September 1980 the House passed two

196 S.O. 118(a).
197 H.R. Deb. (8.10.1908) 961; H.R. Deb. (21.11.1905) 5515; VP 1996–98/3031 (26.5.1998).
198 VP 1908/54 (21.10.1908).
199 VP 1908/79 (10.11.1908); H.R. Deb. (10.11.1908) 2140.
200 S.O. 118(b).
201 H.R. Deb. (15.8.1968) 252.
202 Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. II, p. 222.
203 *May*, 24th edn, p. 424.
204 Recent editions of *May* have omitted the statement that 'the application of the term is carefully regulated with reference to the content of the motion', *see May*, 19th edn (1976), p. 382.
205 VP 1950–51/217 (24.10.1950); VP 1962–63/500 (23.5.1963).
206 *See* Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, London, Macmillan, 1958. p. 104.

resolutions, concerning reports of the Committee of Privileges, which expressed the opinion that the reports of the committee should be considered early in the 32nd Parliament (the next Parliament).[207] The terms of a resolution may state that it is to have effect for a limited time—for example, until a specific date, or for the remainder of a session. Resolutions appointing standing committees, as a matter of routine, contain the words 'until the House of Representatives is dissolved or expires by effluxion of time'; resolutions appointing select committees sometimes do so. Some orders and resolutions expressly state that they are to have a continuing and binding, or standing, effect. The obvious examples of this are the standing orders themselves. These are the permanent rules for the guidance and control of the House in the conduct of its business,[208] which are 'of continuing effect and apply until changed by the House in this or a subsequent Parliament'.[209] In 1984 the terms of resolutions adopted relating to the registration and declaration of Members' interests specified that they were 'to have effect from the commencement of the 34th Parliament and to continue in force unless and until amended or repealed by the House of Representatives in this or a subsequent Parliament'.[210] The resolutions have since been amended on several occasions.

More recent resolutions of continuing effect were those of:

- 5 May 1993 concerning Parliamentary Secretaries;[211]
- 12 May 1994 concerning the Chief Government Whip;[212] and
- 5 December 1994 concerning the Votes and Proceedings.[213]

Each of these resolutions provided that it 'continue in force unless and until amended or rescinded by the House in this or a subsequent Parliament'. These resolutions became unnecessary when their provisions were incorporated into the standing orders coming into effect in the 41st Parliament.

Other orders and resolutions, whilst they may not contain such explicit provisions, have been taken to have a continuing effect. The binding force on a continuing basis of resolutions which may be seen as having continuing effect although their terms do not expressly indicate this, is implicit rather than explicit, in that it relies on the acquiescence of the House for its continuing operation. Such acquiescence does not deny the power of the House simply to ignore the resolutions of previous sessions; to state explicitly that such resolutions have no effect in succeeding sessions; to rescind them explicitly; or to pass other resolutions, notwithstanding them. Orders and resolutions which affect the practice and procedure of the House without any period of duration being fixed, are often regarded as having permanent validity. That is, they may, by virtue of continuous practice, acquire the force of customary law.

That such orders and resolutions of the House of Representatives will have continuing validity is implied in section 50 of the Constitution.[214] The standing orders of the House also imply the continuing validity of such orders and resolutions. Standing order 3(e) states, in part, that in deciding cases not otherwise provided for, the Speaker shall have regard to established practices of the House.

207 VP 1978–80/1672–3 (17.9.1980).
208 *See* section on 'Sources of procedural authority' in Ch. on 'The Speaker, Deputy Speakers and officers'.
209 S.O. 3(a).
210 VP 1983–84/945–6 (8.10.1984).
211 VP 1993–96/25 (5.5.1993).
212 VP 1993–96/982–3 (12.5.1994).
213 VP 1993–96/1620 (5.12.1994).
214 *See also Quick and Garran*, pp. 507–8.

However, despite the historical merit of such arguments, to avoid doubt it has become the practice to make the duration of effect explicit in the terms of the resolution itself. The development of this practice may be seen in the history of the resolution of 5 May 1993, referred to above, relating to Parliamentary Secretaries. A resolution in identical terms (apart from the provision for continuing effect) had been agreed to in the preceding Parliament. In moving the new motion the Leader of the House explained that it was returning to the House because of doubts as to whether the previous resolution would cover the new Parliament.[215]

Effect

The House has the power, within constitutional limits, to make a determination on any question it wishes to raise, to make any order, or to agree to any resolution. In the conduct of its own affairs the House is responsible only to itself. However, the effect of such orders and resolutions of the House on others outside the House may be a limited one. Some resolutions are couched in terms that express the opinion of the House on a matter and as a result may not have any directive force. However, this is not to say that the opinions of the House are to be disregarded, as it is incumbent upon the Executive Government and its employees and others concerned with matters on which the House has expressed an opinion to take cognisance of that opinion when contemplating or formulating any future action.[216]

Other than in relation to matters such as its power to send for persons, documents and records and its powers in regard to enforcing its privileges, decisions of the House alone have no legal efficacy on the outside world. The House, as a rule, can only bring its power of direction into play in the form of an Act of Parliament—that is, only in concert with the other two components of the legislature, the Sovereign and the Senate. This is the only means by which the House can direct (rather than influence) departments of State, the courts and other outside bodies to take action or to change their modes of operation. However, while the House may not have the power to make a direction, a resolution phrased in other terms may in practice be as effective. For example, the resolution of the House of 17 September 1980 seeking to direct the (then) Public Service Board said, in part, '. . . (2) the Public Service Board be requested to do all within its power to restore Mr Berthelsen's career prospects in the Public Service and ensure that he suffers no further disadvantage as a result of this case . . . '.[217] The response of the Public Service Board to the request was presented on 24 February 1981.[218]

The limitation on the efficacy of orders of the UK House of Commons on others outside the House was demonstrated in the decisions of the court of Queen's Bench in the cases of *Stockdale v. Hansard* (1836–40). The court ruled that an order of the House of Commons alone was not a sufficient cause to protect a person, carrying out that order, from the due processes of the law. As a consequence of the decisions in these cases the objectives of the House in the area were effected by legislation—the Parliamentary Papers Act 1840—as it was only by legislating with the other constituent parts of the Parliament that the House could give sufficient authority to its wishes.[219]

215 H.R. Deb. (5.5.1993) 89.
216 *And see* H.R. Deb. (28.10.2010) 2074.
217 VP 1978–80/1673 (17.9.1980).
218 VP 1980–83/80 (24.2.1981).
219 *See May*, 24th edn, pp. 288–90.

Section 47 of the *Acts Interpretation Act 1901* provides that:

> Where a resolution has been passed by either House of the Parliament in purported pursuance of any Act, then, unless the contrary intention appears, the resolution shall be read and construed subject to the Constitution and to the Act under which it purports to have been passed, to the intent that where the resolution would, but for this section, have been construed as being in excess of authority, it shall nevertheless be a valid resolution to the extent to which it is not in excess of authority.

Resolution or vote of the House rescinded or varied

Standing order 120 permits a resolution or other vote of the House to be rescinded during the same session if seven days' notice is given. If the rescission is to correct irregularities or mistakes one day's notice is sufficient or the correction may be made at once by leave of the House. This procedure is rarely invoked. *May* states that the reason motions to rescind a vote or resolution are rare is that the Houses instinctively realise that parliamentary government requires the majority to abide by a decision regularly come to, however unexpected, and that it is unfair to resort to methods, whether direct or indirect, to reverse such a decision. The practice, resulting from this feeling, is essentially a safeguard for the rights of the minority, and a contrary practice is not normally resorted to, unless in the circumstances of a particular case those rights are in no way threatened.[220]

For practical convenience the requirement for seven days' notice for a rescission motion is often avoided by suspending the relevant standing order or by a motion moved by leave, especially when orders of the House are rescinded as a preliminary to making a different order on the same subject. However, the latter course would be strictly against the spirit of the standing order unless the rescission is to correct an irregularity or mistake.

In order that the House may easily make changes to its sessional orders, the strictures of standing order 120 are overcome by using the words 'unless otherwise ordered' in the resolution adopting the sessional orders. Motions suspending standing orders to set a timetable or make provisions for specific items of business may also incorporate these words in order to cater for changing circumstances.

The following are cases of the House having rescinded resolutions or orders:

- all resolutions of the House and committee of the whole from a certain point relating to a particular appropriation bill, to enable a new bill to be introduced (standing orders suspended);[221]
- the third reading of a bill to enable a message from the Governor-General recommending an appropriation to be announced (standing orders suspended);[222]
- to enable the question to be put again on the third reading of a constitution alteration bill (the division bells had not been rung for the required time when the original vote was taken and an absolute majority was not established) (standing orders suspended);[223]
- to enable the second readings of certain bills which had been made orders of the day for the next sitting to be made orders of the day for the current sitting (by leave);[224]

220 *May*, 24th edn, p. 428.

221 VP 1903/181 (21.10.1903); H.R. Deb. (21.10.1903) 6382.

222 VP 1945–46/213 (1.8.1945).

223 VP 1974/28–9 (6.3.1974); H.R. Deb. (6.3.1974) 132.

224 E.g. VP 1974–75/105 (31.7.1974); VP 2004–07/2161 (20.9.2007); *but see* VP 2010–13/2244 (15.5.2013) where leave was given to suspend standing orders to allow debate on the second reading of a number of bills to be resumed at a later hour without rescinding the earlier decisions of the House to adjourn debate to the next sitting.

- to enable the orders of the day on the second readings of certain bills which had been postponed to the next sitting to be made orders of the day for the current sitting (by leave);[225]
- the second and third readings of a bill following the realisation that the second reading had not been moved (by leave);[226]
- the committee (detail), report and third reading stages of a bill, following realisation that opposition amendments the Government had not intended to accept had been recorded as having been agreed to (standing orders suspended);[227]
- consideration in detail stage and third reading of a bill following realisation that intended amendments had not been moved (standing orders suspended);[228]
- resolution to lay aside a bill (standing orders suspended) in order to permit reconsideration of Senate amendments and the moving of further amendments;[229]
- resolution agreeing to Senate amendments to a bill following a message from the Senate that an earlier message forwarding the amendments had mistakenly included proposed amendments the Senate had not in fact agreed to (standing orders suspended);[230]
- to enable a division to be taken on a question, the Chair not hearing earlier the call for a division when the question was decided (by leave);[231]
- to enable the consideration of a report of the Committee of Privileges which had been made an order of the day for a particular date to be made an order of the day for the current sitting (by leave);[232]
- resolution referring a petition to the Committee of Privileges (by leave);[233]
- resolutions regarding reference of work to the Public Works Committee (seven days' notice[234] and by leave[235]), including a resolution agreed to during the previous session (on notice);[236]
- resolution of earlier session (in force until amended or rescinded) referring certain matters to the Public Accounts Committee (on notice);[237] and
- resolution concerning committee membership (by leave).[238]

The House has on occasion in effect rescinded an order of the House by ordering papers to be printed in substitution for papers previously ordered to be printed, no notice being given of the motions.[239] When the House repeals or amends standing or sessional orders it in effect rescinds or varies previous orders of the House. Apart from amendments to standing or sessional orders the House has varied resolutions of the same session relating to the electoral redistribution of two States, standing orders having first

225 VP 1978–80/1093 (18.10.1979).
226 VP 1985–87/893 (30.4.1986).
227 VP 1987–90/907–9, 925–7 (23.11.1988).
228 VP 1993–96/1803–4 (8.2.1995).
229 Native Title Amendment Bill 1997 [No.2], VP 1996–98/3202 (2.7.1998).
230 VP 1990–93/1645–54 (19.8.1992).
231 VP 1974–75/467 (19.2.1975); H.R. Deb. (19.2.1975) 474–5.
232 VP 1978–80/147 (31.4.1978).
233 VP 1978–80/975 (11.9.1979).
234 VP 1976–77/389 (12.10.1976) (notice given 5 Oct. for 12 Oct., NP 54 (6.10.1976) 2336).
235 VP 1974–75/521 (4.3.1975); VP 2002–04/1748 (24.6.2004).
236 VP 1922/93 (25.8.1922) (seven days' notice was not required because it was a resolution of the previous session).
237 VP 1987–90/1055 (7.3.1989).
238 VP 1998–2001/1784 (9.10.2000).
239 VP 1907–08/268 (13.12.1907); VP 1914–17/571 (28.2.1917); VP 1920–21/155 (12.5.1920).

been suspended to allow the motion to be moved.[240] The House has also agreed to a motion revoking a decision about special arrangements for a future sitting.[241]

A rescission motion is not needed to alter the decisions the House has made on the detail stage of a bill, as long as this is done before the third reading has been moved—*see* 'Reconsideration of a bill before third reading' in Chapter on 'Legislation'.

On occasion, when a minor departure from the standing orders has inadvertently occurred, the House has agreed to a motion, moved by leave, which has had the effect of legitimising the defective proceedings, rather than rescinding and redoing them.[242]

Resolution expunged from records

On 29 April 1915 the House agreed to the following motion:

> That the resolution of this House of the 11th November, 1913 "That the honourable Member for Ballaarat[243] be suspended from the service of this House for the remainder of the session unless he sooner unreservedly retracts the words uttered by him at Ballarat on Sunday, the 9th November, and reflecting on Mr. Speaker, and apologizes to the House" be expunged from the Journals of this House, as being subversive of the right of an honourable Member to freely address his constituents.

The Speaker stated that, as it would be impossible to recall all relevant copies of Hansard and the Votes and Proceedings, the incident would be expunged from the record kept by the Clerk of the House.[244]

MOTIONS OF NO CONFIDENCE AND CENSURE

The Government

Perhaps the most crucial motions considered by the House of Representatives are those which express censure of or no confidence in a Government,[245] as it is an essential tenet of the Westminster system that the Government must possess the confidence of the lower (representative) House. By convention, loss of the confidence of the House normally requires the Government to resign in favour of an alternative Government or to advise a dissolution of the House of Representatives. The importance of such motions or amendments is recognised by the rule that any motion of which notice has been given, or amendment,[246] which expresses censure of or no confidence in the Government, and is accepted by a Minister as a motion or amendment of censure or no confidence, has priority of all other business until disposed of.[247] Additional speaking time is allotted to these motions—the mover of the motion, who is usually the Leader of the Opposition, may speak for 30 minutes; the Prime Minister or a Minister deputed by the Prime Minister may also speak for 30 minutes, and any other Member for 20 minutes.[248]

A notice of motion not accepted by a Minister in the terms of standing order 48 is treated in the same manner as any other notice given by a private Member and is entered

240 VP 1968–69/230 (10.10.1968).
241 VP 2004–07/1009 (2.3.2006).
242 E.g. VP 2010–13/2265 (16.5.2013).
243 Division name changed from Ballaarat to Ballarat in 1977.
244 VP 1914–17/181 (29.4.1915); H.R. Deb. (29.4.1915) 2748–9.
245 *See also* Ch. on 'The Parliament and the role of the House'. Motions censuring or expressing lack of confidence in the occupant of the Chair are dealt with in Ch. on 'The Speaker, Deputy Speakers and officers'.
246 VP 1970–72/445–6 (18.2.1971).
247 S.O. 48. The acceptance is by way of a Minister's formal statement to the House, for example, 'I inform the House that I accept the notice of motion as a motion of censure of the Government for the purpose of standing order 48', H.R. Deb. (19.3.1985) 461.
248 S.O. 1.

on the Notice Paper under private Members' business. Although action may be taken to bring the matter on for debate immediately or at an early stage, such a motion does not attract the increased speaking times of an accepted censure or no confidence motion.[249] The Government may not accept a notice as a no confidence motion immediately it is reported to the House[250], but it may be accepted on the next sitting day[251] or some future day,[252] after which it takes precedence until disposed of.

The importance with which no confidence motions were regarded historically is reflected in the fact that on occasions, the last being in 1947, the House has adjourned until the next sitting day following notice being given of such a motion.[253] Also, it was often the case in the past that the Senate remained adjourned while the Government was under challenge in this way in the House.[254] However, the importance of these motions, from both a parliamentary and public point of view, has lessened in more recent years because of the increasing frequency of censure motions generally (mostly censure of the Prime Minister or Ministers, rather than of the Government).[255] In the modern House, pressure of business is such as to preclude an adjournment.

A motion of censure of or no confidence in the Government usually relates to certain specified acts or omissions. However, a no confidence motion does not always contain reasons in its terms.[256]

A Government's continuation in office is dependent on it surviving a motion of no confidence. A motion (or amendment) expressing censure of the Government, although not seen in the same light as one expressing no confidence, is still of vital importance. A censure motion, as the words imply, expresses more a disapproval or reprimand at particular actions or policies of the Government, and an early authority has stated that it would:

> . . . ordinarily lead to [the Government's] retirement from office, or to a dissolution . . . unless the act complained of be disavowed, when the retirement of the minister who was especially responsible for it will propitiate the House, and satisfy its sense of justice.[257]

On no occasion has a vote of no confidence in a Government, or a motion or amendment censuring a Government, been successful in the House of Representatives.[258]

Withdrawal of confidence shown by defeat on other questions

The withdrawal by the House of its confidence in the Government may be shown:

- By a direct vote of censure of or no confidence in the Government.
- By defeat on an issue central to government policy or rejecting a legislative measure proposed by the Government, the acceptance of which the Government has declared to be of vital importance. Conversely, a vote by the House agreeing to a particular legislative measure or provision contrary to the advice and consent of the Government could similarly be regarded as a matter of confidence. Following defeat

249 NP 14 (17.9.1974) 1128. For further discussion of the time for moving *see* Ch. on 'Order of business and the sitting day'.

250 A notice of motion which expresses censure of or no confidence in the Government, or a censure of any Member, must be reported to the House by the Clerk at the first convenient opportunity, S.O. 106(c).

251 VP 1974–75/61 (23.7.1974).

252 VP 1974–75/167 (18.9.1974).

253 VP 1946–48/250 (17.9.1947).

254 *See Odgers*, 6th edn, pp. 967–8.

255 The most recent occasion of a motion being accepted under standing order 48 (then S.O. 110) was in 1985. VP 1985–87/81 (19.3.1985); H.R. Deb. (19.3.1985) 461.

256 VP 1970–72/471 (15.3.1971).

257 Alpheus Todd, *Parliamentary government in England* (New edition, Spencer Walpole), Sampson Low, Marsden and Company, London, 1892, vol. II, p. 121.

258 For Canadian precedent on 28 November 2005 *see Journals of the House of Commons*, No. 159, Division 190.

a Government may choose to resign, as in April and August 1904, 1929 and 1941 (*see* page 322), or to seek a direct vote of confidence.

- By defeat of the Government on a vote not necessarily central to government policy but accepted by the Government as one of confidence, as in 1905, 1908, 1909 and 1931 *(see* page 322).

A defeat of the Government in the House of Representatives does not necessarily mean it has lost the confidence of the House or that it ought to resign. As Jennings states:

> It must not be thought . . . that a single defeat necessarily demands either resignation or dissolution. Such a result follows only where the defeat implies loss of confidence . . .[259]

> What a Government will treat as a matter of sufficient importance to demand resignation or dissolution is, primarily, a question for the Government. The Opposition can always test the opinion of the House by a vote of no confidence. No Government [in the United Kingdom] since 1832 has failed to regard such a motion, if carried, as decisive. A House whose opinion was rejected has always at hand the ultimate remedy of the refusal of supply.[260]

A Government may consider it appropriate, if it is defeated on a matter which it deems to be of sufficient importance, to seek the feeling of the House at the first opportunity by means of a motion of confidence. A motion of confidence could also be used pre-emptively—for example, in October 1975 Prime Minister Whitlam, following an announcement of the Opposition's intention to delay in the Senate bills appropriating money for the ordinary annual services of the Government, moved a motion of confidence in the Government. An amendment was moved and negatived and the original motion agreed to.[261]

In 1903 the Government was defeated on an important amendment to a Conciliation and Arbitration Bill. Prime Minister Barton stated that the vote created a situation of some gravity and the Ministry would consider its position before any further business was undertaken. The next day he announced that the Government could not accept the amendment or proceed with the bill as amended and, therefore, the Government intended to drop the bill.[262] The same Government also decided not to proceed with the Papua (British Papua New Guinea) Bill after the Government was defeated on certain amendments.[263] Government defeats on tariff matters were not uncommon during this period[264] and in 1904 the Watson Government suffered other defeats to its conciliation and arbitration legislation prior to the defeat that led to its resignation.[265] When the motion for the second reading of a government bill was negatived in 1922 (the only time this has occurred), this was not taken as signifying a loss of confidence in the Hughes Government.[266]

Although it has been claimed that the loss of control of the business of the House is a matter over which Governments should resign, the loss of a vote on such an issue is not necessarily fatal for a Government. In 1908 Prime Minister Deakin resigned when he accepted that any amendment to a motion to alter the hour of next meeting was a

259 Sir Ivor Jennings, *Cabinet government*, 3rd edn, Cambridge University Press, 1961. p. 493.

260 ibid., p. 495.

261 VP 1974–75/987–90 (16.10.1975).

262 VP 1903/216 (11.9.1903); H.R. Deb. (8.9.1903) 4788; H.R. Deb. (9.9.1903) 4838–40. Ironically the amendment was very similar to that which led to the resignation of the Deakin Ministry in 1904.

263 VP 1903/205 (31.7.1903), 207 (7.8.1903); H.R. Deb. (9.9.1903) 4838.

264 VP 1901–02/386, 387, 388 (17.4.1902), 718 (21.3.1902), 726 (4.4.1902), 728 (11.4.1902).

265 VP 1904/279, 280 (9.6.1904), 284 (24.6.1904), 287 (21.7.1904) (amendments made that were opposed by the Government).

266 The Parliamentary Allowances Bill 1922, which proposed to reduce Members' salaries, negatived by 26 votes to 35, VP 1922/207 (11.10.1922); H.R. Deb. (11.10.1922) 3573–97. Members did not divide on party lines and the division seems to have been regarded as a free vote.

challenge to his Government, and the 1909 and 1931 resignations of Governments followed from similar acceptances (*see below*). In each case the Governments were on the point of losing the necessary support to remain in power. In 1923, however, the Government having lost control of the business of the House the previous evening, Prime Minister Bruce confidently assured the Opposition 'the Government will very soon take it back into its own hands today'.[267] During 1962 and 1963, when the Menzies Government had a floor majority[268] of one, it suffered a number of defeats on procedural motions[269] and, although it did not resign, its precarious majority was a factor which led to an early dissolution.[270] During the 43rd Parliament the minority Gillard Government lost a significant number of divisions.[271] In the 45th Parliament the Turnbull Government, with a floor majority of one, was defeated on several procedural motions.[272]

While there has never been a successful vote of no confidence or censure of a Government in the House of Representatives, on eight occasions Governments have either resigned or advised a dissolution following their defeat on other questions:

- Deakin Ministry, 21 April 1904—The Government resigned following its defeat 29:38 in committee (detail stage) on an amendment moved by the Opposition to the Commonwealth Conciliation and Arbitration Bill.[273]
- Watson Ministry, 12 August 1904—The Government resigned following its defeat 34:36 on an amendment to its motion that the Commonwealth Conciliation and Arbitration Bill, which it inherited from the previous Government and carried through the committee (detail) stage, be recommitted for consideration of certain clauses and a schedule.[274]
- Reid Ministry, 30 June 1905—The Government resigned following the House agreeing 42:25 to an amendment to the Address in Reply (proposing to add the words 'but are of the opinion that practical measures should be proceeded with').[275]
- Deakin Ministry, 10 November 1908—The Government resigned following its defeat 13:49 on an amendment to the motion to alter the hour of next meeting.[276]
- Fisher Ministry, 27 May 1909—The Government resigned following defeat 30:39 on a motion moved by a private Member to adjourn debate on the Address in Reply.[277]
- Bruce–Page Ministry, 10 September 1929—The Governor-General accepted the Prime Minister's advice to dissolve the House after an amendment had been agreed to in committee (detail stage) to the Maritime Industries Bill (35:34). The

267 H.R. Deb. (17.8.1923) 2964.

268 i.e. of eligible votes, not including the Speaker's.

269 VP 1962–63/194 (21.8.1962), 217–8 (3.10.1962), 307–8 (27.11.1962). The Government was also defeated on an opposition amendment to remove words from a clause of a bill. However, later in the sitting the Government successfully moved that the bill be reconsidered and the omitted words reinserted, VP 1962–63/348–9 (5.12.1962), 360–1 (6.12.1962).

270 H.R. Deb. (15.10.1963) 1790.

271 The first loss was over an opposition amendment to a proposed amendment to a standing order, H.R. Deb. (29.9.2010) 141–2. Other losses were on procedural motions, such as closures, and on items put forward by private Members.

272 VP 2016–18/86–8 (1.9.2016); 1269–70 (6.12.2017). In other cases the Government, having lost a division due to 'misadventure', won the vote after the division had been repeated pursuant to S.O. 132.

273 VP 1904/49 (27.4.1904), 273 (21.4.1904); H.R. Deb. (19.4.1904) 1043, 1047; H.R. Deb. (21.4.1904) 1247.

274 VP 1904/147 (12.8.1904), 149 (17.8.1904).

275 VP 1905/7 (30.6.1905), 9 (5.7.1905).

276 VP 1908/78 (6.11.1908), 79 (10.11.1908), 81 (12.11.1908); H.R. Deb. (6.11.1908) 2136; H.R. Deb. (10.11.1908) 2139–40.

277 VP 1909/7 (27.5.1909), 9 (28.5.1909), 11 (1.6.1909); H.R. Deb. (27.5.1909) 126; H.R. Deb. (28.5.1909) 169.

amendment was to the effect that proclamation of the Act would not be earlier than its submission to the people either at a referendum or a general election.[278]

- Scullin Ministry, 25 November 1931—The Governor-General accepted the Prime Minister's advice to dissolve the House after the question 'That the House do now adjourn' was agreed to 37:32, against the wishes of the Government.[279]
- Fadden Ministry, 3 October 1941—The Government resigned when, during the Budget debate in committee of supply, an opposition amendment to the effect that the first item in the estimates be reduced by a nominal sum (£1) was agreed to 36:33.[280]

These cases are outlined in more detail in previous editions.

There have been other cases of interest which did not lead to a change of Government:

- In 1908 the Government lost a division 28:31 on the question that the debate be adjourned on a motion and amendment. Prime Minister Deakin issued a challenge of confidence on the next division which was decided in favour of the Government.[281]
- The Hughes Ministry resigned in January 1918 following the defeat of its proposals in the second conscription plebiscite in December 1917. Prime Minister Hughes gave the Governor-General no advice as to what should be done and after seeking advice from representatives of all sections of the House the Governor-General commissioned Hughes to form another Ministry.[282]
- In 1921 the Hughes Government was defeated on a motion to adjourn the House to discuss an urgent matter of definite public importance. The House then adjourned for five days and on its resumption the Prime Minister gave Members an opportunity of registering their opinion by a vote on a motion to print a paper, to which the Opposition moved an amendment seeking the resignation of the Prime Minister. The amendment was defeated 46:23, and the original motion agreed to on the same figures.[283]
- In 1975 the Fraser caretaker Government did not have a majority on the floor of the House and on its appointment was defeated on several procedural motions and a resolution of want of confidence in the Prime Minister. The House was dissolved, but not as a consequence of the resolution—*see below*.

Prime Minister and other Ministers

From time to time a specific motion of censure of or no confidence in a particular Minister or Ministers may be moved by the Opposition. The first case occurred in 1941, but the motion lapsed for the want of a seconder.[284] Such motions have become comparatively frequent in recent years,[285] often being directed at the Prime Minister. While the standing orders provide that a motion of censure of or no confidence in the Government shall have priority of all other business if it is accepted by a Minister as a censure or no confidence motion, there is no similar provision in respect of a motion of

278 VP 1929/118 (10.9.1929), 121 (12.9.1929); H.R. Deb. (10.9.1929) 841, 850, 867; H.R. Deb. (12.9.1929) 873–4.
279 VP 1929–31/945 (25.11.1931), 947, 948 (26.11.1931); H.R. Deb. (25.11.1931) 1899; H.R. Deb. (26.11.1931) 1926–7.
280 VP 1940–43/193 (3.10.1941), 195 (8.10.1941); H.R. Deb. (3.10.1941) 720.
281 VP 1907–08/377–8 (9.4.1908); H.R. Deb. (9.4.1908) 10451–60.
282 VP 1917–19/157–8 (10.1.1918).
283 VP 1920–21/489 (14.4.1921), 491 (15.4.1921), 493–4 (20.4.1921); H.R. Deb. (15.4.1921) 7466; H.R. Deb. (20.4.1921) 7497–9.
284 VP 1940–43/105 (2.4.1941); *and see* VP 1913/46 (5.9.1913), 47 (6.9.1913); VP 1978–80/1020–3 (26.9.1979).
285 Almost all have been censure motions.

censure of or no confidence in a Minister. Such a motion is therefore, at least in theory, treated in the same way as any other private Member's motion, including the speech times applicable to an ordinary motion, although after such a notice of motion has been given, standing orders may be suspended to enable the motion to be moved immediately.[286] It is common for Members, instead of lodging notices of such motions, to move to suspend standing orders to enable them to be moved immediately,[287] or for the substantive motion to be moved by leave.[288] A motion of censure of a Minister has been initiated by government action—the Leader of the House moving to suspend so much of standing orders as would prevent a shadow minister being compelled to move a motion of censure of the Minister 'in place of the innuendo and imputation he is attempting to make by means of questions without notice'.[289]

A vote against the Prime Minister would have serious consequences for the Government. If the House expressed no confidence in the Prime Minister, convention would require that, having lost the support of the majority of the House of Representatives, the Ministry as a whole should resign, or alternatively the Prime Minister may advise a dissolution.

The only occasion that a motion of censure of or no confidence in a Prime Minister has been successful was on 11 November 1975, when, following the dismissal of the Whitlam Government, a motion of no confidence in newly commissioned Prime Minister Fraser was agreed to. The terms of the motion also requested the Speaker to advise the Governor-General to call another Member, the former Prime Minister, to form a Government. The sitting was suspended to enable the Speaker to convey the resolution to the Governor-General, but did not resume as both Houses were dissolved by proclamation of the Governor-General.[290]

No motion of censure of or no confidence in an individual Minister other than the Prime Minister has been successful in the House. The solidarity of the Ministry and the government party or parties will normally ensure that a Minister under attack will survive a censure motion in the House. The effect of carrying such a motion against a Minister may be inconclusive as far as the House is concerned, as any further action would be in the hands of the Prime Minister, but parliamentary pressure has caused the resignation or dismissal of Ministers on a number of occasions.[291]

If a motion of no confidence in, or censure of, a Minister were successful and its grounds were directly related to government policy, the question of the Minister or the Government continuing to hold office would be one for the Prime Minister to decide. If the grounds related to the Minister's administration of his or her department or fitness otherwise to hold ministerial office, the Government would not necessarily accept full responsibility for the matter, leaving the question of resignation to the particular Minister or to the Prime Minister.

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286 E.g. VP 1987–90/461 (18.4.1988).

287 E.g. VP 1993–96/1964–7 (9.3.1995); VP 1998–2001/341 (18.2.1999); VP 2010–13/398 (3.3.2011). It needs to be noted that a motion to suspend standing orders to enable a censure motion is not a censure motion in itself, but a procedural step towards allowing a censure to be moved. Such motions could sometimes be regarded as coming under the category of motions to suspend standing orders as a tactical measure—*see* page 338.

288 E.g. VP 1993–96/1781–3 (2.2.1995); VP 1998–2001/581 (9.6.1999).

289 The resultant censure motion was amended to censure the shadow minister and agreed to, VP 2002–04/914 (29.5.2003).

290 The double dissolution proclamation was signed before the Speaker was able to see the Governor-General and convey the resolution. For details of the events of 11.11.1975 *see* Ch. on 'Double dissolutions and joint sittings'.

291 For a summary of cases *see* 'Cessation of ministerial office' in Ch. on 'House, Government and Opposition'.

A motion of lack of confidence in a Senate Minister has been moved in the House, and negatived.[292] Motions have been moved expressing no confidence in, or censure of, both the Prime Minister and another Minister.[293]

Censure of Minister or Government by Senate

Once rare,[294] censure motions in the Senate against Ministers or the Government are now a relatively common occurrence. The first successful Senate censure of a Minister occurred in 1973 when an amendment expressing want of confidence in the Attorney-General (Senator Murphy) was agreed. On the following sitting day a motion of confidence in the Attorney-General was agreed to in the House.[295] In 1974 a motion was moved in the Senate that the Minister for Foreign Affairs (Senator Willesee) was 'deserving of censure and ought to resign' because of three separate issues. The question was divided and the motion as it related to one of the issues was agreed to.[296] On 13 September 1984 the Senate agreed to a motion of censure of the Minister for Resources and Energy (Senator Walsh). Since then the Senate has agreed to several such motions. Apart from motions censuring Senate Ministers, these have included motions directed at House Ministers,[297] House Ministers together with the Senate Ministers representing them in the Senate,[298] the Prime Minister,[299] and the Government.[300] The passage of a censure motion in the Senate would appear to have no substantive effect. However it may, depending on the circumstances, be seen as contributing to the parliamentary and other pressures leading to a Minister's resignation or dismissal.[301]

Censure of a Member or Senator

On a number of occasions a motion of censure of the Leader of the Opposition, or an amendment expressing censure in the form of an alternative proposition, has been agreed to.[302] A motion has been agreed to censuring the Leader of the National Party, then in opposition, for conduct unworthy of a Member.[303] Apart from motions against the Leader of the Opposition and the Leader of the National Party, a motion of censure of a private Member has been moved on only two occasions. Both motions were agreed to.[304]

292 VP 1968–69/150–1 (14.8.1968).

293 VP 1978–80/133–6 (12.4.1978), 917 (7.6.1979).

294 *Odgers*, 6th edn, p. 967; 14th edn, pp. 634–43.

295 J 1973–74/91–2 (4.4.1973), 93–4 (5.4.1973); VP 1973–74/104–6 (10.4.1973).

296 J 1974–75/195–7 (18.9.1974).

297 J 1987–90/1399–1400 (1.3.1989) (condemning Minister, inter alia, for criticising the Senate committee system); J 1993–96/2262–3 (12.10.1994) and J 1998–2001/1545–6 (24.8.1999) (censuring Ministers for handling of portfolio responsibilities).

298 J 1987–90/1712 (25.5.1989) (for failing to answer a question); J 1993–96/1641–2 (10.5.1994) (for failing to comply with Senate order to table documents).

299 J 1990–93/2965–7 (5.11.1992) (for 'contemptuous abuse of the Senate'); J 2002–04/216 (19.3.2002) (for not taking certain action in relation to a Senator, who was also censured), J 2002–04/2463 (7.10.2003) (for 'misleading the Australian Parliament and the Australian people').

300 J 1987–90/123–4 (24.9.1987) (for attack on Senate); J 1990–93/1509–10 (12.9.1991) (for failing to comply with Senate order to table a tape recording); J 1987–90/2055 (26.9.1989) (handling of industrial dispute); J 2008–10/3179–81 (23.2.2010) (delivery of certain programs).

301 E.g. resignation of Senator G.F. Richardson on 19.5.1992 subsequent to censure on 7.5.1992, J 1990–93/2298 (7.5.1992).

302 E.g. VP 1998–2001/2424–8 (28.6.2001) (motion), 2490–92 (9.8.2001) (amendment), 2517–20 (22.8.2001) (motion); VP 2002–04/76–8 (21.2.2002), 142–6 (21.3.2002) (amendments); VP 2008–10/301–5 (29.5.2008) (amendment).

303 VP 1983–84/475 (28.2.1984). On a further occasion a motion was put to the House condemning the Leader of the National Party for reflecting on the Speaker, but the motion was withdrawn, by leave, after he had apologised for and withdrawn his remarks, VP 1985–87/1101–2 (16.9.1986).

304 VP 1977/300–1 (4.10.1977) (for allegedly economically subversive public statements); VP 1993–96/1906 (7.3.1995) (for allegedly misleading the House—the Member subsequently resigned from his shadow portfolio position); *and see* VP 1993–96/2345–9 (30.8.1995) (for motion of condemnation of a private Member).

Such resolutions, as distinct from a resolution of the House suspending a Member, for example, do not have a substantive effect and are regarded rather as an expression of opinion by the House. A motion in the form of a censure of a Member, such as the Leader of the Opposition, not being a member of the Executive Government, is not consistent with the parliamentary convention that the traditional purpose of a vote of censure is to question or bring to account a Minister's responsibility to the House. Furthermore, given the relative strength of the parties in the House, and the strength of party loyalties, in ordinary circumstances it could be expected that a motion or amendment expressing censure of an opposition leader or another opposition Member would be agreed to, perhaps regardless of the circumstances or the merits of the arguments or allegations. It is acknowledged, however, that ultimately the House may hold any Member accountable for his or her actions.[305]

The House has agreed to a motion condemning a private Senator, inter alia, for 'commission of an act, the disclosure of . . . [a person's] tax file number, which would have been a crime if done outside the Parliament'.[306] A private Senator has also been censured by the House for 'failing to observe reasonable standards of behaviour . . . '.[307]

Whilst there are precedents for amendments expressing censure of private Members,[308] they may be considered bad precedents and undesirable, as they do not constitute good practice in terms of the principle that the conduct of a Member may only be challenged by way of a substantive motion.[309]

See also 'Combined motions' at page 340 for discussion of a motion to suspend standing orders to condemn a Member.

Censure of the Opposition

The House has agreed to a motion censuring the Opposition collectively,[310] and on other occasions motions of censure directed at the Prime Minister or another Minister have been amended to become motions censuring,[311] expressing concern over,[312] or condemning[313] the Opposition. Again, such motions and amendments are not consistent with the traditional parliamentary convention noted in the preceding section, and the passage of a motion censuring the Opposition has no substantive effect. On one occasion a notice of motion for the purpose of moving that an Address be presented to the Governor-General informing him that the Opposition invited the censure of the House was ruled out of order on the ground that it was frivolous (*see* page 298).

ADDRESSES

An Address to the Sovereign or the Governor-General is a method traditionally employed by the House for making its wishes, views and opinions known to the Crown.

305 *See also* Ch. on 'Parliamentary Privilege'.
306 VP 1993–96/2011–2 (30.3.1995).
307 VP 1996–98/2772–4 (5.3.1998).
308 Motions censuring Ministers amended to censure opposition Members (and then agreed to), VP 1998–2001/957–63 (13.10.1999); VP 2002–04/914–7 (29.5.2003).
309 S.O. 100(c). *See also May*, 24th edn, p. 396.
310 VP 1990–93/692–3 (18.4.1991).
311 VP 1987–90/939–41 (29.11.1988); VP 1990–93/1351–3 (4.3.1992), 1793–6 (3.11.1992); VP 1996–98/1134–7 (13.2.1997).
312 VP 1987–90/1651–4 (27.11.1989).
313 VP 1990–93/1701–3 (15.9.1992).

The standing orders make provision for Addresses to Her Majesty, the Governor-General and members of the Royal Family.[314]

From time to time what have purported to be Addresses to other persons have been entered in the Votes and Proceedings:

- an Address to a former Governor-General on his departure from Australia was moved and agreed to; this should have been more properly termed a resolution;[315]
- an Address of welcome from the Parliament in connection with the visit of an American fleet to Australia; the Speaker presented the Address which had been presented in the Senate Chamber; there had been no formal consideration of the Address by the House prior to its presentation;[316] and
- the terms of an Address of congratulations from the Parliament to the Lieutenant-Governor, Legislature and people of the Isle of Man on the occasion of the Millennium of the Tynwald was announced by the Speaker; the Address had not been considered by the House.[317]

With the exception of the Address in Reply, an Address to the Sovereign or Governor-General is moved, except in cases of urgency, after notice in the usual manner,[318] but Addresses of congratulation or condolence to members of the Royal Family may be moved by a Minister without notice.[319] An Address to the Governor-General has been moved as an amendment to a motion to print papers.[320]

(For coverage of the Address in Reply *see* Chapter on 'The parliamentary calendar'.)

To the Sovereign

Addresses which have been agreed to by the House and presented to the Sovereign have generally concerned the coronation of the Sovereign and significant events relating to the Royal Family,[321] but have also included the following subjects:

- the cessation of wartime hostilities;[322]
- praying that the Sovereign give directions that a Mace be presented by and on behalf of the Parliament to another legislature;[323] and
- home rule for Ireland.[324]

The House and Senate have often agreed to joint Addresses to the Sovereign, the Addresses being drafted in the form of joint Addresses before being considered by each House separately and no message passing between the Houses requesting concurrence.[325]

314 S.O.s 267–70.

315 VP 1908/5 (16.9.1908).

316 VP 1908/3–4 (16.9.1908).

317 VP 1978–80/930 (21.8.1979).

318 S.O. 267(a).

319 S.O. 267(b).

320 The proposed Address was moved as an amendment to the motion to print the reports of a royal commission and prayed that His Excellency would refer the inquiry back to the royal commission for particular action to be taken. Consideration of the motion and amendment lapsed at the prorogation of the Parliament, VP 1934–37/255 (11.4.1935), ci.

321 E.g. VP 1901–02/439 (28.5.1902); VP 1910/37–8 (21.7.1910); VP 1911/2 (5.9.1911) (joint Address); VP 1934–37/189 (4.4.1935) (joint Address); VP 1937/3 (17.6.1937) (joint Address); VP 1946–48/406 (19.11.1947) (joint Address); VP 1948–49/157 (23.11.1948); VP 1960–61/2 (8.3.1960) (joint Address); VP 1964–66/33 (17.3.1964) (joint Address);VP 1970–72/1159 (29.8.1972); VP 1974–75/9 (9.7.1974); VP 1978–80/959 (28.8.1979); VP 1996–98/1903 (1.9.1997); VP 2002–04/10 (12.2.2002), 157 (14.5.2002), 240 (6.6.2002), 326 (19.8.2002); VP 2010–13/1153 (7.2.2012).

322 VP 1917–19/357 (13.11.1918); VP 1945–46/221 (29.8.1945).

323 VP 1964–66/41 (19.3.1964); VP 1978–80/319–20 (8.6.1978) (joint Addresses).

324 VP 1905/29 (3.8.1905), 123–5 (19.10.1905). An earlier proposed Address on home rule for Ireland lapsed, VP 1904/247 (1.12.1904), xl.

325 VP 1978–80/319 (8.6.1978); J 1978–80/265 (9.6.1978).

To members of the Royal Family

On three occasions Addresses of welcome have been presented to members of the Royal Family.[326]

To the Governor-General

Apart from the Address in Reply, Addresses have been presented to Governors-General on their departure from the Commonwealth[327] and requesting that the Governor-General forward to the King, for communication to the President of the United States, a resolution of sympathy following the assassination of President McKinley.[328]

On two occasions the House has ordered that resolutions of the House be forwarded by Address to the Governor-General.[329] On neither occasion did the House consider the Address as such, nor were replies from the Governor-General announced to the House.

The Constitution and various Commonwealth statutes provide for Addresses to the Governor-General from both Houses in respect of the removal of certain persons from office under special circumstances, for example:

- Justices of the High Court and other federal courts (Constitution, s. 72);
- Auditor-General and Independent Auditor (Auditor-General Act 1997, schedules 1 and 2);
- Public Service Commissioner (Public Service Act 1999, s. 47);[330]
- Australian Statistician (Australian Bureau of Statistics Act 1975, s. 12);
- Member of the Administrative Appeals Tribunal (Administrative Appeals Tribunal Act 1975, s. 13); and
- Ombudsman (Ombudsman Act 1976, s. 28).

There is no precedent for any such Address in the Commonwealth Parliament.

Resolutions to Sovereign and Governor-General

Resolutions as distinct from Addresses have been agreed to by the House and forwarded to the Sovereign:

- on the death of a Sovereign or otherwise concerning the Sovereign or Royal Family;[331]
- expressing determination that World War I continue to a victorious end;[332]
- thanking the Sovereign for the gift of despatch boxes;[333]
- thanking the Sovereign for his message on the occasion of the establishment of the seat of Government in Canberra;[334] and
- expressing congratulations on the 50th anniversary of Her Majesty's coronation.[335]

326 VP 1920–21/185–6 (20.5.1920); VP 1926–28/349 (9.5.1927); VP 1934–37/6–7 (23.10.1934) (joint Address).
327 VP 1903/183 (21.10.1903); VP 1908/5 (16.9.1908).
328 VP 1901–02/161 (18.9.1901).
329 VP 1903/34 (19.6.1903), 63 (21.7.1903); VP 1905/109 (10.10.1905), 119–20 (17.10.1905).
330 For Parliamentary Service Commissioner *see* p. 329.
331 VP 1910/7, 8 (1.7.1910); VP 1929/7 (6.2.1929); VP 1934–37/512 (10.3.1936); VP 1940–43/377 (2.9.1942); VP 1951–53/81 (26.9.1951), 259 (19.2.1952).
332 VP 1914–17/315 (4.8.1915).
333 VP 1926–28/349 (9.5.1927).
334 VP 1926–28/348 (9.5.1927).
335 VP 2002–04/922 (2.6.2003).

On occasions when Parliament has not been meeting, messages have been sent to the Sovereign on the Sovereign's accession to the throne and in respect of the death of the Sovereign's predecessor.[336]

Resolutions have been forwarded to the Governor-General:

- on the death of a member of his family;[337]
- requesting him to summon the first meeting of the 10th Parliament at Canberra;[338] and
- relating to arrangements for the opening of future sessions of the Parliament.[339]

Presentation of Addresses

Addresses to the Sovereign or members of the Royal Family are transmitted by the Speaker to the Governor-General (usually by letter) with the request that they be sent for presentation.[340] Unless the House otherwise orders, Addresses to the Governor-General are presented by the Speaker.[341] When an Address is ordered to be presented by the whole House, the Speaker proceeds with Members to a place appointed by the Governor-General and reads the Address to the Governor-General. While the standing orders provide that the Members who moved and seconded the Address stand to the left of the Speaker,[342] in practice, they have stood behind the Speaker.

The Address to the King on the cessation of hostilities at the end of World War I was presented to the Governor-General on the steps of Parliament House by the Speaker, accompanied by Members.[343] The Speaker has personally presented Addresses to members of the Royal Family.[344] On the occasion of a joint Address to King George V on the 25th anniversary of his accession to the throne, the Governor-General suggested that the Prime Minister (at that time in the United Kingdom) hand the Address to the King. The Speaker agreed to the proposal, assuming the suggestion would meet with the concurrence of Members.[345]

Reply

The Governor-General's answer to any Address presented by the whole House must be reported by the Speaker.[346] A reply from the Sovereign to any Address is also announced to the House by the Speaker. The reply is transmitted to the Speaker through the Governor-General.[347]

Address to the Presiding Officers

The Presiding Officers may remove the Parliamentary Service Commissioner from office if each House presents an Address praying for removal.[348]

336 VP 1910/7 (1.7.1910); VP 1934–37/511 (10.3.1936); VP 1937/2 (17.6.1937).
337 VP 1940–43/477 (16.2.1943); VP 1974–75/153 (17.9.1974).
338 VP 1923–24/74 (12.7.1923).
339 VP 1987–90/433 (24.3.1988), 445 (13.4.1988).
340 S.O. 268.
341 S.O. 269(a).
342 S.O. 269(b).
343 VP 1917–19/359 (14.11.1918).
344 VP 1926–28/354 (28.9.1927); VP 1934–37/13 (31.10.1934).
345 VP 1934–37/239 (9.4.1935).
346 S.O. 270; VP 1978–80/87 (16.3.1978); VP 1998–2001/220 (9.12.1998).
347 VP 1978–80/327 (15.8.1978), 981 (12.9.1979).
348 *Parliamentary Service Act 1999*, s. 45.

MOTIONS OF CONDOLENCE

It is the practice of the House to move a motion of condolence on the death of the Governor-General or a sitting Member or Senator.[349] The practice is also extended to those who formerly held the following offices:

Governor-General
Prime Minister
Speaker of the House
President of the Senate[350]
Leader of the Opposition
Leader of a 'recognised' political party
Leader of the Government in the Senate
Leader of the Opposition in the Senate.

A condolence motion may also be moved following the death of a former Senator or Member when:

- the person ceased to be a Senator or Member during the current Parliament;
- the person has had previous distinguished ministerial service or other distinguished service in Australia; or
- the death of the former Member or Senator coincides with the death of another person in respect of whom a motion of condolence is to be moved.

However, in normal circumstances the death of a former Member or Senator is announced by the Speaker, who refers to the death without a motion being moved. The Speaker then asks Members to rise in their places for a short time as a mark of respect.[351] This practice has sometimes been criticised, on the ground that the House should show more recognition of the services of a former Member or Senator.[352] Sometimes Members have made statements of condolence by indulgence, or have chosen to refer to the deaths of former Members at a suitable time later—for example, on the adjournment debate. On the opening day of the 32nd Parliament, the Speaker, by indulgence, allowed Members to pay tribute to former colleagues, there being no question before the House,[353] and the speeches were bound and forwarded to the next of kin (the practice for condolence motions—*see below*). The Speaker has announced the death of a former Member, foreshadowing a condolence motion at a later date.[354]

From time to time condolence motions may also be moved following the deaths of distinguished Australians, Heads of State or Government of other countries, and other distinguished persons overseas whose achievements are considered to have some direct relevance to Australia. Condolence motions have also been moved for service personnel[355] and victims of natural[356] and other[357] disasters. When a condolence motion is not to be moved the Prime Minister and Leader of the Opposition, and other Members,

349 *See also* Ch. on 'Members'.
350 The death of a former Senate President has been announced but, at the request of the deceased, no condolence motion moved, VP 1993–96/1618 (5.12.1994).
351 E.g. VP 1978–80/1243 (19.2.1980); VP 1998–2001/646 (23.6.1999); VP 2010–13/89 (19.10.2010).
352 H.R. Deb. (20.2.1980) 158, 161; H.R. Deb. (2.4.1980) 1664.
353 VP 1980–83/10 (25.11.1980).
354 VP 1990–93/481 (21.1.1991).
355 E.g. VP 2010–13/10 (28.9.2010).
356 E.g. Victorian bushfires, 9 February 2009. The House adjourned as a mark of respect, VP 2008–10/849 (9.2.2009), and debate on the motion continued on subsequent days.
357 E.g. plane crash, VP 2004–07/1777 (20.3.2007); bombings, VP 2008–10/1199 (11.8.2009).

may note the death of a person by seeking the Chair's indulgence to make statements of condolence.[358]

The guidelines for the moving of condolence motions have, in practice, been determined by the Government but, depending on the circumstances, they may not always be observed.

At the request of a Member, during questions without notice, and with the agreement of the Prime Minister and Speaker, Members stood in silence as a mark of respect to Dr Martin Luther King, a world figure who had been assassinated in the United States of America. There was an understanding that this departure from practice should not be considered to be a precedent.[359]

In 1920, at the initiative of a private Member, Members stood in silence for one minute in memory of members of the Australian Imperial Force who fell in World War I.[360] On the 80th anniversary of Remembrance Day on 11 November 1998, proceedings were interrupted by the Chair at 11 a.m. and Members stood for a minute's silence.[361] On another Remembrance Day, pursuant to a motion moved by a private Member, the House was suspended for two minutes at 11 a.m., with Members standing in silence in commemoration.[362]

In 2002, on a motion in remembrance of the terrorist attacks in the United States on 11 September 2001 being agreed to, Members rising in silence, at the Speaker's invitation people in the gallery also rose in their places as a mark of respect.[363]

On 1 March 2011 the House met at 10.48 a.m. in order to observe two minutes silence at the exact time of the earthquake in Christchurch the week before, as a mark of support for and solidarity with the people of New Zealand. The sitting was then suspended (at 10.53 a.m.) until the normal time of meeting at 2 p.m.[364]

As noted above, the House may show its respect for a person who has died by Members standing in silence for a short period, without a motion being moved. This usually occurs on the death of former Members, and in 2011 occurred on the death of a long-serving member of staff of the Department of the House of Representatives.[365]

A motion of condolence, by practice of the House, is moved without notice. It is usually moved by the Prime Minister and seconded by the Leader of the Opposition, and is ordinarily given precedence.[366] Time limits do not apply, although individual speeches are normally quite brief. Debate on a condolence motion may be adjourned after a small number of Members (for example, party leaders) have spoken, and resumed at a later hour the same day.[367] 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 for a short

358 The House has referred a death to the Main Committee (Federation Chamber) 'for further statements by indulgence', VP 2008–10/411 (23.6.2008), 436 (25.6.2008); NP 31 (24.6.2008) 32.
359 VP 1968–69/43 (30.4.1968).
360 VP 1920–21/119 (23.4.1920); H.R. Deb. (23.4.1920) 1488.
361 VP 1998–2001/22 (11.11.1998). A Member then read the ode, H.R. Deb. (11.11.1998) 69.
362 VP 1990–93/1877, 1878 (11.11.1992).
363 VP 2002–04/385 (29.8.2002); H.R. Deb. (29.8.2002) 6190.
364 VP 2010–13/367 (1.3.2011).
365 H.R. Deb. (31.5.2011) 5286.
366 S.O. 49; *and see* Ch. on 'Order of business and the sitting day'.
367 E.g. VP 1993–96/1345, 1347 (10.10.1994); VP 2002–04/1249, 1252 (14.10.2003) (Members stood as mark of respect when debate was adjourned).

period of silence. A single condolence motion may be moved in respect of more than one death.[368]

Former standing orders had no provision for condolence motions to be referred to the Main Committee[369] (now Federation Chamber), and to enable this to occur the practice commenced of presenting documents relating to the deaths of persons in order to facilitate motions to take note which could be referred to the Main Committee for later debate. During such debates conventions applying to a condolence motion were observed—no time limits were placed on speeches and Members stood in silence when the debates were adjourned.[370] Documents referred to the Main Committee in such circumstances included copies of condolence motions that had just been agreed to.[371] However, current practice is for the debate on the condolence motion to be adjourned and the adjourned debate referred as an order of the day to the Federation Chamber—ultimately returning to the House for final agreement.[372] It has become customary for Members to show sympathy and respect by rising in silence when debate on a condolence motion is adjourned on the first occasion in the House, and in the Federation Chamber when the motion is referred back to the House. This action may also be repeated when the question is eventually put and agreed to in the House.[373]

Depending on the circumstances a condolence motion may be followed by a suspension of the sitting to a later hour. Some deaths have been marked by an adjournment to the next sitting. However, over the years there has been a tendency for the periods of suspension or adjournment to be reduced with the increase in pressure on the time of the House, and neither is now usual.

It is usual for bound copies of motions of condolence and extracts from the Hansard proceedings on condolence motions to be presented to the next of kin of the deceased person.

MOTIONS OF THANKS

As with motions of condolence, precedence is ordinarily given to a motion of thanks of the House.[374] Motions of thanks (formerly called votes of thanks) have been comparatively rare and are confined to the following cases:

- to members of the Armed Forces and others following World Wars I and II;[375]

368 Eg. VP 2002–04/10 (12.2.2002) (three former Ministers); VP 2004–07/1568 (27.11.2006) (former Minister and former Senate President); VP 2004–07/1657 (6.2.2007) (two former Ministers); VP 2010–13/1752 (10.9.2012) (three soldiers).

369 Formerly only motions relating to committee and delegation reports and motions to take note of documents could be referred. Since Nov. 2004 S.O. 183 has permitted orders of the day for resumption of debate on any motion to be referred.

370 E.g. Copy of Speaker's announcement of the death of a former Member, VP 2002–04/1401 (10.2.2004), 1428 (12.2.2004); H.R. Deb. (12.2.2004) 24695–716. Copy of a Tasmanian Government Press release paying tribute to former Premier, VP 2002–04/1713 (21.6.2004), 1729 (22.6.2004).

371 VP 2002–04/1763 (3.8.2004) (copy of the condolence motion on the death of former Speaker); VP 2004–07/286 (10.5.2005), 475 (23.6.2005) (copies of 3 condolence motions—motions to take note returned to House and agreed to).

372 E.g. VP 2004–07/839, 844 (5.12.2005), 847 (6.12.2005) (former Minister—the Main Committee met specially for this debate); VP 2004–07/1657 (6.2.2007), 1660–61 (6.2.2007), 1699 (12.2.2007), 1764 (28.2.2007), 1789, 1791 (21.3.2007) (2 former Ministers—debate spread over several weeks between other items of business).

373 Recent practice has been for the Speaker to ask Members and 'all present' to rise, in order to include people in the galleries, e.g. H.R. Deb. (5.7.2011) 7579.

374 S.O. 49.

375 VP 1920–21/137 (4.5.1920); VP 1945–46/222 (29.8.1945). On the former occasion the motion of thanks was presented by the Speaker, accompanied by Members, to representatives of the services in Queen's Hall (Melbourne), VP 1920–21/184 (20.5.1920).

- recording the gratitude of the House to the International Health Board (Rockefeller Institute) for assistance in connection with the public health of the Commonwealth;[376]
- to the United Kingdom Branch of the Empire Parliamentary Association in relation to its offer to present a Speaker's Chair;[377]
- to presenters of gifts to Australia's new Parliament House;[378]
- to persons and organisations associated with the planning and construction of the new Parliament House;[379] and
- on the 60th anniversary of VE day, honouring and remembering Australians who fought in the war and gave their lives, and recording the gratitude of the House.[380]

Motions, not being motions of thanks, but containing sentiments of congratulation, appreciation or gratitude, have in practice received similar precedence. Such motions have for the most part been moved by leave, although they have also been moved following a motion being agreed to for the suspension of standing orders.[381] Contrary to the usual practice of such motions being moved by the Prime Minister or a Minister, a case has occurred of such a motion being moved by an opposition leader.[382]

MOTION OF APOLOGY

On 13 February 2008 the Prime Minister moved a motion of apology to Australia's Indigenous peoples. The motion was on notice, and seconded by the Leader of the Opposition, standing orders having been suspended to permit the Prime Minister to speak for an unspecified period of time, and for the Leader of the Opposition to speak for an equivalent time.[383] Following these speeches Members signified their support for the motion by rising in their places. After a pause in proceedings[384] debate was adjourned, the resumption of debate was referred to the Main Committee (now Federation Chamber) and the sitting was suspended.[385] Later, Members stood in silence as a mark of support in the Main Committee when the motion was referred back to the House, and again when the question was put and agreed to in the House.[386]

376 VP 1923–24/197 (24.8.1923).
377 VP 1925/67 (14.8.1925).
378 VP 1987–90/621 (22.8.1988).
379 VP 1987–90/621 (22.8.1988).
380 VP 2004–07/285 (10.5.2005). A motion on the 60th anniversary of VP day, inter alia also expressing gratitude, was not recorded as a motion of thanks, VP 2004–07/516 (11.8.2005).
381 Such motions have included: a motion expressing congratulations and gratitude to General McArthur at the end of World War II, VP 1945–46/222 (29.8.1945); motions of congratulation on Australian sporting successes: Americas Cup VP 1983–84/253 (4.10.1983); ascent of Mt Everest, VP 1983–84/929 (5.10.1984) (moved after suspension of standing orders); 15th Commonwealth Games, VP 1993–96/1259 (29.8.1994); a motion congratulating and expressing appreciation of the Royal Military College on the occasion of its 75th anniversary, VP 1985–87/1234 (17.10.1986); motions recognising the success of the Sydney 2000 Olympic and Paralympic Games, and congratulating athletes, organisers and volunteers, VP 1998–2001/1749–50 (3.10.2000), 1819 (30.10.2000); motions 'of appreciation' on the occasion of the retirement of Clerks of the House (moved without notice or leave) VP 1980–83/905 (6.5.1982); VP 1985–87/319 (23.5.1985); VP 1990–93/598 (14.3.1991); VP 1996–98/1817 (26.6.1997); VP 2013–16/252 (12.12.2013).
382 A motion congratulating the Navy on the occasion of its 75th anniversary and expressing thanks to allied naval forces for participation in the celebrations, VP 1985–87/1169 (7.10.1986).
383 VP 2008–10/10 (12.2.2008).
384 During the pause the Prime Minister, Leader of the Opposition and Minister for Families, Housing, Community Services and Indigenous Affairs met with representatives of Australia's Indigenous peoples in the distinguished visitors gallery, after which the Prime Minister, together with the Leader of the Opposition, presented the Speaker with a gift on behalf of the representatives.
385 VP 2008–10/61–2 (13.2.2008), H.R. Deb. (13.2.2008) 167–77.
386 VP 2008–10/105 (20.2.2008), 134 (11.3.2008).

On 16 November 2009, following a speech of apology by the Prime Minister to an audience in the Great Hall, a Minister moved, by leave, 'That the House support the apology given on this day by the Prime Minister, on behalf of the nation, to the Forgotten Australians and former child migrants in the following terms . . .'.[387] Members signified support for the motion by rising in their places when debate in the House was initially adjourned, and also, following further debate in the Main Committee (now Federation Chamber), when the question was later put and agreed to in the House.[388]

On 26 November 2012 the Minister for Defence delivered an apology on behalf of the Government to people subjected to sexual or other forms of abuse in the Australian Defence Force by way of a ministerial statement.[389]

On 21 March 2013, following a speech of apology by the Prime Minister to an audience in the Great Hall, the House debated the motion moved by the Attorney-General 'That the House support the apology given earlier today by the Prime Minister to people affected by forced adoption and removal policies and practices in the following terms . . .".[390] This motion having lapsed on the dissolution of the House, at the start of the following Parliament the terms of the apology were moved as a motion and agreed to without further debate.[391]

MOTION TO DISCUSS MATTER OF SPECIAL INTEREST

Standing order 50 provides that at any time when other business is not before the House a Minister may state to the House a proposal to discuss a matter of special interest in preference to moving a specific motion. The Minister must then move a motion specifying the time to be allotted to the debate. The Minister then moves 'That [stating subject matter] be considered by the House'. The motion may be withdrawn, without leave, by a Minister at the expiration of the time allotted to the debate. A matter of special interest has been discussed by the House on only one occasion, when it was discussed early in the order of business prior to the giving of notices.[392]

This procedure may be regarded as corresponding, from a ministerial point of view, to a matter of public importance (the practice of the House being that Ministers do not submit MPIs—*see* Chapter on 'Non-government business').

MOTIONS RELATING TO THE STANDING ORDERS

The standing orders are the rules of the House made under the power granted by section 50 of the Constitution. They are of continuing effect and apply until changed by the House.[393] Standing orders are made and amended, and may be suspended, by resolution of the House. Standing orders intended to apply only to the current Parliament or for a lesser period—for example, for the remainder of a year—are known as sessional orders.

The operation of a standing order can also, in effect, be suspended 'by leave of the House' without any motion being moved. While the subject of leave of the House does

387 VP 2008–10/1438–9 (16.11.2009).
388 VP 2008–10/1533 (26.11.2009).
389 VP 2010–13/1963 (26.11.2012).
390 VP 2010–13/2203–04 (21.3.2013).
391 VP 2013–16/156–7 (3.12.2013).
392 VP 1974–75/815–7 (9.7.1975); H.R. Deb. (9.7.1975) 3556.
393 S.O. 3(a).

not fit entirely comfortably under the heading of 'motions', it is most appropriately covered here together with the suspension of standing orders, as the two procedures are so closely connected.

Motions to make or amend standing or sessional orders

Standing orders are made and amended by motion moved on notice in the usual way; no special procedures are involved. At the start of a new Parliament, for example, standing order 215 is commonly amended to adjust the names and composition of the general purpose standing committees. Other changes and new standing orders are often made following recommendation by the Standing Committee on Procedure, and may be introduced for a trial period as sessional orders.

The Clerk has the authority to correct clerical errors or inconsistencies in wording in the standing orders, but not so as to cause a change to the meaning of any standing order.[394] In practice, the Clerk only acts on such a matter after consultation—for example, with the Speaker, the Leader of the House, the Manager of Opposition Business and the Procedure Committee.

Leave of the House

The House or Federation Chamber may grant leave—that is, give its unanimous permission—to a Member to act in a manner not expressly provided for in, or contrary to, the standing orders.[395] A Minister or Member may ask for leave, or the Chair, sensing the feeling of the House or the Federation Chamber, may initiate the proposal; in either case the Chair seeks the agreement of Members. Leave may be granted only if no Member present objects.

Leave may be sought for a variety of purposes. Common examples are to enable the next stage of a bill to be taken immediately; to proceed immediately from the second reading of a bill to the third reading (that is, to bypass the consideration in detail stage); during the consideration in detail stage to take a bill as a whole or in parts together; to move a motion without notice; or to enable statements, including ministerial statements, to be made to the House. Leave is often sought to present papers to the House—while there is no provision for private Members to table papers, they may do so if they obtain leave of the House, and Ministers too require leave in some circumstances.

Motion to suspend standing or sessional orders

Standing order 47 provides that:

(a) A Member may move, with or without notice, the suspension of any standing or other order of the House.

(b) If a suspension motion is moved on notice, it shall appear on the Notice Paper and may be carried by a majority of votes.

(c) If a suspension motion is moved without notice it:
  (i) must be relevant to any business under discussion and seconded; and
  (ii) can be carried only by an absolute majority of Members.

(d) Any suspension of orders shall be limited to the particular purpose of the suspension.

394 VP 2004–07/57 (1.12.2004).
395 S.O. 63.

Thus, like any other motion, a motion to suspend standing orders is moved pursuant to notice or by leave of the House. However, it can also be moved without notice in cases of necessity.

Motions to suspend the standing orders are most commonly moved in order to:

- facilitate the progress of business through the House;
- extend or reduce time limits for speeches;
- enable a motion to be moved without notice; and
- enable a particular item of business to be called on immediately.

Although standing order 47 refers to 'any standing order', in practice motions proposing to suspend standing orders provisions that uphold constitutional requirements or principles are not acceptable.[396] Carriage of a motion that standing orders be suspended to permit certain action by the House does not require that the action be taken.[397]

The standing or sessional orders may be suspended by the House only, and not by the Federation Chamber. The position is summarised in the following statement from the Chair (in relation to the former committee of the whole):

> The standing orders are established by the House sitting as a House and cannot be amended or suspended by a Committee of the Whole. The Committee is a creature of the House and has no right or power to vary a decision of the superior body.[398]

The House may suspend standing or sessional orders in relation to proceedings that may take place later in the Federation Chamber,[399] or in relation to committee proceedings.[400]

As with other motions, a motion to suspend standing or sessional orders requires a seconder, with the exception that a seconder is not required for a motion moved by a Minister (or Parliamentary Secretary) or the Chief Government Whip.[401] A motion may relate to matters not yet before the House[402] and the standing orders may be suspended for more than one purpose.[403] While other business is before the House, a motion to suspend standing orders will not be received by the Chair unless the substance of the motion is relevant to the item of business. If it is not relevant to the item of business, it cannot be moved until the item is disposed of—that is, between items of business.[404] A particular standing or sessional order may be suspended in order to achieve a single object. More commonly however the object is achieved by a motion expressed in the terms 'That so much of the standing (and sessional) orders be suspended as would prevent . . . '.

Pursuant to notice

The spirit of the standing orders is more properly met when a motion to suspend standing orders is brought before the House after notice has been given. Such a motion appears on the Notice Paper and may be carried by a majority of those voting.[405] A more regular use is made of notices at times when the Government has a small majority, in

396 Speaker's ruling on proposed suspension of S.O. 179, VP 2010–13/1085 (22.11.2011); H.R. Deb. (22.11.2011) 13418.
397 H.R. Deb. (10.10.2006) 29.
398 VP 1970–72/827 (9.11.1971); H.R. Deb. (9.11.1971) 3181.
399 E.g. VP 1954–55/286 (30.8.1955) (committee of the whole); VP 1996–98/551 (8.10.1996).
400 E.g. VP 2010–13/68 (30.9.2010), in relation to the first meeting of the Selection Committee in the 43rd Parliament.
401 S.O. 116. On one occasion a motion not seconded was agreed to by the House and the Speaker later stated that he was satisfied that the will of the House had been discharged, H.R. Deb. (27.10.1977) 2557–8; H.R. Deb. (1.11.1977) 2593–4.
402 H.R. Deb. (3.11.1915) 7131; H.R. Deb. (10.11.1915) 7406–7.
403 H.R. Deb. (11.8.1904) 4149.
404 VP 1983–84/543 (27.3.1984); H.R. Deb. (27.3.1984) 803.
405 S.O. 47(b).

order to avoid the requirement that a motion moved without notice must be carried by an absolute majority (*and see* 'Contingent notice' at page 294.)

Debate management motion on notice

In March 2014 the standing orders made specific provision for motions for the suspension of standing or other orders on notice relating to the programming of government business. The following time limits are specified: whole debate 25 minutes; mover 15 minutes; Member next speaking 10 minutes; any other Member 5 minutes.[406]

By leave of the House

A motion to suspend standing orders may also be moved following the granting of leave by the House. The granting of leave obviates the need for notice[407] and can be taken to mean that the object of the motion—that is, the suspension of standing orders—meets with the unanimous consent of the House, and hence the motion is unlikely to be opposed. This does not imply that once standing orders have been suspended to move a motion without notice or bring on an item of business, that the motion or item of business will not be opposed or challenged in the House. When leave is granted the motion to suspend standing orders may be carried by a simple majority of those voting, but when leave has been given a division is not normally called for.[408]

Without notice

If a suspension motion is moved without notice it must be relevant to any business under discussion and seconded, and can be carried only by an absolute majority of Members.[409] If a Member wishes to move for the suspension of standing orders without notice, the Member—

- must first receive the call from the Chair; and
- may not interrupt a Member who is speaking.[410]

Such a motion can be moved during consideration of an item of business only if it is relevant to that item of business.[411] If the motion is not relevant to the item of business, it must be moved after the item is disposed of—that is, between items of business.[412]

A motion to suspend standing orders has been ruled out of order, or not allowed to be moved, because:

- it contravened the same motion rule;[413]
- there were no standing orders relating to the purpose of the motion;[414]
- there was already a motion to suspend standing orders before the House;[415]

406 S.O. 1.

407 And thus the time limits for a suspension motion without notice (*see* page 339) and the requirement for an absolute majority (*see* page 340) do not apply.

408 H.R. Deb. (2.8.1905) 471.

409 S.O. 47(c)—*see* 'Absolute majority' at page 340.

410 S.O. 66.

411 In such cases, until the question on the suspension motion has been proposed by the Chair, it can be superseded by the closure of the question currently before the House. E.g. H.R. Deb. (12.8.2004) 33002–3.

412 H.R. Deb. (28–29.10.1970) 2969; VP 1983–84/543 (27.3.1984); H.R. Deb. (27.3.1984) 803.

413 Cases described at page 298.

414 VP 1967–68/50 (16.3.1967); the motion proposed to suspend standing orders to enable a Minister to complete an answer to a question without limitation of time. *See also* H.R. Deb. (20.3.1980) 1008; the motion proposed to suspend standing orders to enable matter to be incorporated in Hansard.

415 H.R. Deb. (12.10.1972) 2549.

- it was unrelated to the question before the House,[416] or sought to suspend standing order 47(c)(i) itself in order to allow a motion to be moved unrelated to the matter before the House;[417]
- the Chair had given the call to the Member for another purpose;[418]
- it covered the same subject on which the House had just voted to adjourn debate;[419]
- at the time the Member sought to move it another Member was speaking to a motion he had moved;[420] and
- the written motion handed in differed substantially from the terms the Member had read out.[421]

Part of a motion to suspend standing orders has been ruled out of order on the grounds that it was rhetorical.[422]

If standing orders have been suspended in order to permit certain action, a further motion to suspend standing orders for another unrelated purpose may not be moved until the action which was the subject of the first motion has been completed.[423] It is not in order to move a suspension of standing orders to vary the order of business when a motion to set the order of business has only just been agreed to.[424]

A motion to suspend standing orders should be moved before the cut-off time for new business as the motion itself constitutes new business under the terms of standing order 33.[425] However, a motion moved, by leave (and so by unanimous consent of the House), to enable certain orders of the day to be called on after the specified time has been used and is less objectionable.[426]

Without notice as a tactical measure

In earlier years the procedure of moving for the suspension of standing or sessional orders was used sparingly by the Government mainly to facilitate the progress of business through the House. However, since the late 1960s the procedure has been used by the Opposition as a procedural device to attempt to bring forward for debate or highlight matters which it considers to be of national, parliamentary or political importance at the time. The use of such tactics has become frequent. At times, the Government has apparently considered these tactical diversions to be so prevalent and disruptive to its program of business that, for some periods, the relevant standing order (now S.O. 47) has itself been suspended except when a motion was moved pursuant to the standing order by a Minister.[427] On other occasions a notice of motion to suspend the standing order in this

416 H.R. Deb. (28–29.10.1970) 2969; H.R. Deb. 27.6.2013) 7.
417 H.R. Deb. (13.8.2015) 8267–9.
418 H.R. Deb. (3.3.1998) 174; H.R. Deb. (11.12.13) 2389—Speaker had given Member call to raise a point of order only, not to seek to move a motion.
419 VP 1977/115 (5.5.1977).
420 VP 1993–96/2345 (30.8.1995).
421 VP 2004–07/1447 (10.10.2006).
422 H.R. Deb. (24.3.2011) 3245.
423 H.R. Deb. (4.12.2003) 23779.
424 VP 2002–04/969 (18.6.2003). For an acceptable form of motion later in the sitting *see* VP 2002–04/973 (18.6.2003).
425 *See* Ch. on 'Order of business and the sitting day'.
426 VP 1978–80/1416 (22.4.1980).
427 VP 1970–72/607 (6.5.1971), H.R. Deb. (6.5.1971) 2720–3—for remainder of period of sittings (pursuant to notice); VP 1978–80/1028–9 (26.9.1979), H.R. Deb. (26.9.1979) 1562—for remainder of day (without notice by absolute majority); VP 1993–96/177–8 (19.8.1993) (on notice)—on 19 August 1993, the period covered was 'all sittings up to and including Thursday, 28 October 1993'; VP 1996–98/1037–9 (12.12.1996).

way has remained on the Notice Paper but not in fact been moved[428]—the obvious intention of the notices being to discourage undue use of the practice.

The frequency of these motions was considered by the Standing Orders Committee in 1972 and the committee recommended a time limit of 25 minutes on the whole debate on such a motion.[429] The House adopted the recommendation.[430] The committee did not attempt to prevent such a motion being moved by a private Member, regard being had to the consideration that Members should have a reasonable opportunity to express a view judged to be politically important at the time.

There are, however, restrictions on the timing of such motions. In view of conflicting precedents on the question of precisely when such motions may be moved, Speaker Jenkins clarified the matter and explained the position he intended to adopt on 27 March 1984. He stated that the correct interpretation and application of the standing order required that a motion without notice to suspend standing orders could only be moved (a) when other business was before the House if the motion was relevant to the item before the House at the time or (b) when there was no business before the House, that is, between items of business.[431] This has become the firm practice of the House.

Debate on motion

The time limits for debate on a motion moved without notice to suspend standing orders under standing order 47 are: whole debate 25 minutes; mover 10 minutes; seconder five minutes; Member next speaking 10 minutes; any other Member five minutes. When the motion is moved pursuant to notice or by leave of the House, the time limits are the same as for any other debate not otherwise provided for by the standing orders: whole debate without limitation of time; mover 15 minutes; any other Member 10 minutes.[432]

Debate on a motion to suspend standing orders should be relevant to the question before the House—that is, that standing orders be suspended.[433] Members should not dwell on the subject matter which is the object of the suspension. The Chair has consistently ruled that Members may not use debate on a motion to suspend standing orders as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended.[434] However, this rule has not always been strictly enforced. Debate on a motion to suspend standing orders has been adjourned.[435]

An amendment may be moved to a motion to suspend standing orders.[436] Such an amendment should be worded so that the motion, if amended, remains a procedural motion to suspend standing orders; and should avoid attempting to turn the motion into a substantive motion.

428 H.R. Deb. (20.12.1990) 4719–24, 4889—on each Thursday for remainder of the Parliament (notice given by private Member following disruption to private Members' business period); H.R. Deb. (30.5.1991) 4504—until commencement of next period of sittings; H.R. Deb. (25.2.1992) 105—for remainder of sitting; H.R. Deb. (4.3.1992) 765—for duration of questions without notice at each sitting for remainder of period of sittings; H.R. Deb. (24.6.1999) 7494; H.R. Deb. (18.6.2003) 16899; H.R. Deb. (16.3.2005) 149—for remainder of period of sittings. *See also* H.R. Deb. (3.3.2011) 2291—'any motion moved during Question Time other than a motion moved by a Minister'.

429 PP 20 (1972) 7–8.

430 VP 1970–72/1012 (18.4.1972); H.R. Deb. (18.4.1972) 1702–3.

431 H.R. Deb. (27.3.1984) 803.

432 S.O. 1.

433 S.O 76.

434 E.g. H.R. Deb. (3.3.2011) 2271; H.R. Deb. (1.3.2012) 2525–31; for early case *see* H.R. Deb. (22.7.1921) 10517–19.

435 VP 2004–07/1157–8 (30.5.2006).

436 E.g. VP 1970–72/544 (23.4.1971); VP 2002–04/793 (19.3.2003); VP 2004–07/2163 (20.9.2007).

Combined motions

The Procedure Committee has criticised the use of a combined motion suspending standing and sessional orders and incorporating condemnation of a private Member.[437] The committee concluded that where the House is being asked to reflect on the conduct of a Member it should be done by way of a separate, substantive motion and not confused with the procedural mechanism for putting the motion before the House.[438]

Absolute majority

Most decisions of the House are decided by a simple majority—that is, a majority of the Members actually voting. An absolute majority is a majority of the membership of the House.[439] In a House of 150 Members an absolute majority is 76 Members.

Any motion moved without notice and without leave to suspend standing orders must be carried by an absolute majority of Members.[440] If such a motion is agreed to on the voices the record notes that the question passed 'with the concurrence of an absolute majority'.[441] The House does not proceed to a formal recorded vote[442] as it does for unopposed third readings of constitution alteration bills, where the absolute majority is a constitutional requirement.

CONSTITUTIONAL VALIDITY

In 1935 the Solicitor-General advised that the absolute majority requirement for the suspension of standing orders appeared to be invalid:

> In my opinion, every matter before the House which is proposed in the form of a motion, and upon which a question is subsequently put, is a 'question arising' in that House, and must be determined by a majority of votes, as provided by section 40.
>
> The power given by section 50 to each House to make rules and orders with respect to the order and conduct of its business and proceedings does not confer power to make rules and orders which are inconsistent with the Constitution. The provisions of section 40, interpreted in the manner I have shown, are of general application, and cannot be cut down by rules or orders made under section 50.[443]

The provision was considered by the Standing Orders Committee during the 1962 revision of the standing orders. The question of omitting the absolute majority requirement in accordance with the 1935 opinion was canvassed, but no decision to alter the requirement was reached. During the committee's consideration, the Attorney-General, referring to what is now standing order 47(c), advised:

> Strictly as a matter of law, I would myself think S.O. No. 400 is invalid, as being inconsistent with the express provisions of section 40 of the Constitution. That section, as quoted above, provides that questions arising in the House shall be determined by "a majority of votes". I do not myself think it is open to the House to adopt a Standing Order the effect of which is to declare that certain questions are to be determined not by a simple majority but only by an absolute majority. The then Solicitor-General so advised in 1935, and in my view correctly. But this is a matter for the House itself, and not for any court of law, and it is to be noted that in 1950 the House adopted S.O. No. 400 in its present form,

437 VP 2004–07/1447 (10.10.2006).

438 Standing Committee on Procedure, *Motion to suspend standing orders to condemn a Member: report on events of 10 October 2006*. PP 431 (2006) 18.

439 S.O. 2 defines an absolute majority as 'the majority of the membership of the House (including the Speaker)'. Between 1950 and 2004 the equivalent standing order to current S.O. 47 required 'an absolute majority of Members having full voting rights', which raised doubts as to whether the Speaker should be included in the calculation—*see* earlier editions (1st to 4th) for discussion.

440 S.O. 47(c). The requirement for an absolute majority has been suspended for a particular sitting, VP 2004–07/633 (15.9.2005). *See* VP 2010–13/215–6 (18.11.2010), 473 (24.3.2011) for examples of motion agreed to by a majority but not an absolute majority, and thus not carried.

441 E.g. VP 1968–69/499 (13.8.1969); VP 1970–72/634 (17.8.1971); VP 2004–07/1702 (13.2.2007).

442 In the past the bells have been rung to bring sufficient Members into the Chamber as evidence of such concurrence, e.g. H.R. Deb. (4.4.1974) 1070–71, VP 1974/85 (4.4.1974). This practice has not been maintained.

443 Opinion of Solicitor-General, dated 17 September 1935.

> thus, in substance, declining to give effect to the opinion that Sir George Knowles had expressed in 1935.
>
> In these circumstances I think the Speaker has strong warrant for applying S.O. No. 400 when occasion arises, notwithstanding any doubts as to its validity.[444]

Senate standing orders have a similar requirement for an absolute majority for motions without notice to suspend standing orders (Senate S.O. 209), and also for motions to rescind an order of the Senate (Senate S.O. 87). As in the House, the Senate has accepted that such standing orders are in force, despite doubts raised in the past as to their constitutional validity.[445]

444 In a letter to the Treasurer, dated 3 April 1962.
445 *Odgers*, 14th edn, p. 288.

10
Legislation

CONSTITUTIONAL PROVISIONS

The Constitution vests the legislative power of the Commonwealth in the Federal Parliament, consisting of the Queen represented by the Governor-General, the Senate and the House of Representatives.[1] The making of a law may be subject to complicated parliamentary and constitutional processes but its final validity as an Act of Parliament is dependent upon the proposed law being approved in the same form by all three elements which make up the Parliament.[2]

The Parliament has power to make laws for the peace, order and good government of the Commonwealth with respect to those matters defined by section 51 of the Constitution. Other constitutional provisions extend, limit, restrict or qualify this power, so that a full understanding of the Parliament's legislative power can only be gained from the Constitution as a whole. The Constitution in its wording concentrates on the Parliament's legislative power and does not detail in the same manner Parliament's other areas of jurisdiction and functions of substantial importance.[3]

The Constitution contains certain provisions which affect a Parliament's legislative process, for example, the provisions relating to:

- financial or money bills (*see* Chapter on 'Financial legislation');
- assent to bills (*see* page 399);
- bills to alter the Constitution (*see* page 385); and
- disagreements between the Houses (*see* Chapter on 'Double dissolutions and joint sittings').

Another constitutional provision of direct relevance to the legislative process is section 50 which grants each House of the Parliament the power to make rules and orders with respect to the order and conduct of its business and proceedings and which, for the purposes of this chapter, gives authority for the standing orders which prescribe the procedures to be followed in the introduction and passage of bills.

BILLS—THE PARLIAMENTARY PROCESS

The normal flow of the legislative process is that a bill (a draft Act, or, in the terminology of the Constitution, a proposed law) is introduced into one House of Parliament, passed by that House and agreed to (or finally agreed to when amendments are made) in identical form by the other House. At the point of the Governor-General's assent a bill becomes an Act of the Parliament. (The legislative process is presented in diagrammatic form on the back inside cover.)

In the House of Representatives all bills are treated as 'public bills'—that is, bills relating to matters of public policy. The House of Representatives does not recognise

1 Constitution, ss. 1 and 2—*see also* Ch. on 'The Parliament and the role of the House'.
2 An Act to alter the Constitution must also have the approval of the electors (Constitution, s. 128). *See* Ch. on 'The Parliament and the role of the House'.
3 *See* particularly Constitution, ss. 49, 50, 52 and Ch. on 'The Parliament and the role of the House'.

what in the United Kingdom and some other legislatures are called 'private bills'[4]—that is, bills for the particular interest or benefit of any person or persons, public company or corporation, or local authority. Hence there is also no recognition of what are termed 'hybrid bills'—that is, public bills to which some or all of the procedures relating to private bills apply.[5]

In recent years on average, about 200 bills have been introduced into the Parliament each year. Of these roughly 95 per cent originated in the House of Representatives.[6] Approximately 70 per cent of all bills introduced into the Parliament finally became Acts.[7] The consideration of legislation took up some 55 per cent of the House's time.[8]

Provided the rules relating to initiation procedures are observed any Member of the House may introduce a bill. Historically there were limited opportunities for private Members to introduce bills, but in 1988 new arrangements were adopted and more opportunities became available (*see* Chapter on 'Non-government business').

Form of bill

The content of a bill is prepared in the exact form of the Act it is intended to become.[9] Bills usually take the form described below, although it should be noted that not all the parts are essential to every bill. The parts of a bill appear in the following sequence:

Long title

Every bill begins with a long title which sets out in brief terms the purposes of the bill or may provide a short description of the scope of a bill. The words commencing the long title are usually either 'A Bill for an Act to . . .' or 'A Bill for an Act relating to . . .'. The term 'long title' is used in distinction from the term 'short title' (*see* page 346). A procedural reference to the 'title' of a bill, without being qualified, may be taken to mean the long title. The long title is part of a bill and as such is capable of amendment[10] and must finally be agreed to by each House. The long title of a bill is procedurally significant. Standing orders require that the title of a bill must agree with its notice of presentation, and every clause must come within the title.[11] In 1985 and 2002 bills were withdrawn when it was discovered that the long title on the introduced copy was different from the notice—immediately afterwards replacement bills with the correct long title were presented by leave.[12] In 1984 a bill was withdrawn as not all the clauses fell within the scope of the bill as defined in the long title.[13] Difficult questions can arise

4 As distinct from a private Member's bill.

5 *May,* 24th edn, p. 525.

6 Due principally to the fact that the majority of Ministers are Members of the House and also to the House's constitutional predominance in financial matters. The proportion of bills introduced from the Senate has declined over recent years—*see* Appendix 17.

7 These figures have varied considerably over the years—for annual figures since 1901 *see* Appendix 17. The high level of legislation of the Australian Parliament compared, for example, with the United Kingdom and Canadian Parliaments, is due in part to the constitutional requirement (s. 55) of separate taxing bills for each subject of taxation and the federal nature of the Parliament.

8 Not including the Federation Chamber..

9 'Bill' is thought probably to be a derivative of medieval Latin 'Bulla' (seal) and meaning originally a written sealed document, later a written petition to a person in authority and, from the early 16th century, a draft Act. The process of petitioning the King preceded Parliament. However the increasing part played by the Commons in making statutes was affected by a development of the procedure relating to petitions: the King's reply was entered on the back of the petition and judges turned into statutes such of the Commons requests as were suitable by combining a petition with its response. *See* Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, pp. 10–14, 22–25. The basis for discussion later moved from requests to draft proposals, *see* Josef Redlich, *The procedure of the House of Commons*, vol. I, Archibald Constable, London, 1908, p. 16.

10 E.g. VP 1993–96/1936 (8.3.1995); VP 1996–98/258 (18.6.1996), 2062 (29.9.1997); H.R. Deb. (17.9.2002) 6515.

11 S.O.140(b). In the case of an appropriation bill, the long title must also agree with the title cited in the Governor-General's message recommending appropriation, *see* Ch. on 'Financial legislation'.

12 VP 1985–87/520 (12.11.1985) (2 bills); VP 2002–04/100 (13.3.2002).

13 VP 1983–84/903–4 (3.10.1984).

in this area.[14] A long title which is specific and limited in scope is known as 'restricted', and one which is wide in scope as 'unrestricted'. This distinction has significance in relation to relevance in debate on the bill (*see* page 364) and to the nature of amendments which can be moved to the bill (*see* page 375).

Preamble

Like the long title, a preamble is part of a bill, but is a comparatively rare incorporation. The function of a preamble is to state the reasons why the enactment proposed is desirable and to state the objects of the proposed legislation.

The *Australia Act 1986* contains a short preamble stating that the Prime Minister and State Premiers had agreed on the taking of certain measures (as expressed in the Act's long title) and that in pursuance of the Constitution the Parliaments of all the States had requested the Commonwealth Parliament to enact the Act. The *Norfolk Island Act 1979*, the *Native Title Act 1993*, and the *Natural Heritage Trust of Australia Act 1997* are examples of Acts with longer preambles.

Some bills contain objects or statement of intention clauses, which can serve a similar purpose to a preamble—*see* for example clause 3 of the Space Activities Bill 1998.[15] Section 15AA of the *Acts Interpretation Act 1901* provides that in the interpretation of an Act a construction that would promote the purpose or object underlying the Act, whether expressly stated or not, must be preferred (*and see* page 405).

Enacting formula

This is a short paragraph which precedes the clauses of a bill. The current words of enactment are as follows:

> 'The Parliament of Australia[16] enacts:'

The words of enactment have changed several times since 1901. Prior to October 1990 they were:

> 'BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:'

Commenting on the original enacting formula, *Quick and Garran* stated:

> In the Constitution of the Commonwealth the old fiction that the occupant of the throne was the principal legislator, as expressed in the [United Kingdom] formula, has been disregarded; and the ancient enacting words will hereafter be replaced by words more in harmony with the practice and reality of constitutional government. The Queen, instead of being represented as the principal, or sole legislator, is now plainly stated [by section 1 of the Constitution] to be one of the co-ordinate constituents of the Parliament.[17]

Clauses

Clauses may be divided into subclauses, subclauses into paragraphs and paragraphs into subparagraphs. Large bills are divided into Parts which may be further divided into Divisions and Subdivisions.[18] When a bill has become an Act—that is, after it has received assent—clauses are referred to as sections.

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14 H.R. Deb. (18.5.1988) 2515–22.

15 *And see* D.C. Pearce and R.S. Geddes, *Statutory interpretation in Australia*, 6th edn, LexisNexis Butterworths, 2006, p. 154.

16 For bills with a preamble, the word 'THEREFORE' is inserted here.

17 *Quick and Garran*, p. 386. The enacting formula in use in the United Kingdom since the 15th century has been: 'Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:'.

18 The heading of a Part is printed in capitals and includes a subject summary.

Short title

The short title is a convenient name for the Act, a label which assists in identification and indexing.[19] Clause 1 of a bill usually contains its short title, and this clause describes the measure in terms as if the bill had been enacted, for example, 'This Act may be cited as the[20] *Crimes at Sea Act 1999*'. Since early 1976 a bill amending its principal Act or other Acts has generally included the word 'Amendment' in its short title. When a session[21] of the Parliament extends over two or more calendar years and bills introduced in one year are not passed until an ensuing year, the year in the citation of the bill is altered to the year in which the bill finally passes both Houses.[22] This formal amendment may be effected before transmission to the Senate after the passing of the bill by the House (when there may be a need to reprint the bill because it has been amended by the House) or before forwarding for assent.

It is not uncommon for more than one bill, bearing virtually the same short title, to be introduced, considered and enacted during the same year.[23] In this situation the second bill and subsequent bills are distinguished by the insertion of '(No. 2)', '(No. 3)', and so on, before the year in the short title.[24] Bills dealing with matters in a common general area may be distinguished with qualifying words contained in parenthesis within the short title.[25] In both these cases the distinguishing figures or words in the short title flow to the Act itself and its citation.

On other occasions a bill may, for parliamentary purposes, carry '[No. 2]' after the year of the short title to distinguish it from an earlier bill of identical title. Identical titles may be used, for example, when it is known that the earlier bill will not further proceed in the parliamentary process to the point of enactment or when titles are expected to be amended during the parliamentary process.[26] Identical titles have also occurred when the same bills have been introduced in both Houses,[27] and when different private Members have introduced identical bills.[28] This distinction in numbering also becomes necessary for bills subject to inter-House disagreement, in the context of the constitutional processes required by sections 57 and 128 of the Constitution. There have also been '[No. 3]' bills.[29]

Traditionally '[No. 2]' after the year of the bill was used to denote a second bill with an identical short title, whether or not the content of the bill was identical. Current practice is that '[No. 2]' is only allotted to a second bill with an identical title when, at the time of its introduction, it has content that is identical to the content of the first bill.

19 However, identification may not be permanent—it is possible for the short (and long) title of an Act to be amended by an amending bill. For example, the Australian Passports (Transitionals and Consequentials) Bill 2004 proposed to amend the *Passports Act 1938* 'An Act relating to Passports' to become the *Foreign Passports (Law Enforcement and Security) Act 2004* 'An Act relating to foreign passports and other foreign travel documents'.

20 Note that 'the' is not part of the short title.

21 *See* definition in Ch. on 'The parliamentary calendar'.

22 There have been exceptions to this practice. For example, the *Safe Work Australia Act 2008*, introduced in 2009 as the Safe Work Australia Bill 2008 [No. 2], and passed in 2009 (Act No. 84 of 2009), retained its original 2008 short title, as other legislation already passed referred to it under that name.

23 For the numbering of appropriation and supply bills *see* Ch on 'Financial legislation'.

24 E.g. Anti-terrorism Bill 2004 followed by Anti-terrorism Bill (No. 2) 2004. As confusion can arise when bills are not passed in the year they are introduced—for example, Taxation Laws Amendment Bill (No.7) 2002 became *Taxation Laws Amendment Act (No.2) 2003*—the Office of Parliamentary Counsel now generally prefers to avoid using identifying numbers in titles (*see* Drafting Direction 1.1 of 2006).

25 E.g. Tax Laws Amendment (Retirement Villages) Bill 2004 and Tax Laws Amendment (Superannuation Reporting) Bill 2004.

26 E.g. Safe Work Australia Bill 2008 and Safe Work Australia Bill 2008 [No. 2].

27 E.g. Wild Rivers (Environmental Management) Bill 2010 (private Member's bill) and Wild Rivers (Environmental Management) Bill 2010 [No. 2] (private Senator's bill).

28 Marriage Legislation Amendment Bill 2016, and Marriage Legislation Amendment Bill 2016 [No. 2], introduced on the same day (12.9.2016).

29 Appropriation Bill (No. 1) 1975–76 [No. 3] and Appropriation Bill (No. 2) 1975–76 [No. 3], VP 1974–75/1067–70 (29.10.1975); Fair Work (Registered Organisations) Amendment Bill 2014 [No. 3], VP 2016/12 (18.4.2016).

When a second bill has an identical title but has content that is not identical, the notation '(No. 2)' after the year of the bill is now allotted, for example, the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 (No. 2).[30]

The '[No. 2]' or '(No. 2)' after the year of the bill is added by parliamentary staff to avoid confusion in the processing and passage of bills with the same short title. These distinguishing notations do not become part of the title of the Act if the bill is assented to.

Commencement provision

In most cases a bill contains a provision as to the day from which it has effect. Sometimes differing commencement provisions are made for various provisions of a bill—when this is the case modern practice is to set the details out in a table. Where a bill has a commencement clause, it is usually clause 2, and the day on which the Act comes into operation is usually described in one of the following ways:

- the day on which the Act receives assent;
- a date or dates to be fixed by proclamation (requiring Executive Council action). The proclamation must be published in the Gazette. This method is generally used if it is necessary for preparatory work, such as the drafting of regulations, to be done before the Act can come into force. Proclamation may be dependent on the meeting of specified conditions;[31]
- a particular date (perhaps retrospective) or a day of a stipulated event (e.g. the day of assent of a related Act); or
- a combination of the above (e.g. sections/schedules 1 to 6 to come into operation on the day of assent, sections/schedules 7 to 9 on a date to be proclaimed).[32]

Unusual commencement dates have included:

- the day after the day on which both Houses have approved regulations made under the Act;[33]
- a 'designated day', being a day to be declared by way of a Minister's statement tabled in the House.[34]

Since 1989 it has been the general practice with legislation commencing by proclamation for commencement clauses to fix a time at which commencement will automatically take place, notwithstanding non-proclamation. Alternatively, the commencement clause may fix a time at which the legislation, if not proclaimed, is to be taken to be repealed.[35]

In the absence of a specific provision, an Act comes into operation on the 28th day after the day on which the Act receives assent.[36] This period acknowledges the principle that it is undesirable for legislation to be brought into force before copies are available to the public. Modern practice is to include an explicit commencement provision in each bill. Acts to alter the Constitution, unless the contrary intention appears in the Act, come into operation on the day of assent.

30 VP 2016–18/392 (28.11.2016). This was the first bill so labelled in the House of Representatives. There had been earlier Senate bills so labelled which had not reached the House.

31 E.g. *Carriage of Goods by Sea Act 1991* (proclamation postponed until Minister had consulted industry representatives).

32 E.g. where legislation licenses a certain activity, it may be necessary to have sections authorising the issue of licences to have effect to enable licences to be obtained before the sections prohibiting the activity without a licence come into effect. *And see* VP 1996–98/2033–4 (29.9.1997).

33 *Therapeutic Goods Act 1989*.

34 *Sales Tax (Customs) (Wine–Deficit Reduction) Act 1993*. VP 1993–96/396 (20.10.1993).

35 Office of Parliamentary Counsel Drafting Instruction No. 2 of 1989. There was previously no requirement for a proclamation to be made within any particular time limit, *see* S. Deb. (24.11.1988) 2774–80. The Senate has passed an order of continuing effect requiring details of unproclaimed provisions of Acts to be regularly tabled, J 1987–90/1205 (29.11.1988).

36 *Acts Interpretation Act 1901*, s. 3A.

An Act may have come into effect according to its commencement clause, yet have its practical operation postponed, for example pending a date to be fixed by proclamation.[37] It is also possible for provisions to operate from a day to be declared by regulation. As regulations are subject to potential disallowance by either House, this practice may not commend itself to Governments. The Australia Card Bill 1986, having passed the House, was not further proceeded with following the threat of such a disallowance in the Senate.[38]

Activating clause

When provisions of a bill are contained in a schedule to the bill (*see below*), they are given legislative effect by a provision in a preceding clause. Current practice is for the insertion of an 'activating' clause at the beginning of the bill (usually clause 3) providing typically that each Act specified in a schedule is amended or repealed as set out in the schedule and that any other item in a schedule has effect according to its terms.

Definitions

A definitions or interpretation clause, traditionally located early in the bill, sets out the meanings of certain words in the context of the bill. Definitions may also appear elsewhere in a bill and for 'amending' bills will be included in schedules. At the end of some bills there may be a 'dictionary' clause defining asterisked terms cited throughout the bill.

Substantive provisions

Traditionally, the substantive provisions of bills were contained in the remaining clauses. This is still the practice in respect of 'original' or 'parent' legislation. In the case of bills containing amendments to existing Acts, the modern practice is to have only minimal provisions in the clauses (such as the short title and commencement details) and to include the substantive amendments in one or more schedules.

Schedules

Historically schedules have been used to avoid cluttering a bill with detail or with material that would interfere with the readability of the clauses. In earlier times amending bills commonly included schedules setting out amendments that, because of their nature, could more conveniently be set out in a schedule rather than in the clauses of a bill. During the 37th Parliament the practice started of including in schedules all amendments to existing Acts, whether amendments of substance or of less important detail. Office of Parliamentary Counsel Drafting Direction No. 1 of 1996 made it the standard practice in respect of government bills for all amendments and repeals of Acts to be made by way of numbered items in a schedule. Other items may be included in an amending/repealing schedule (e.g. transitional provisions). Other examples of the types of material to be found in schedules are:

- the text of a treaty to be given effect by a bill;
- a precise description of land or territory affected by a bill; and
- detailed rules for determining a factor referred to in the clauses (for example, technical material in a bill dealing with the construction of ships and scientific formulas in a bill laying down national standards).

37 E.g. *Broadcasting and Television Amendment Act 1982*, s. 24; Gazette S298 (29.11.1983).
38 H.R. Deb. (6.10.1987) 749.

While a schedule may be regarded as an appendix to a bill, it is nevertheless part of the bill, and is given legislative effect by a preceding clause (or clauses) within the bill. Schedules are referred to as 'Schedule 1', 'Schedule 2', and so on.

Associated documentation

Bills may also contain or be accompanied by the following documentation which, although not part of the bill and not formally considered by Parliament, may be taken into account by the courts, along with other extrinsic material, in the interpretation of an Act (*see* page 405).

TABLE OF CONTENTS

Since 1995 a table of contents has been provided for all bills.[39] This table lists section/clause numbers and section/clause headings under Part and Division headings. The Table of Contents remains attached to the front of the Act.

HEADINGS AND NOTES

Previously, elements such as marginal notes, footnotes, endnotes and clause headings were not taken to be part of the bill. Following amendments to the Acts Interpretation Act in 2011, all material from and including the first clause of a bill to the end of the last schedule to the bill is now considered to be part of the bill.[40]

EXPLANATORY MEMORANDUM

An explanatory memorandum is a separate document presenting the legislative intent of the bill in terms which are more readily understood than the bill itself. When a number of interrelated bills are introduced together their explanatory memorandums may be contained in the one document. A memorandum usually consists of an introductory 'general outline' of the purposes of the bill and 'notes on clauses' which explain the provisions of each clause. The Government requires[41] explanatory memorandums for government bills to include a financial impact statement; a regulation impact statement (RIS), if required; and a statement of compatibility with human rights (*see below*).

Originally explanatory memorandums were prepared for certain complex bills only. These were circulated in the Chamber, but not presented to the House and thus not recorded in the Votes and Proceedings. Since 1983 it has been standard practice for departments to prepare explanatory memorandums for all government bills.[42] The practice (but not initially a standing orders requirement) of presenting explanatory memorandums formally was introduced in 1986 to facilitate court proceedings should an explanatory memorandum be required in court as an extrinsic aid in the interpretation of an Act, following the 1984 amendment to the *Acts Interpretation Act 1901* which provided, among other things, that in the interpretation of a provision of an Act, consideration may be given to an explanatory memorandum.[43] Since 1994 the standing orders have required a Minister presenting a bill, other than an appropriation or supply bill, to present a signed explanatory memorandum.[44] Although not required by the

39 Office of Parliamentary Counsel Drafting Direction No. 9 of 1995.

40 *Acts Interpretation Act 1901*, s. 13. The reasoning behind the traditional position was that historically such elements were added by the printer following passage.

41 *Legislation handbook,* Department of the Prime Minister and Cabinet, Canberra, 2017, pp. 38–40.

42 For a more detailed history see *'Was there an EM?'—Explanatory memoranda and explanatory statements in the Commonwealth Parliament,* Parliamentary Library research brief, no. 15, 2004–05. An index to pre–1983 EMs (and this research brief) can be found on the Parliamentary Library's website.

43 *Acts Interpretation Act 1901*, s. 15AB. *See also* 'Interpretation of Acts' at page 405. Under the *Evidence Act 1905*, Votes and Proceedings, Senate Journals, and papers presented in the Parliament could be admitted, on their mere production, as evidence in court. (The relevant Act is now the *Evidence Act 1995*).

44 S.O. 141(b). The EM is now presented when the bill is introduced (House bills) or immediately before the Minister moves the 2nd reading (Senate bills); before 2006 it was presented at the end of the Minister's second reading speech. In 2008, for the first time, explanatory memorandums were presented for appropriation bills.

standing orders, supplementary explanatory memorandums are now routinely presented for government amendments to bills.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Since 2012 it has been a legislative requirement that all bills and disallowable legislative instruments must be accompanied by a Statement of Compatibility with Human Rights, containing an assessment of whether the legislation is compatible with rights and freedoms recognised or declared by international treaties which Australia has ratified. The Member responsible for introducing a bill (including a private Member's bill) must cause the statement to be prepared and to be presented to the House.[45] Generally such statements are incorporated into the bill's explanatory memorandum, but they may also be presented separately.

COMPARATIVE MEMORANDUM (BLACK TYPE BILL)

A comparative memorandum[46] is a document that sets out the text of a principal Act as it would appear if a proposed amending bill were to be passed, and identifies the additions or deletions proposed to be made. Alternatively, it may set out differences between a current bill and an earlier version of the bill, or between a bill as introduced and as proposed to be amended. The term 'black-type bill' derives from the practice that new material is shown in bold type.

Preparation of bills—the extra-parliamentary process

Government bills usually stem either from a Cabinet instruction that legislation is required (that is, Cabinet is the initiator) or from a Minister with the advice of, or on behalf of, his or her department seeking (by means of a Cabinet submission) approval of Cabinet. The pre-legislative procedure in the normal routine,[47] regardless of the source of the legislative proposal, is that within five working days of Cabinet approval for the legislation being received by the sponsoring department, or within 10 working days if Cabinet has required major changes to be made to the original proposals, final drafting instructions must be lodged with the Office of Parliamentary Counsel[48] by the sponsoring department. Parliamentary Counsel drafts the bill and arranges for its printing.[49]

A copy of the draft bill is provided to the sponsoring department for its clearance, in consultation with other interested departments and instrumentalities, and the Minister's approval. During these processes government party committees may be consulted. The procedures for such consultation vary, depending on the party or parties in government.

45 *Human Rights (Parliamentary Scrutiny) Act 2011*.

46 Most recent example in 1989, *see* H.R. Deb. (5.9.2005) 139. *See also 'Was there an EM?'* op cit.

47 In the case of emergency or urgent legislation the normal steps in the extra-parliamentary legislative process may not be observed. For further information on the pre-legislative process *see Legislation handbook*, Department of the Prime Minister and Cabinet, Canberra, 2017.

48 The Office of Parliamentary Counsel, under the *Parliamentary Counsel Act 1970*, is under the control of the First Parliamentary Counsel and is within the Attorney-General's portfolio. The office is responsible for the drafting of bills for introduction into either House of the Parliament and amendments of bills, and other related functions.

49 Bills may be printed in a variety of forms from the inception of a draft bill to its presentation for assent. Some draft bills never proceed beyond the 'proof' stage. The authority to use the material in relation to a bill rests with Parliamentary Counsel until the bill is introduced in Parliament, when it passes to the Clerk of the House while the bill is before the House of Representatives and the Clerk of the Senate while the bill is before the Senate.

When a proposed bill is finally settled, Parliamentary Counsel orders the printing of sufficient copies of the bill in the form used for presentation to Parliament and arranges for their delivery under embargo to staff of the House or the Senate.[50]

The Government's *Legislation handbook* states that draft bills and all associated material are confidential to the Government and that details of bills are not to be released outside government before their introduction to the Parliament unless disclosure is authorised by Cabinet or the Prime Minister.[51] Occasionally the Government may publish a draft bill and explanatory memorandum as an 'exposure draft' prior to its introduction to the Parliament.[52]

Synopsis of major stages

Procedures for the passage of bills provide for the following stages:

- Initiation (S.O.s 138–140);
- First reading[53] (S.O. 141);
- Possible referral to the Federation Chamber for second reading and consideration in detail stages (S.O. 143(a));
- Possible referral to a committee for advisory report (S.O. 143(b));
- Report from committee (if bill referred) (S.O. 144);
- Second reading (S.O.s 142, 145–146);
- Announcement of any message from the Governor-General recommending appropriation (S.O. 147);
- Consideration in detail (S.O.s 148–151);
- Report from Federation Chamber and adoption (for bills referred to the Federation Chamber) (S.O.s 152–153);
- Reconsideration (possible) (S.O. 154);
- Third reading (S.O. 155);
- Transmission to the Senate for concurrence (S.O. 157);
- Transmission[54] or return of bill from the Senate with or without amendment or request (S.O.s 158–165);
- Presentation for assent (S.O.s 175–177).

50 On occasion, when there has been insufficient time for a bill to be printed, Parliamentary Counsel has faxed a copy of the bill to the House, where photocopies have been made for the Minister to present and for circulation to Members. E.g. Remuneration and Allowances Bill 1990, Remuneration and Allowances Amendment Bill 1990 and Remuneration and Allowances (Amendment) Bill 1990—VP 1990–93/123–4 (31.5.1990); 129–30, 133–4 (1.6.1990).

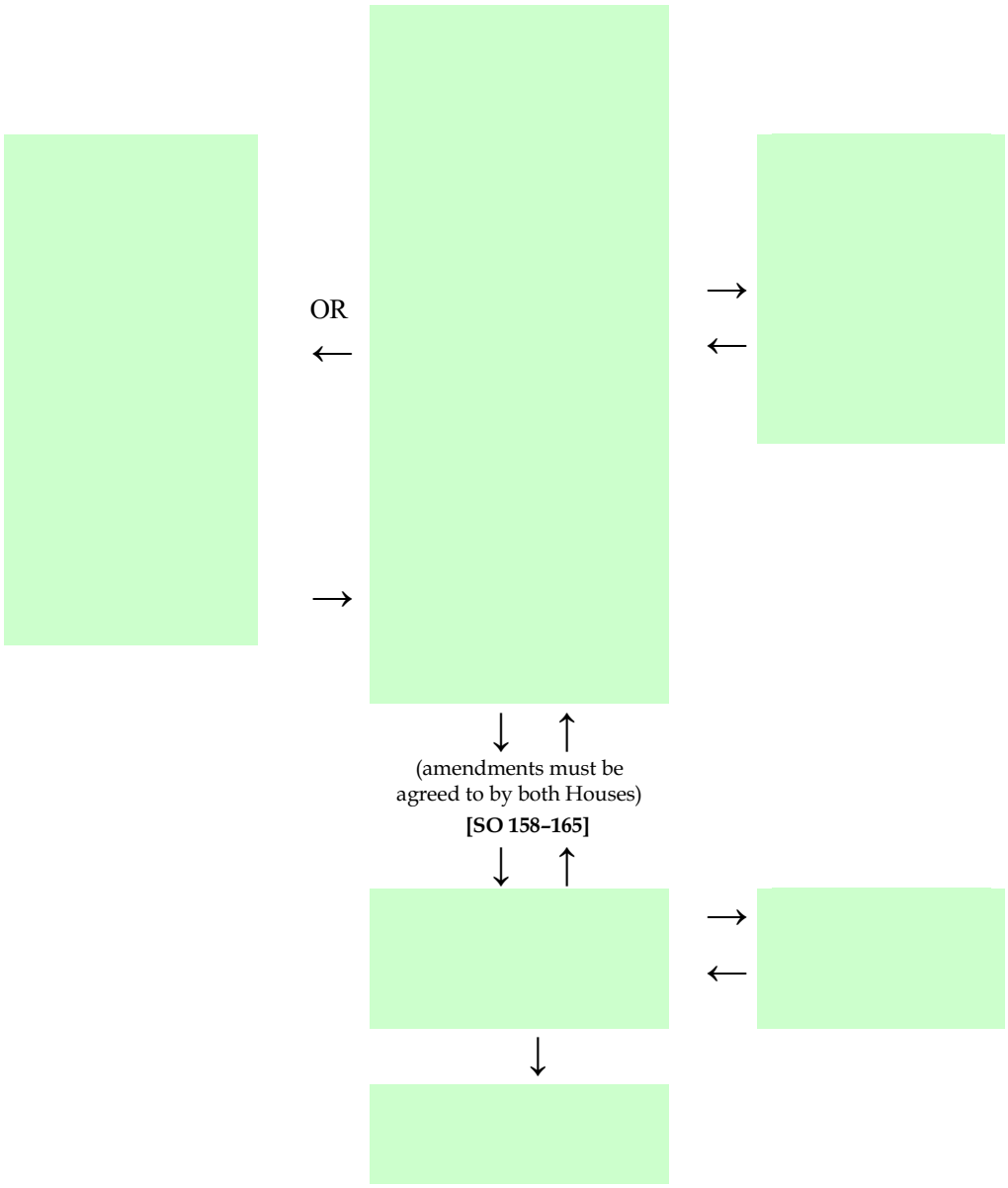
51 *Legislation handbook*, Department of the Prime Minister and Cabinet, Canberra, 2017, p. 36.

52 Exposure drafts of bills may be referred to a parliamentary committee, e.g. Exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005, VP 2004–07/553 (18.8.2005); Exposure drafts of the Australian Charities and Not-for-profits Commission Bill 2012 and the Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012, VP 2010–13/1682 (15.8.2012).

53 The origin of the practice of reading a bill three times is obscure. Campion states that by 1580 it was already the usual (but not uniform) practice of the House to read a bill three times. Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 22.

54 A bill coming a first time from the Senate proceeds through all stages in the House as if it were a bill originating in the House.

Stages a House bill goes through



Each of the stages of a bill in the House has its own particular function. The major stages may be summarised as follows:

Initiation: Bills are initiated in one of the following ways:

- *On notice*—The usual method of initiating a bill is by the calling on of a notice of intention to present the bill. The notice is prepared by the Office of Parliamentary Counsel, usually concurrently with the preparation of the bill. The notice follows a standard form:

  I give notice of my intention to present, at the next sitting, a Bill for an Act [remainder of long title].

  The long title contained in the notice must agree with the title of the bill to be introduced. The notice must be signed by the Minister who intends to introduce the bill or by another Minister on his or her behalf. As with all notices, the notice of presentation must be given by delivering it in writing to the Clerk at the Table.
- *Without notice*—In accordance with the provisions of standing order 178, appropriation or supply bills or bills (including tariff proposals) dealing with taxation may be presented to the House by a Minister without notice—*see* Chapter on 'Financial legislation'.
- *On granting of leave by the House*—On occasions a bill may be introduced by the simple granting of leave to a Minister to present the bill.[55]
- *Senate bills*—A bill introduced into and passed by the Senate is conveyed to the House under cover of a message transmitting the bill for concurrence. The bill is, in effect, presented to the House by the Speaker's action of reading the message.

Standing order 138 also provides for initiation by order of the House. This procedure is no longer used.[56]

First reading: This is a formal stage only. On presentation of a bill the long title only is read immediately by the Clerk, and no question is proposed.

Second reading: This is the stage primarily concerned with the principle of the legislative proposal. Debate on the motion for the second reading is not always limited to the contents of a bill and may include, for example, reasonable reference to relevant matters such as the necessity for, or alternatives to, the bill's provisions. Debate may be further extended by way of a reasoned amendment.

Consideration in detail: At this stage, the specific provisions of the bill are considered and amendments to the bill may be proposed or made.

Third reading: At this stage the bill can be reviewed in its final form after the shaping it may have received at the detail stage. When debate takes place, it is confined strictly to the contents of the bill, and is not as wide-ranging as the second reading debate. When a bill has been read a third time, it has passed the House.[57]

55 E.g. VP 1978–80/1502 (15.5.1980); VP 1996–98/351 (27.6.1996); VP 2002–04/1642 (27.5.2004); VP 2008–10/989 (12.5.2009); VP 2013–16/1449 (24.6.2015).

56 Background information on these earlier provisions may be found in previous editions.

57 S.O. 155(c).

TABLE 10.1 PROCEDURES APPLYING TO DIFFERENT CATEGORIES OF BILLS

Description	*Special nature*	*Provisions of Constitution and standing orders relevant to class* [1]	*Major stages followed in respect of class* [2]
ORDINARY *Examples* Acts Interpretation Bill, Trade Practices Bill, Parliamentary Papers Bill.	Bills that: (a) do **not** contain words which appropriate the Consolidated Revenue Fund; (b) do **not** *impose* a tax; and (c) do **not** have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act.	Constitution ss. 53, 57, 58, 59, 60. S.O.s 138–164, 174–176.	*Initiation* on notice of intention to present; sometimes by leave; bills dealing with taxation may be presented without notice. Explanatory memorandum presented. *First reading*; Clerk reads title; no debate allowed. *Second reading* moved immediately (usually); Minister makes second reading speech; debate adjourned to a future day. Bill may be referred to Federation Chamber for remainder of second reading and detail stage, or to a standing or select committee for an advisory report. Second reading debate resumed; reasoned amendment may be moved; second reading agreed to; Clerk reads title. *Consideration in detail* immediately following second reading. Amendments may be made. (*Report* by Federation Chamber to House, if bill referred; House adopts report.) *Third reading* moved; may be debated; agreed to; Clerk reads title. Message sent to Senate seeking concurrence. NOTE: Detail stage is often bypassed.
SPECIAL APPROPRIATION *Examples* (a) States Grants Bill; (b) An amending Judiciary Bill to alter the remuneration of Justices as stated in the principal Act.	Bills that: (a) contain words which appropriate the Consolidated Revenue Fund to the extent necessary to meet expenditure under the bill; or (b) while not in themselves containing words of appropriation, would have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act.	Constitution ss. 53, 56. S.O.s 147, 180–182.	*Initiation* on notice of intention to present, sometimes by leave. Proceedings same as for ordinary bills except that immediately following second reading— **Message from Governor-General recommending appropriation for purposes of bill is announced and if required in respect of anticipated amendments to be moved during detail stage, a further message for the purposes of the proposed amendments is announced.** Subsequent proceedings same as for ordinary bills.

APPROPRIATION AND SUPPLY *Examples* Appropriation Bills (No. 1) and (No. 2) Supply Bills (No. 1) and (No. 2).	Appropriation Bills appropriating money from the Consolidated Revenue Fund (usually) for expenditure for the year. If necessary, Supply Bills appropriating money from the Consolidated Revenue Fund to make interim provision for expenditure for the year pending the passing of the Appropriation Bills.	Constitution ss. 53, 54, 56. S.O.s 165, 178, 180(b).	**Message from Governor-General recommending appropriation announced prior to introduction. If required a further message for the purposes of proposed amendments is announced prior to consideration in detail**. *Initiation* **without notice**. Proceedings otherwise same as for ordinary bills other than for sequence in detail stage.
TAXATION *Examples* Income Tax Bills and Customs and Excise Tariff Bills.	Bills imposing a tax or a charge in the nature of a tax.	Constitution ss. 53, 55. S.O.s 165, 178, 179.	*Initiation* **without notice**. Proceedings same as for ordinary bills. **Only Minister may move amendments to increase or extend taxation measures.** NOTE: Governor-General's message **is not** required.
CONSTITUTION ALTERATION *Example* Constitution Alteration (Establishment of Republic) 1999.	Bills to alter the Constitution.	Constitution s. 128. S.O. 173	Same as for ordinary bills but **with additional requirement for bill to be passed by absolute majority**.
SENATE INITIATED *Examples* Same as for ordinary bills.	Same as for ordinary bills.	Constitution s. 53. S.O.s 166–171.	**Message from Senate reported transmitting bill to House for concurrence**. First reading; second reading moved; debate adjourned. Subsequent proceedings same as for ordinary bills. (Senate bills sometimes referred to Federation Chamber before moving of second reading.) **Message sent to Senate notifying House agreement or, if amended, seeking Senate concurrence in amendments**.

1. Sections 57 to 60 apply to all categories and standing orders relevant to ordinary bills generally apply to all categories.

2. Regular or normal proceedings.

Classification of bills

Bills introduced into the House may, for procedural purposes, be described as follows:

- Bills, by which no appropriation is made or tax imposed ('ordinary' bills);
- Bills containing special appropriations;
- Appropriation and supply bills;
- Bills imposing a tax or charge;
- Bills to alter the Constitution;
- Bills received from the Senate.

The procedures in the House for all bills have a basic similarity. The passage of a bill is, unless otherwise ordered, always in the stages of first reading, second reading, consideration in detail and third reading. For the purposes of this text procedures common to all classes of bills are described in detail under ordinary bills. As is evident in Table 10.1, significant variations or considerations apply to bills in other categories and they are described when that category is examined.

Ordinary bill procedure

'Ordinary' bills for procedural purposes are those which:

- do not contain words which appropriate the Consolidated Revenue Fund;
- do not have the effect of increasing, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act; and
- do not *impose* a tax (an ordinary bill may 'deal with' taxation without imposing it— *see* Chapter on 'Financial legislation').

Initiation and first reading

Ordinary bills are usually introduced by notice of intention to present or sometimes by leave.[58] Ordinary bills 'dealing with taxation' may be introduced without notice.[59] When the notice of intention to present the bill is called on by the Clerk, the Minister (or Parliamentary Secretary[60]) in charge of the bill rises and says 'I present the [short title of bill]'. The Minister then hands a signed[61] copy of the bill to the Clerk. This copy becomes the 'original' or 'model' copy of the bill.

It is the practice of the House that another Minister may present a bill for a Minister who has given notice.[62] When the notice is called on by the Clerk, the Minister who is to present the bill rises and says 'On behalf of the . . . , I present the [short title]'.[63]

There is no requirement for a Minister (or any Member) introducing a bill to present a printed copy. The standing order requires only that a legible copy signed by the Minister

58 On occasion following suspension of standing orders when leave has not been obtained, e.g. VP 2002–04/147–9 (21.3.2002); VP 2004–07/2086 (16.8.2007).

59 S.O. 178.

60 As in other procedures of the House unless otherwise stated all references to a Minister in the following text can be taken to include a Parliamentary Secretary.

61 S.O. 140(a).

62 E.g. VP 1998–2001/925 (30.9.1999).

63 A Minister has presented a bill for another Minister to whom leave had been given, VP 1932–34/895 (4.7.1934). On 8 September 1932 the Prime Minister moved a notice for leave to bring in a bill on behalf of the Minister for Commerce, VP 1932–34/304 (8.9.1932). When the bill was brought up in May 1933 the Minister for Commerce had resigned from the Ministry, and a third Minister presented the bill, VP 1932–34/665 (23.5.1933).

be presented to the House. Nevertheless printed copies are usually available when the bill is introduced. Immediately after presenting the bill the Minister presents the bill's explanatory memorandum.[64]

The Clerk, upon receiving the copy of the bill from the Minister and without any question being put,[65] formally reads the bill a first time by reading its long title.[66] Once a bill is presented, it must be read a first time.[67] The long title of the bill presented must agree with the title used in the notice of intention to present, and every clause of the bill must come within its title.[68] Any bill presented and found to be not prepared according to the standing orders shall be ordered to be withdrawn.[69]

Bills have been withdrawn because:

- the long title did not agree with the long title given on the notice of presentation;[70]
- several clauses did not come within its long title;[71] and
- the long title described in the Governor-General's message recommending appropriation did not agree with the long title.[72]

A bill is not out of order if it refers to a bill that has not yet been introduced,[73] and a bill may be introduced which proposes to amend a bill not yet passed.[74]

As no question is proposed or put, no debate can take place at the first reading stage. Immediately after the first reading the usual practice is that the Minister moves that the bill be read a second time and makes the second reading speech. Copies of the bill and the explanatory memorandum are made available to Members in the Chamber. A bill is treated as confidential by the staff of the House until it is presented, and no distribution is made until that time. As soon as practicable after presentation the terms of bills and explanatory memoranda are made available on the Parliament's website.[75] Leave has been given for the presentation of a replacement copy of a bill after it was learnt that there were printing errors in the copy presented originally.[76]

The application of the same motion rule to bills

The Speaker has the discretionary power under standing order 114(b) to disallow any motion which he or she considers is the same in substance as any question already resolved during the same session. Proceedings on a bill are taken to be 'resolved' in this context when a decision has been made on the second reading, and the rule does not prevent identical bills merely being introduced. Sections 57 (double dissolution) and 128 (constitution alteration) of the Constitution, relating to the resolution of disagreements

64 S.O. 141(b). Prior to 2006 the EM was presented after the second reading speech.

65 Prior to 1963, under superseded procedures, a question was put on the first reading. The question could be decided on division and there is an instance of the first reading being negatived on division, VP 1940–43/483 (24.2.1943).

66 S.O. 141.

67 H.R. Deb. (28.3.1973) 809.

68 S.O. 140(b).

69 S.O. 138.

70 VP 1985–87/520 (12.11.1985); VP 2002–04/100 (13.3.2002).

71 VP 1983–84/903–4 (3.10.1984).

72 VP 1934–37/306–7 (17.10.1935), 309 (18.10.1935). The States Grants (Administration of Controls Reimbursement) Bill 1951 was not introduced as intended on 26 September 1951, as a check indicated that the long title did not agree with the terms of the Administrator's message. A new message was prepared and the bill introduced on the next day, VP 1951–53/86 (26.9.1951), 106 (27.9.1951).

73 H.R. Deb. (26.9.1924) 4846.

74 E.g. the Conciliation and Arbitration Bill (No. 2) 1951, 'A Bill for an Act to amend the *Conciliation and Arbitration Act 1904–1950*, as amended by the *Conciliation and Arbitration Act 1951*', which was introduced in the House on 14 March 1951 (VP 1950–51/327 (14.3.1951)), when the Conciliation and Arbitration Bill 1951 was with the Senate (passed by the House on 9 March, VP 1950–51/319–20 (9.3.1951), and introduced in the Senate on 15 March, J 1950–51/226 (15.3.1951)).

75 <http://www.aph.gov.au>

76 VP 1993–96/2241 (27.6.1995).

between the Houses, provide for the same bills to be passed a second time after an interval of three months.[77] These provisions override the standing order.[78]

In using his or her discretion in respect of a bill the Speaker would pay regard to the purpose of the rule, which is to prevent obstruction or unnecessary repetition, and the reason for the second bill. Hence, in addition to the cases provided for in the Constitution, a Speaker might not seek to apply the rule to cases arising from Senate disagreement, and in the normal course of events it is only on such occasions that a bill would be reintroduced in the House and passed a second time.[79] For example, there have been occasions when the Senate has rejected bills transmitted from the House,[80] or delayed their passage,[81] and the House has again passed the bills without waiting the three months period. In one case the standing order providing for the same motion rule was suspended,[82] although in view of the Speaker's discretion in this matter the suspension may not have been necessary. It is also possible that a bill could seek to reintroduce provisions of a bill previously passed by the House but subsequently deleted from the bill by Senate amendment.[83]

Although there is no record of a motion on a bill being disallowed under the same question rule, in some circumstances the operation of the rule would be appropriate. In 1982 two identical bills were listed on the Notice Paper as orders of the day, one a private Member's bill and the other introduced from the Senate. Had either one of the bills been read a second time, or the second reading been negatived, any further consideration of the other bill would have been preventable under the same question rule, but in the event neither bill was proceeded with.[84] The same considerations would apply to the identical private Members' bills introduced on the same day in 2016.[85]

A number of private Members' bills which have lapsed pursuant to the provisions of standing order 42 have been put forward again. As no resolution had been reached on the previous occasion, the same motion rule was not applicable.[86]

Referral to Federation Chamber

After the first reading but before the debate on the motion for the second reading is resumed, a motion may be moved without notice to refer the bill to the Federation Chamber for the remainder of the second reading and consideration in detail stages.[87] Alternatively, and now most commonly, if a bill is to be considered at a later hour that day, it may be referred to the Federation Chamber by a programming declaration by the Leader of the House or Chief Government Whip.[88] The Chief Government Whip, pursuant to powers bestowed by standing order 116(c) in relation to the conduct of business, rather than a Minister, usually moves the relevant motion, or makes the programming declaration pursuant to standing order 45. A programming declaration may

77 In each case, the second time a bill is presented it may in certain circumstances include amendments made or agreed to.
78 VP 1950–51/189 (4.10.1950).
79 And, on occasion, a third time. For numbering in the short title of such bills, *see* p. 346.
80 Post and Telegraph Rates Bill 1967 [No. 2], VP 1967–68/123 (17.5.1967). The second bill was not returned from the Senate.
81 In 1975 the main appropriation bills were passed and sent to the Senate three times. The Senate eventually passed the original bills, VP 1974–75/953–6 (8.10.1975), 1015–21 (22.10.1975), 1067–70 (29.10.1975).
82 VP 1967–68/123 (17.5.1967).
83 Health Legislation Amendment Bill (No. 3) 1982; H.R. Deb. (10.11.1982) 2998.
84 Institute of Freshwater Studies Bills, 1981 and 1982. It should be noted that there is no impediment to identical bills being introduced and progressing in each House.
85 Marriage Legislation Amendment Bill 2016 and Marriage Legislation Amendment Bill 2016 [No. 2], VP 2016–18/97 (12.9.2016).
86 E.g. VP 1990–93/1358 (5.3.1992), 1782 (15.10.1992).
87 S.O. 143(a).
88 S.O. 45(b).

cover more than one bill. In the case of referral by motion of more than one bill, the Chief Government Whip may present a list of bills proposed to be referred and move a single motion, by leave, that bills be referred in accordance with the list.

Bills may be referred by a programing declaration, or by a motion on notice or by leave, after the resumption of debate on the second reading.[89] A motion may provide for referral at a future time.[90] An amendment has been moved to a motion of referral.[91]

When these procedures were first introduced in 1994, referral occurred between the first and second reading stages. The standing order was revised in 1996 to allow, but not compel, referral following the Minister's second reading speech, and this has become the usual practice.[92] In cases where the second reading has not been moved immediately following the first reading (e.g. bills introduced from the Senate), bills have continued to be referred between the first and second reading stages, and Ministers' second reading speeches on these bills are delivered in the Federation Chamber.[93]

For a description of proceedings in the Federation Chamber *see* 'Legislation' in Chapter on 'The Federation Chamber'.

Referral to a committee

Referral for advisory report

After the first reading but before the debate on the motion for the second reading is resumed, a bill may be referred by a motion moved without notice or by a determination of the Selection Committee to a standing or joint committee for an advisory report.[94] The committee reviews bills as they are introduced and selects for referral those that it regards as controversial or as requiring further consultation or debate. While a significant number of bills were referred to committees by the Selection Committee in the 43rd Parliament, only one (a private Member's bill) was referred by the Selection Committee in the 44th. The motion or determination may specify a date by which the committee is to report to the House.[95]

Bills are referred to the general purpose standing committee or to the joint committee[96] most appropriate to the subject area of the bill. The participation of Members who are interested in the bill but not on the committee is facilitated by the provision that, for the purpose of consideration of bills referred for advisory reports, one or more members of the committee may be replaced by another Member.[97] In addition the normal provision for the appointment of supplementary members to a standing committee for a particular inquiry also applies.[98]

89 A motion to refer a bill moved (without leave) after debate had been resumed on the second reading has been ruled out of order, H.R. Deb. (26.8.2002) 5659–61.

90 E.g. VP 2002–04/239 (6.6.2002), providing for referral of bills at the conclusion of further debate in the House; VP 2002–04/1459 (1.3.2004) and VP 2008–10/285 (27.5.2008), providing for referral at the adjournment of the House.

91 VP 1993–96/2456–7 (17.10.1995).

92 Since the 43rd Parliament bills have been referred following the speech of the opposition spokesperson.

93 E.g. VP 2010–13/1116 (22.11.2011).

94 S.O. 143(b).

95 S.O. 222(a)(iii). The Selection Committee may provide reasons for the referral or indicate issues for consideration.

96 Provision for bills to be referred to joint committees was added in 2010 (S.O. 222). Previously standing orders had been suspended to enable bills to be so referred, e.g. VP 1993–96/2678 (30.11.1995); VP 1996–98/265 (19.6.1996), 2534 (27.11.1997) (Public Accounts); VP 1996–98/2919 (2.4.1998) (Native Title and the Aboriginal and Torres Strait Islander Land Fund); VP 2002–04/151 (21.3.2002), 1253 (15.10.2003) (ASIO, ASIS and DSD); VP 2002–04/462 (26.9.2002) (National Crime Authority). The earlier provision in S.O. 227 for reference to a committee formed of House of Representatives members of a joint committee was never used.

97 By motion moved on notice, S.O. 229(c).

98 S.O. 215(d).

Committee proceedings on a bill are similar to proceedings on other committee inquiries; the committee may invite submissions and hold public hearings, and may refer the bill to a subcommittee. The committee's recommendations are reported to the House in the same manner as other committee reports, with committee members expecting to be able to make statements. Motions to take note of the report are not moved however, as opportunity for debate will occur during subsequent consideration of the bill if it is proceeded with.

If a committee finds no issues requiring a formal report, the Chair or Deputy Chair may make a statement to the House to that effect. The statement, along with the presentation of the relevant minutes of proceedings, discharges the committee's obligation to report on the bill.[99]

After the committee has presented its report, and if the bill is to be proceeded with, the (remainder of the) second reading and the consideration in detail stages will follow in the House, or the bill may be referred for these stages to the Federation Chamber. The bill cannot be considered in detail until the committee has reported.[100] The time for the consideration in detail stage is set by a motion moved (without notice) by the Member in charge of the bill.[101] Although a formal government response may be presented,[102] the Government's response to an advisory report may also be given by the Minister in speaking to the bill. If the Government accepts changes to the bill recommended in the advisory report, these are incorporated into government amendments moved during the consideration in detail stage.

Although the standing orders provide for bills to be referred to a committee before the resumption of debate on the motion for the second reading, referral at other times (e.g. during debate on the second reading) may occur following a suspension of standing orders.[103]

Bill referred to select committee

Pre-2004 standing orders provided for the possible referral of a bill by the House to a select committee immediately following the second reading. No bills were so referred. However, two bills were referred to select committees following the suspension of standing orders. On the first occasion the bill was referred to a select committee during the consideration in detail stage.[104] On the other occasion a bill was referred during the second reading stage, immediately following the Minister's second reading speech, to a joint select committee.[105]

99 S.O. 143(c).

100 S.O. 148. This restriction applies only to bills referred under S.O. 143(b).When by oversight a bill was read a third time prior to a committee's oral report on the bill, the House corrected the situation by motion affirming the action of the House notwithstanding S.O. 148 and authorising the Speaker to transmit the bill to the Senate, VP 2010–13/2265 (16.5.2013). S.O. 148 has been circumvented in the case of a bill referred to a joint committee by suspending standing orders after the second reading to enable the remaining stages to proceed immediately, VP 2013–16/1939–40 (24.2.2016).

101 S.O. 144.

102 E.g. VP 1993–96/1151 (29.6.1994), 1318 (21.9.1994), 1963 (9.3.1995); VP 2010–13/495 (11.5.2011).

103 E.g. VP 1993–96/921–2 (4.5.1994).

104 VP 1901–02/455 (12.6.1902), 519–20 (2.9.1902) (Select Committee on the Bonuses for Manufactures Bill).

105 VP 1985–87/1029 (4.6.1986), 1343 (20.11.1986), 1608 (30.4.1987) (Joint Select Committee on Telecommunications Interception)—*see* 2nd edn, p. 392.

The terms of reference of the Joint Select Committee on Gambling Reform established in 2010 provided for the committee to inquire into and report on, among other matters, any gambling-related legislation tabled in either House, either as a first reading or exposure draft.[106] In 2011 the Joint Select Committee on Australia's Clean Energy Future Legislation was appointed to inquire into and report on the provisions of a package of 19 related bills.[107]

Bill referred directly by Minister

Standing order 215 establishing the general purpose standing committees provides for the referral, by the House or a Minister, of any matter, including a pre-legislation proposal or bill, for standing committee consideration. Bills have been referred to a committee by a Minister directly (that is, without action in the Chamber), prior to[108] or even after[109] its introduction to the House, rather than through the advisory report mechanism provided by standing order 143.

Attempted referral by second reading amendment

Proposals to refer bills to committees have been put forward in second reading amendments.[110] Such amendments have on all occasions been rejected by the House.

Second reading

The second reading is arguably the most important stage through which a bill has to pass. The whole principle of the bill is at issue at the second reading stage, and is affirmed or denied by a vote of the House.

Moving and second reading speech

Copies of a bill having been made available in the Chamber, the second reading may be moved immediately after the first reading (the usual practice) or at a later hour.[111]

On the infrequent occasions when copies of the bill are not available, leave may be granted for the second reading to be moved immediately,[112] or at a later hour that day.[113] If leave is refused, the second reading is set down for the next sitting.[114] Alternatively standing orders may be suspended to enable the second reading to be moved immediately.[115]

If the second reading is not to be moved immediately or at a later hour, a future sitting is appointed for the second reading, and copies of the bill must then be available.[116] The House appoints, on motion moved by the Minister, the day (that is, the next sitting or some later date) for the second reading to be moved.[117] The motion is open to amendment and debate. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific date or day. Debate on the motion or amendment is restricted to the appointment of a day on which the second reading is to be moved, and

106 VP 2010–13/51–2 (29.9.2010).
107 VP 2010–13/881–2 (13.9.2011).
108 E.g. H.R. Deb. (9.2.1995) 835.
109 E.g. H.R. Deb. (13.5.1999) 5420.
110 E.g. VP 1959–60/155 (18.8.1959), 261 (17.11.1959); VP 1961/133–4 (17.5.1961); VP 1987–90/920 (24.11.1988); VP 1993–96/699 (2.2.1994); VP 2008–10/110–1 (21.2.2008).
111 S.O. 142(a). It is sufficient that some copies are available in the Chamber, H.R. Deb. (2.11.2005) 4–5.
112 VP 1968–69/583 (24.9.1969) (copies of the National Health Bill 1969 not available for distribution).
113 VP 1950–51/151 (21.6.1950).
114 VP 1956–57/49 (13.3.1956).
115 Either without notice, VP 1951–53/443 (24.9.1952); or pursuant to contingent notice, VP 1956–57/109 (3.5.1956).
116 S.O. 142(b).
117 VP 1956–57/50 (13.3.1956).

reference must not be made to the terms of the bill.[118] The second reading is set down as an order of the day on the Notice Paper for the next sitting or a specific date.[119]

There may be reasons, other than the unavailability of printed copies of the bill, for the second reading to be set down for a future day. The Government may want to make public the terms of proposed legislation, with a view to enabling Members to formulate their position in advance of the Minister's second reading speech and debate.[120]

The common practice, however, is for the second reading to be moved immediately after the bill has been read a first time. The terms of the motion for the second reading are 'That this bill be now read a second time'[121] and in speaking to this motion the Minister makes the second reading speech, explaining, inter alia, the purpose and general principles and effect of the bill. This speech should be relevant to the contents of the bill.[122] The time limit for the Minister's second reading speech (for all bills except the main appropriation bill for the year) is 30 minutes.[123] A second reading speech plays an important role in the legislative process and its contents may be taken into account by the courts in the interpretation of an Act (*see* page 405). Ministers are expected to deliver a second reading speech even if the speech has already been made in the Senate. It is not accepted practice for such speeches to be incorporated in Hansard.[124] At the conclusion of his or her speech the Minister sometimes presents documents connected to the bill, for example, a government response to a committee report on the bill.[125] Leave is not required for this or for the presentation of replacement memorandums or corrigendums.

When the second reading has been moved immediately pursuant to S.O. 142(a), it is mandatory[126] for debate to be adjourned after the Minister's speech, normally on a formal motion of a member of the opposition executive. This motion cannot be amended or debated,[127] and as adjournment is compulsory, no vote is taken.[128] A further question is then put 'That the resumption of the debate be made an order of the day for the next sitting'. This question is open to amendment and debate, although neither is usual. An amendment must be in the form to omit 'the next sitting' in order to substitute a specific

118 H.R. Deb. (9.6.1903) 587.

119 NP 46 (11.2.1975) 5085.

120 H.R. Deb. (12.2.1975) 134.

121 S.O. 142(a).

122 The Deputy Speaker explained to a Minister whose second reading speech was ranging beyond the contents of a bill that a certain latitude was allowed during a second reading speech. However, when the second reading debate occurred it would be difficult for the Chair to rule against speeches made in reply to the subjects raised by the Minister, H.R. Deb. (22.2.1972) 38–41.

123 S.O. 1.

124 A few instances have occurred in conflict with this rule. On one occasion leave was granted for a Minister to incorporate a series of second reading speeches, H.R. Deb. (27.8.1980) 804–13 (this instance preceded the comprehensive position set down by Speakers Snedden and Jenkins on the incorporation of material in Hansard, H.R. Deb. (21.10.1982) 2339–40, H.R. Deb. (10.5.1983) 341–2). On one occasion, instead of a second reading speech being made in the normal manner Members were referred to the Senate Hansard, H.R. Deb. (30.11.1995) 4447, and on another a brief summary of the provisions was given and Members then referred to the Senate Hansard, H.R. Deb. (12.11.1992) 3359. On one occasion, by leave, a Minister tabled the second reading speech to a Senate bill without reading it, VP 1996–98/1824–5 (26.6.1997), H.R. Deb. (27.6.1997) 6623. On one occasion leave was granted for a Minister to incorporate a second reading speech in circumstances when a bill had been withdrawn and presented again with a change to its long title, and substantially the same speech had been made previously (the speech was also presented), H.R. Deb. (13.3.2002) 1139–42, VP 2002–04/100 (13.3.2002). On one occasion, although it was acceptable to Members present for the remainder of a Minister's speech to be tabled because of time constraints, the Deputy Speaker noted that such action would be subject to the Speaker's agreement; this was not given, and the Minister completed the speech after intervening business, H.R. Deb. (29.5.2008) 3849–50, 3853–5.

125 E.g. VP 1985–87/1608 (30.4.1987); VP 2002–04/1533 (25.3.2004). Examples of other papers tabled at this time include VP 1998–2001/695 (30.6.1999) (regulation impact statement), 1135 (8.12.1999) (proposed amendments to guidelines and code), 2406 (27.6.2001) (draft protocol), 2583 (30.8.2001) (report of a review of the principal Act); VP 2002–04/1297–8 (5.11.2003) (brief); VP 2004–07/626 (14.9.2005) (report); VP 2010–13/742 (6.7.2011) (draft regulations); VP 2013–16/856 (25.9.2014) (correspondence).

126 The mandatory requirement is a provision which ensures that the House will have some time to study the bill before it is proceeded with. This provision does not apply to a second reading moved pursuant to contingent notice, as standing orders have been suspended.

127 S.O.s 78, 79.

128 VP 1968–69/117 (5.6.1968).

day or date, for example, 'Tuesday next'[129] or '11 December 1980'[130] Debate on the question or amendment is restricted to the appointment of the day on which debate on the second reading is to be resumed and reference must not be made to the terms of the bill.

Resumption of debate

Debate may not be resumed for some time, depending on the Government's legislative program, and during this time public and Members' attitudes to the proposal may be formulated.

An order of the day set down for a specified day is not necessarily order of the day No. 1 for that day, nor does it necessarily mean that the item will be considered on that day.[131]

The fixing of a day for the resumption of a debate is a resolution of the House and may not be varied without a rescission (on seven days' notice) of the resolution.[132] However, a rescission motion could be moved by leave or after suspension of standing orders. In 1973 the order of the House making the second reading of a bill an order of the day for the next sitting was rescinded on motion, by leave, and the second reading made an order of the day for that sitting.[133] The purpose of fixing 'the next sitting' or a specific future day ensures that, without subsequent action by the House, the order of the day will not be called on before the next sitting or the specified day.

On occasions debate may ensue, with the leave of the House, immediately after the Minister has made the second reading speech.[134] By the granting of leave, the mandatory provision of standing order 142(a) concerning the adjournment of the debate no longer applies, and a division may be called on any subsequent motion for the adjournment of the debate.[135] Alternatively, after the second reading speech, debate may, by leave, be adjourned until a later hour on the same day that the bill is presented.[136] If leave is refused in either of these cases, the same effect can be achieved by the suspension of standing orders.[137]

If the second reading has been set down for a future sitting day, on that day the Minister makes the second reading speech when the order of the day is called on, and debate may be adjourned by an opposition Member[138] in the normal way. Alternatively, the second reading debate may proceed immediately, as the provision concerning the mandatory adjournment of debate when the second reading has been moved immediately after the first reading does not apply.

129 VP 1970–72/596–8 (5.5.1971).

130 VP 1978–80/1473 (13.5.1980). But see VP 2002–04/175 (16.5.2002)—'resumption of the debate not occur until the House has had the opportunity to consider the following motion: . . . [condemning the Government]'.

131 NP 45 (5.12.1974) 4942. For example the House resolved on 28 November 1974 to make resumption of the second reading debate on the Family Law Bill 1974 an order of the day for 11 February 1975, VP 1974–75/383–4 (28.11.1974). The item was listed as order of the day No. 3 but was not called on, NP 46 (11.2.1975) 5085.

132 S.O. 120.

133 VP 1973–74/243 (30.5.1973).

134 E.g. VP 1978–80/1188 (14.11.1979); VP 1990–93/1963 (16.12.1992), 2001 (17.12.1992); VP 1996–98/3173 (30.6.1998); VP 2004–07/1082 (10.5.2006); VP 2010–13/1631 (26.6.2012); VP 2013–16/1449 (24.6.2015).

135 H.R. Deb. (21.3.1972) 906.

136 E.g. VP 1968–69/312 (21.11.1968); VP 2002–04/291 (25.6.2002); VP 2008–10/289 (28.5.2008), 607 (15.10.2008); VP 2013–16/1437 (23.6.2015).

137 A contingent notice of motion usually appears on the Notice Paper to facilitate this, *see* 'Contingent notices' at page 391.

138 VP 1974–75/449 (12.2.1975).

As with all adjourned debates, when an adjourned second reading debate is resumed, the Member who moved the adjournment of the debate is entitled to the first call to speak.[139] However, usually it is the opposition spokesperson on the bill's subject matter who resumes the debate, and this may not be the same Member who obtained the adjournment of the debate. On resumption of the second reading debate the Leader of the Opposition, or a Member deputed by the Leader of the Opposition—in practice a member of the opposition executive—may speak for 30 minutes. The Member so deputed, generally the shadow minister, is usually, but not necessarily, the first speaker when the debate is resumed. Other speakers in the debate may speak for 15 minutes.

Nature of debate—relevancy

The second reading debate is primarily an opportunity to consider the principles of the bill and should not extend in detail to matters which can be discussed at the consideration in detail stage. However, it is the practice of the House to permit reference to amendments proposed to be moved at the consideration in detail stage. The Chair has ruled that a Member would not be in order in reading the provisions of a bill seriatim and debating them on the second reading,[140] and that it is not permissible at the second reading stage to discuss the bill clause by clause; the second reading debate should be confined to principles.[141]

However, debate is not strictly limited to the contents of the bill and may include reasonable reference to:

- matters relevant to the bill;
- the necessity for the proposals;
- alternative means of achieving the bill's objectives;
- the recommendation of objectives of the same or similar nature; and
- reasons why the bill's progress should be supported or opposed.

However, discussion on these matters should not be allowed to supersede debate on the subject matter of the bill.

When a bill has a restricted title and a limited subject matter, the application of the relevancy rule for second reading debate is relatively simple to interpret.[142] For example, the Wool Industry Amendment Bill 1977, the long title of which was 'A Bill for an Act to amend section 28A of the *Wool Industry Act 1972*',[143] had only three clauses and its object was to amend the *Wool Industry Act 1972* so as to extend the statutory accounting provisions in respect of the floor price scheme for wool to include the 1977–78 season. Debate could not exceed these defined limits.[144] The Overseas Students Tuition Assurance Levy Bill 1993 was a bill for an Act to allow levies to be imposed by the rules of a tuition assurance scheme established for the purposes of section 7A of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*, and contained only three clauses, thus allowing only a limited scope for debate.

A more recent example of a bill with a restricted title was the Extension of Sunset of Parliamentary Joint Committee on Native Title Bill 2004, the long title of which was 'A Bill for an Act to extend for 2 years the operation of the Parliamentary Joint Committee

139 S.O. 79(b); H.R. Deb. (16.9.1958) 1251.
140 H.R. Deb. (24.11.1920) 6906.
141 H.R. Deb. (22.11.1932) 2601.
142 H.R. Deb. (29.3.1935) 541–2.
143 VP 1977/149 (26.5.1977).
144 H.R. Deb. (26.5.1977) 1941.

on Native Title and the Aboriginal and Torres Strait Islander Land Fund'. It also contained only three clauses.

To a lesser extent, the relevancy rule is easily interpreted for a bill with a restricted title to amend named parts of the principal Act, even though the bill may contain a greater number of clauses than the above examples. The Speaker ruled that the scope of debate on the States Grants (Special Financial Assistance) Bill 1953 should not permit discussion of the ways in which the States might spend the sums granted, that the limits of the debate were narrow and that he would confine the debate to whether the sums should be granted or not. The Speaker's ruling was dissented from, following which the Speaker stated that the expenditure methods of the States were clearly open for discussion.[145] Examples of amending bills with restricted titles were the Ministers of State Amendment Bill 1988, the long title of which was 'A Bill for an Act to amend section 5 of the *Ministers of State Act 1952*',[146] and the Veterans' Entitlements Amendment (Male Total Average Weekly Earnings) Bill 1998, its long title being 'A Bill for an Act to amend section 198 of the *Veterans' Entitlements Act 1986* to allow increases in the rate of pension payable under paragraph 30(1)(a) of that Act to the widow or widower of a deceased veteran to take account of Male Total Average Weekly Earnings'.

When a bill has an unrestricted title, for example, the Airports Bill 1995, whose long title was 'A Bill for an Act about airports' and which contained a large number of clauses, the same principles of debate apply, but the scope of the subject matter of the bill may be so wide that definition of relevancy is very difficult. However, debate should still conform to the rules for second reading debates and be relevant to the objectives and scope of the bill. Reference may be had to the second reading speech and the explanatory memorandum to help determine the objectives and scope of a bill. General discussion of a matter in a principal Act which is not referred to in the amending bill being debated has been prevented.[147]

Second reading amendment

An amendment to the question 'That this bill be now read a second time', known as a second reading amendment, may only take one of two forms—that is, an amendment to dispose of the bill (*see* page 371) or a 'reasoned amendment'.[148]

A reasoned amendment enables a Member to place on record any special reasons for not agreeing to the second reading, or alternatively, for agreeing to a bill with qualifications without actually recording direct opposition to it. It is usually declaratory of some principle adverse to or differing from the principles, policy or provisions of the bill. It may express opinions as to any circumstances connected with the introduction or prosecution of the bill or it may seek further information in relation to the bill by committees or commissions, or the production of documents or other evidence.

145 VP 1951–53/714 (8.10.1953); H.R. Deb. (8.10.1953) 1170.
146 H.R. Deb. (14.4.1988) 1635.
147 H.R. Deb. (19.11.1935) 1768–9.
148 S.O. 145.

RELEVANCY AND CONTENT

The standing orders[149] specify rules governing the acceptability of reasoned amendments. An amendment must be relevant to the bill.[150] In relation to a bill with a restricted title, an amendment dealing with a matter not in the bill, nor within its title, may not be moved.[151] In relation to a bill with an unrestricted title, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved even though the clauses have a limited purpose.

For example, the Apple and Pear Stabilization Amendment Bill (No. 2) 1977 had as a long title 'A Bill for an Act to amend the *Apple and Pear Stabilization Act 1971*' and the object of the bill was to extend financial support to exports of apples and pears made in the 1978 export season. The bill dealt with extension of time of support only, not with the level of the support.[152] A second reading amendment to the effect that the bill be withdrawn and redrafted to increase the level of support was in order as the level of support was provided in the principal Act.[153] Even though a bill may have a very broad title, an amendment must still be relevant to the subject matter of the bill.[154] Reference may be made to the Minister's second reading speech and the explanatory memorandum to clarify the scope of the bill.

The case of the Commonwealth Electoral Bill 1966 provides a good example of acceptable and unacceptable second reading amendments. The long title was 'A Bill for an Act to make provision for Voting at Parliamentary Elections by Persons under the age of Twenty-one years who are, or have been, on special service outside Australia as Members of the Defence Force'. A second reading amendment was moved to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to all persons in the 'call-up' age group. The amendment was ruled out of order by the Speaker as the broad subject of the bill related to voting provisions for members of the defence forces under 21 years, whereas the proposed amendment, relating to all persons in the 'call-up' age group regardless of whether or not they were members of the defence forces, was too far removed from the subject of the bill as defined by the long title to be permissible under the standing orders and practice of the House. Dissent from the ruling was moved and negatived.[155] Another Member then moved an amendment to the effect that, while not opposing the passage of the bill, the House was of the opinion that the vote should be given to all persons in the Defence Force who had attained the age of 18 years.[156] This amendment was permissible as the practice of the House is to allow a reasoned amendment relevant to the broad subject of the bill.

149 S.O. 145.

150 For general examples of amendments ruled out of order as not being relevant *see* VP 1967–68/18 (22.2.1967); VP 1970–72/1144 (17.8.1972).

151 An amendment proposed by the Leader of the Opposition to the Commonwealth Conciliation and Arbitration Bill 1949 was ruled out of order by the Deputy Speaker as it was outside the specific proposals set forth in the long title of the bill, VP 1948–49/344 (29.6.1949), 358 (6.7.1949).

152 VP 1977/380 (1.11.1977); H.R. Deb. (1.11.1977) 2609.

153 VP 1977/422 (7.11.1977).

154 The long title of the Child Care Payments Bill 1997 was 'A bill for an Act to provide for payments in respect of child care and related purposes'. An amendment proposed by the Leader of the Opposition was ruled out of order when the Chair upheld a point of order that the amendment did not come within the title and was not relevant to the bill, VP 1996–98/1984–6 (23.9.1997).

155 VP 1964–66/603 (12.5.1966); H.R. Deb. (12.5.1966) 1812.

156 VP 1964–66/604 (12.5.1966).

LENGTH

Although there have been some excessively long second reading amendments,[157] these are not welcomed by the Chair. Speaker Halverson ruled[158] that a second reading amendment should not be accepted by the Chair if, when considered in the context of the bill, and with regard to the convenience of other Members, it could be regarded as of undue length, and that it was not in order for a Member to seek effectively to extend the length of his or her speech by moving a lengthy amendment, without reading it, but relying on the fact that the amendment would be printed in Hansard. The Chair has directed a Member to read out a lengthy second reading amendment in full and for the time taken to do so to be incorporated into the time allocated for his speech, giving as the reason that the amendment was larger than that which would normally be accommodated and that he did not want lengthy amendments to become the norm.[159] The incorporation of an extensive quotation in a second reading amendment is not allowed.[160]

ANTICIPATION OF DETAIL STAGE AMENDMENT

A reasoned amendment may not anticipate an amendment which may be moved during consideration in detail.[161] Following a Member's explanation that an amendment had been drafted not with reference to the clause but with reference to the principle of the bill, an amendment which could possibly have been moved in committee (i.e. the former consideration in detail stage) was allowed to be moved to the motion for the second reading.[162] The principle underlying an amendment which a Member may not move during consideration in detail can be declared by means of a reasoned amendment. A second reading amendment to add to the question an instruction to the former committee of the whole was ruled out of order on the ground that the bill had not yet been read a second time.[163]

ADDITION OF WORDS

A reasoned amendment may not propose the addition of words to the question 'That this bill be now read a second time'.[164] The addition of words must, by implication, attach conditions to the second reading.[165]

DIRECT NEGATIVE

In addition to the rules in the standing orders governing the contents of reasoned amendments, it is the practice of the House that an amendment which amounts to no more than a direct negation of the principle of a bill is not in order.

157 E.g. amendment to Appropriation Bill (No. 1) 1996–97, VP 1996–98/408–10 (9.9.1996).

158 Private ruling.

159 H.R. Deb. (7.12.1998) 1503, 1509. An extension of time was agreed to permit the Member to read out the amendment.

160 H.R. Deb. (28.11.1988) 3368.

161 S.O. 145(a)(iv); VP 1920–21/90 (25.3.1920). There is a sound reason for this rule because, if the wording of a second reading amendment is similar to the wording of a detail amendment and the second reading amendment is defeated, the moving of the detail amendment could be prevented by the application of the 'same motion' rule, S.O. 114(b).

162 VP 1951–53/246 (29.11.1951); H.R. Deb. (29 and 30.11.1951) 3140. The Speaker accepted a second reading amendment, some aspects of which could have been moved in committee, as it was the wish of the House (it was felt preferable to have one clear-cut issue than to be involved in numerous discussions in committee), H.R. Deb. (10.9.1952) 1214–16; *and see* H.R. Deb. (28.9.1954) 1666. *See also* VP 1978–80/727 (4.4.1979)—in this case the proposals of the Opposition were so complicated that resources were not available to draft committee amendments. Following an assurance that the amendments would not be moved in committee, the proposals were incorporated into a second reading amendment.

163 The amendment was also ruled out of order on the ground of irrelevancy, VP 1912/143 (26.9.1912).

164 S.O. 145(a)(iii); VP 1940/87 (30.5.1940). Until a change in the standing orders in 1965 this prohibition was not explicit and attempts to move amendments seeking to add words to the motion for the second reading were ruled out of order on the basis of House of Commons practice.

165 *May,* 24th edn, p. 549. Other kinds of amendment with conditional wording have been accepted by the House ('. . . will not decline to give the bill a second reading if . . .', VP 1993–96/1777–8 (2.2.1995)).

FORM OF AMENDMENT

The usual form of a reasoned amendment is to move 'That all words after "That" be omitted with a view to substituting the following words: . . .' Examples of words used are:

- the bill be withdrawn and redrafted to provide for . . .
- the bill be withdrawn and a select committee be appointed to inquire into . . .
- the House declines to give the bill a second reading as it is of the opinion that . . .
- the House disapproves of the inequitable and disproportionate charges imposed by the bill . . .
- the House is of the opinion that the bill should not be proceeded with until . . .
- the House is of the opinion that the . . . Agreement should be amended to provide . . .
- whilst welcoming the measure of relief provided by the bill, the House is of the opinion that . . .
- the House notes with approval that, in response to public pressure, the Government has introduced this limited bill, but deplores . . .
- whilst not opposing the provisions of the bill, the House is of the opinion that . . .
- whilst not declining to give the bill a second reading, the House is of the opinion that . . .

MOVING OF AMENDMENT

A second reading amendment is usually moved by the relevant shadow minister during his or her speech at the start of the debate, but may be moved by any Member and at any time during the debate. By convention, if the Member has allowed sufficient time, copies of the terms of the amendment are circulated in the Chamber. If copies have been circulated, a Member may move an amendment by saying 'I move the amendment circulated in my name', instead of reading the terms out in full.[166] The fact that the moving of a reasoned amendment permits Members who have already spoken to the second reading to speak again to the amendment may influence the use or timing of the procedure.

Following the suspension of standing orders to enable a number of bills to be considered together and one question to be put on any amendments moved to motions for the second readings,[167] second reading amendments have been moved to six bills in one motion.[168]

SECONDING

Immediately the Member moving the second reading amendment has finished his or her speech (not during the speech), the Speaker calls for a seconder. If the amendment is not seconded, there may be no debate on the amendment and it is not recorded in the Votes and Proceedings.[169] A copy of the amendment signed by the mover and seconder is handed to the Clerk at the Table.

166 *But see* p. 367 for restrictions on length of amendment.
167 VP 1998–2001/207 (9.12.1998).
168 VP 1998–2001/233–5 (10.12.1998).
169 S.O. 116(a), e.g. H.R. Deb. (10.12.1998) 1857—time expired under guillotine before amendment seconded; H.R. Deb. (13.10.2003) 21259–60—amendment not seconded; H.R. Deb. (9.2.2010) 882–3, 887—not seconded.

DEBATE AND QUESTIONS PUT

When seconded, the Speaker states that 'The original question was "That this bill be now read a second time", to which the honourable Member for . . . has moved, as an amendment, that all words after "That" be omitted with a view to substituting other words'. The Speaker then proposes the immediate question in the form 'That the amendment be agreed to'.[170] The question is then open to debate.

A Member who moves an amendment, or a Member who speaks following the moving of an amendment, is deemed to be speaking to both the original question and the amendment. A Member who has spoken to the original question prior to the moving of an amendment may again be heard, but shall confine his or her remarks to the amendment. A Member who has spoken to the original question may not second an amendment subsequently moved. A Member who has already spoken in the second reading debate can only move a second reading amendment by leave of the House.[171]

The time limits for speeches in the debate are 15 minutes for a Member speaking to the motion for the second reading or to the motion and the amendment, including a Minister or Parliamentary Secretary speaking in reply. A limit of 15 minutes also applies for a Member who has spoken to the motion and is addressing the amendment.[172]

A Member may amend his or her amendment after it is proposed with the leave of the House (for example, to correct an error in the words proposed to be substituted).[173] A Member has been given leave to add words to an amendment moved by a colleague at an earlier sitting.[174] An amendment may be withdrawn only by leave.[175]

When the question has been proposed in the form 'That the amendment be agreed to', a motion to amend the proposed amendment may be moved.[176] If the question in that form has been put and the amendment disposed of, a further second reading amendment may be moved.

If the debate has been closed by the mover of the motion for the second reading speaking in reply before the question was put on the amendment, the question on the second reading is then put immediately after the question on the amendment has been resolved.[177] In other cases debate may continue on the motion for the second reading.[178]

EFFECT OF AGREEING TO REASONED AMENDMENT

There is only one precedent for a second reading amendment being agreed to. This occurred in 2016 when a second reading amendment in the form of qualified agreement to the bill was agreed to on the voices. The agreement was apparently accidental—the vote on the question that 'the amendment be agreed to' was called for the 'ayes' and not contested. The questions on the second reading and subsequently the third reading were then put and agreed to on the voices.[179]

Later, the Speaker ruled that the amendment had been validly passed and that proceedings on the bill should have ceased at that point. The questions on the second and third reading should not have been put and that those proceedings had not been valid.

170 S.O. 122(b). The question was traditionally put in the form 'That the words proposed to be omitted stand part of the question', *see* previous editions for detail. *See also* 'Putting question on amendment' in the Chapter on 'Motions'.
171 VP 1987–90/570 (24.5.1988).
172 S.O. 1.
173 VP 1978–80/239 (25.5.1978); VP 1996–98/1237 (4.3.1997).
174 VP 1996–98/2913 (2.4.1998).
175 VP 1937–40/369 (11.5.1939);VP 2010–13/2202 (21.3.2013).
176 E.g. VP 2013–16/132 (21.11.2013).
177 E.g. H.R. Deb. (24.6.2004) 31611.
178 E.g. VP 2002–04/330 (19.8.2002).
179 VP 2016–18/201 (12.10.2016). In 2017 a second reading amendment was agreed to on division; however the vote was taken again in accordance with standing order 132, and negatived, VP 2016–18/980–1 (15.8.2017).

The Speaker noted that (the previous edition of) *House of Representatives Practice* discussed the possibility of a second reading amendment being agreed to, and referred to the statement that if a reasoned amendment were carried, 'it could be argued that the amendment would not necessarily arrest the progress of the bill, as procedural actions could be taken to restore the bill to the Notice Paper and have the second reading moved on another occasion'.[180] The Speaker said that, as the amendment was in the form 'whilst not declining to give the bill a second reading …', he considered this to be a reasonable course of action and would permit that to occur. The House then agreed to a motion suspending so much of standing orders as would prevent the bill being restored immediately, and proceedings being resumed with the second reading to be moved. The questions on the second and third reading were then put and agreed to.[181]

A similar view was taken by the Chair during consideration of the Family Law Bill 1974, on which a free vote was to take place, when the effects of the carriage of an amendment expressing qualified agreement were canvassed in the House.[182] The amendment proposed to substitute words to the effect that, whilst not declining to give the bill a second reading, the House was of the opinion that the bill should give expression to certain principles.[183] On that occasion a contingent notice of motion was given by a Minister that on any amendment to the motion for the second reading being agreed to, he would move that so much of the standing orders be suspended as would prevent a Minister moving that the second reading of the bill be made an order of the day for a later hour that day.[184] Subsequently the Chair expressed the view that the contingent notice would enable the second reading to be reinstated. If the contingent notice was called on and agreed to, the second reading of the bill would be made an order of the day for a later hour of the day. It would then be up to the House as to when the order would be considered (perhaps immediately). If the motion 'That this bill be now read a second time' were to proceed, it would be a completely new motion for that purpose and open to debate in the same manner as the motion for the second reading then before the House.[185]

Any determination of the effect of the carrying of a second reading amendment in the future may well depend upon the wording of the amendment. If the rejection is definite and uncompromising, the bill may be regarded as having been defeated.[186] However, wording giving qualified agreement has been construed to mean that the second reading may be moved on another occasion.

The modern practice in the UK House of Commons is that after a reasoned amendment of any kind has been carried, no order is made for a second reading on a future day.[187] However, in the House of Commons reasoned amendments record reasons for not agreeing to the second reading and amendments agreeing to the second reading with qualifications are not the practice.[188]

180 *House of Representatives Practice*, 6th edn, p. 370.
181 VP 2016–18/201–2 (12.10.2016).
182 H.R. Deb. (12.2.1975) 180; H.R. Deb. (13.2.1975) 320.
183 VP 1974–75/449 (12.2.1975).
184 NP 56 (4.3.1975) 6006.
185 H.R. Deb. (28.2.1975) 934–5.
186 This view was taken by the Speaker in 2006 in respect of a second reading amendment to a Private Member's bill. In the event, the amendment was defeated, VP 2004–07/954–5 (16.2.2006).
187 *May,* 24th edn, p. 550.
188 *May*, 24th edn, p. 549.

REASONED AMENDMENT IN THE FEDERATION CHAMBER

The view has been taken that an unresolved question on a second reading amendment prevents further consideration of a bill in the Federation Chamber.[189]

Amendment to dispose of bill

An amendment may be moved to the question 'That this bill be now read a second time' by omitting 'now' in order to insert 'not', which, if carried, shall finally dispose of the bill. No amendment may be moved to this amendment.[190] If the amendment is defeated the question on the second reading is then restated. Debate may then continue on the motion for the second reading.

Determination of question for second reading

When debate on the motion for the second reading has concluded, and any amendment has been disposed of, the House determines the question on the second reading 'That this bill be now read a second time'. On this question being agreed to, the Clerk reads the long title of the bill.

Only one government bill has been negatived at the second reading stage in the House of Representatives,[191] but there have been a number of cases in respect of private Members' bills.[192] The accepted practice of the House has been that in cases where the second reading has been negatived, the motion for the second reading has not been moved again.

The modern practice of the UK House of Commons is that defeat on second reading is fatal to a bill.[193] In the Senate rejection of the motion that a bill be read a second time does not prevent the Senate from being asked subsequently to grant the bill a second reading.[194]

Bill reintroduced

Should the Government wish to proceed further with a bill, the second reading of which has been negatived or subjected to a successful reasoned amendment, an appropriate course to take would be to have the bill redrafted in such a way and to such an extent that it becomes a different bill including, for example, a different long title. Alternatively, standing orders could be suspended to enable the same bill to be reintroduced, but this might be considered a less desirable course. *See also* 'The application of the same motion rule to bills' at page 357.

Bill not proceeded with

From time to time a bill will be introduced and remain on the Notice Paper until the reactions of the public to the proposal are able to be made known to the Government and Members generally. As a result of these representations, following an advisory report on the bill from a committee, or for some other reason,[195] the Government may wish to alter the bill substantially from its introduced form. This may not always be possible because

189 VP 1993–96/2504–5, 2516 (19.10.1995);VP 1996–98/363 (27.6.1996).

190 S.O. 146.

191 Parliamentary Allowances Bill 1922, VP 1922/207 (11.10.1922); H.R. Deb. (11.10.1922) 3571–97.

192 E.g. VP 1937–40/496 (20.9.1939); VP 1976–77/130 (8.4.1976), 442–3 (4.11.1976), 487 (18.11.1976); VP 2010–13/342–3 (24.2.2011); VP 2010–13/2319 (30.5.2013).

193 *May,* 24th edn, p. 548.

194 *Odgers*, 14th edn, p. 311–2. E.g. 2nd readings of 4 Luxury Car Tax bills negatived on 4.9.2008 (J 2008–10/805 (4.9.2008)); notice given same day that the bills be now read a second time, SNP 30 (15.9.2008) 3; motion agreed to (J 2008–10/903–4 (22.9.2008)).

195 E.g. following the report of a joint select committee the Telecommunications (Interception) Amendment Bill 1986 was replaced by another bill incorporating many of the committee's recommendations, VP 1985–87/1029 (4.6.1986), 1343 (20.11.1986), 1608 (30.4.1987).

the proposed amendments may not be within the title of the bill or relevant to the subject matter of the bill and may therefore be inadmissible under the standing orders.[196] In this case, and sometimes in the case where extensive amendments would be involved, a new version of the bill may be introduced. If this is done, the Government either allows the order of the day in respect of the superseded bill to remain on the Notice Paper until it lapses on dissolution or prorogation, or a Minister or Parliamentary Secretary moves for the discharge of the order of the day.[197] The new version of the bill is proceeded with notwithstanding the existence or fate of a previous similar bill. Discharge of a bill may occur before the presentation of the second version,[198] or after the second version has passed the House.[199]

Proceedings following second reading

Immediately after the second reading of a bill has been agreed to, standing order 147 requires the Speaker to announce any message from the Governor-General in accordance with section 56 of the Constitution recommending an appropriation in connection with the bill. This requirement applies to special appropriation bills only and is covered in the Chapter on 'Financial legislation'.

Former standing orders provided for the possible referral of a bill to a select committee at this stage, but no bills were so referred. There was also provision for the moving of an instruction to a committee—very few instructions were ever moved and only one agreed to (probably unnecessarily). These obsolete provisions are discussed in previous editions.

Reference to legislation committee

Thirteen bills were considered by legislation committees pursuant to sessional orders operating from August 1978. Sessional orders were also adopted in March 1981 for the 32nd Parliament;[200] however, no bills were referred. The sessional orders provided that, immediately after the second reading or immediately after proceedings following the second reading had been disposed of, the House could (by motion on notice carried without dissentient voice) refer any bill, excluding an appropriation or supply bill, to a legislation committee (in effect, for its consideration in detail stage).[201]

Leave to move third reading or report stage immediately

The standing orders provide that, at this stage, the House may dispense with the consideration of the bill in detail and proceed immediately to the third reading.[202] If the Speaker thinks Members do not desire to debate the bill in detail, he or she asks if it is the wish of the House to proceed to the third reading immediately. If there is no dissentient voice, the detail stage is superseded and the Minister moves the third reading immediately. One dissentient voice is sufficient for the bill to be considered in detail.

196 S.O. 150(a).
197 S.O. 37(c); VP 1974–75/534 (5.3.1975).
198 VP 1973–74/190 (16.5.1973); H.R. Deb. (16.5.1973) 2219–20.
199 VP 1976–77/512, 524 (1.12.1976); H.R. Deb. (1.12.1976) 3083.
200 VP 1978–80/321–4 (8.6.1978); VP 1980–83/133–4 (11.3.1981).
201 For a description of the operation of legislation committees *see* pp. 331–2 and 341–2 of the 1st edition. *See also* comments by the Procedure Committee in its *About time* report, PP 194 (1993) 6.
202 S.O. 148(a).

For a bill referred to the Federation Chamber the equivalent bypassing of the detail stage is achieved by the granting of leave for the question 'That the bill be reported to the House without amendment' to be put immediately.[203]

The detail stage is bypassed in the consideration of approximately 75% of bills.

Former committee of the whole

The words 'committee stage' found in earlier publications about the procedures of the House, and also in descriptions of the practice of the Senate and other legislatures, refer to what the House now knows as the 'detail stage' (described below).

Prior to 1994 the consideration in detail stage in the House of Representatives was taken in a Committee of the Whole House—that is, a committee composed of the whole membership of the House. Committee of the whole consideration took place (in the Chamber) at the same place in proceedings as the current detail stage and procedures[204] were similar to current procedures—the essential practical differences being the title (Chairman or Deputy Chairman) and seating position (between the Clerks at the Table) of the occupant of the Chair, and the time limits applying to speeches.

The abolition of the committee of the whole was one of the reforms flowing from the 1993 Procedure Committee report *About time: bills, questions and working hours,*[205] and accompanied other changes to the legislative process, including the provision for bills to be referred to committees for advisory reports, and the establishment of the Main Committee (now renamed Federation Chamber).

Rulings and precedents relating to the consideration of bills in the committee of the whole, where appropriate, have continuing application to the consideration in detail stage, whether in the House or the Federation Chamber.[206]

Consideration in detail

The following discussion describes the consideration in detail stage in the House; the process in the Federation Chamber is the same.

After the bill has been read a second time, and if it is the wish of the House, the House proceeds to the detailed consideration of the bill. The function of this stage is the consideration of the text of the bill, if necessary clause by clause and schedule by schedule,[207] the consideration of amendments, and the making of such amendments in the bill as are acceptable to the House. The powers of the House at this stage are limited. For instance, the decision given on the second reading in favour of the principle of a bill means that, at the detail stage, the bill should not be amended in a manner destructive of this principle, and an amendment which is outside the scope of the bill is out of order.[208]

While the House should not amend a bill in a manner destructive of the principle affirmed at the second reading, it may negative clauses the omission of which may nullify or destroy the purposes of the bill. It may also negative clauses and substitute new clauses, such a procedure being subject to the rule that any amendment must be within the title or relevant to the subject matter of the bill, and otherwise in conformity with the standing orders of the House.[209]

203 S.O. 148(b).
204 Described in earlier editions. The origin of the committee of the whole is covered at p. 233 of the 2nd edition.
205 PP 194 (1993) 7–8.
206 VP 1993–96/807 (23.2.1994).
207 S.O. 149. Greater detail is also possible, e.g. paragraph by paragraph.
208 *May,* 24th edn, p. 564.
209 S.O. 150(a). *See* examples of inadmissible amendments at p. 375.

The title and the preamble (if any) are considered last. The reason for postponing the title is that an amendment may be made in the bill which will necessitate an amendment to the title.[210] The purpose of postponing the preamble is that the House has already affirmed the principle of the bill on the second reading, and therefore has to settle the clauses first, and then consider the preamble in reference to the clauses only. The preamble is thus made subordinate to the clauses instead of governing them. No question is put on the words of enactment at the head of the bill,[211] as these words are part of the framework of the bill.

The standing orders specify a strict order in which the parts of a bill should be considered—*see* 'Bill considered clause by clause' at page 377. In practice, in the majority of cases the bill is taken as a whole or groups of clauses or schedules are taken together, by leave of the House—*see* 'Bill considered as a whole, or by parts' at page 380.

Moving of motions and amendments

A motion (including an amendment) moved during consideration in detail need not be seconded.[212] Although there is no requirement for notice to be given of proposed amendments, the Speaker has appealed to Members to have proposed amendments in the hands of the Clerk at least one hour before they are to be moved,[213] to allow time to ensure that they are in order and to prepare the appropriate announcements for the questions to be put, and in time for them to be printed and circulated to Members before they are considered. Members are encouraged in the practice of circulating amendments as early as possible so as to enable the Minister or Parliamentary Secretary in charge of the bill and other Members to study the effect of the amendments before they are put for decision. Amendments which the Government or other Members may wish to move only in certain circumstances—for example, depending on developments in the House or negotiations between parties—may be held under embargo by the Clerk until their release is authorised by the Minister or other Member responsible. Where amendments have been printed and circulated, it is acceptable for a Member to move 'the amendment (or 'amendment No. . . .') circulated in my name' rather than read the terms of the amendment in full. In reply to a Member's request that a lengthy amendment be read, the Chair has stated that it is quite customary for amendments to be taken as read when they have been circulated.[214]

An amendment may be moved to a proposed amendment.[215]

Debate

In debate on any question during consideration in detail each Member may speak for an unlimited number of periods of up to 5 minutes each.[216] If no other Member rises the Member who has just spoken may speak again immediately, after being recognised by the Chair. An extension of time could be agreed to, the extension not to exceed two and a half minutes. However, as there is no limit on the number of opportunities to speak, in practice it is unlikely that an extension would be sought.

210 S.O. 150(d).
211 S.O. 149(c).
212 S.O. 151.
213 H.R. Deb. (24.8.1984) 398.
214 H.R. Deb. (22.11.1951) 2633.
215 E.g. VP 1929–31/660 (3.6.1931); VP 1950–51/145 (20.6.1950); VP 1978–80/493 (25.10.1978) (Legislation Committee).
216 S.O. 1.

Debate must be relevant to the subject matter of the clause(s), schedule(s), item(s) or amendment(s) before the House,[217] and cannot extend to other clauses or schedules which have been, or remain to be, dealt with. Discussion of matters relating to an amendment ruled out of order is not permitted.[218] When the question before the Chair is that a particular clause be agreed to, the limits of discussion may be narrow. When a bill is considered, by leave, as a whole, the debate is widened to include any part of the bill.[219] However, discussion must relate to the clauses of the bill, and it is not in order to make a general second reading speech.[220]

Questions put

If an amendment is moved to a clause (schedule, etc), the Chair normally puts the question in the form 'That the amendment be agreed to'.[221] When amendments are taken together by leave, the question is normally 'That the amendments be agreed to'. However, on occasion, where leave has been given to move amendments together, further leave has been given for separate questions to be put on each.[222]

If a clause (or schedule, etc) is amended, a further question is put 'That the clause (schedule, etc) as amended, be agreed to'.[223] If the title is amended, the further question is put 'That the title, as amended, be the title of the bill'.[224] If the bill is being considered as a whole, the further question is 'That the bill, as amended, be agreed to'.

See also 'Putting question on amendment' in the Chapter on 'Motions'.

Inadmissible amendments

Examples of amendments ruled out of order by the Chair have been amendments that were held to be:

- not relevant to the clause under consideration;[225]
- consequent on an earlier amendment which had been negatived;[226]
- not within the scope of the bill;[227]
- neither within the scope nor the long title of the bill;[228]
- outside the scope of the bill and the principal Act;[229]
- not consistent with the context of the bill;[230]

217 S.O. 150(b).
218 H.R. Deb. (14.9.1961) 1195–6.
219 H.R. Deb. (25.10.1955) 1856.
220 H.R. Deb. (16.5.1961) 1903.
221 S.O. 122(b).
222 E.g. VP 2002–04/439 (24.9.2002).
223 S.O. 150(c).
224 S.O. 150(d).
225 VP 1961/291 (26.10.1961) (two proposed amendments).
226 VP 2010–13/267 (25.11.2010).
227 E.g. VP 1946–48/527 (29.4.1948).
228 E.g. VP 2002–04/1701 (17.6.2004); VP 1974–75/863 (21.8.1975) (proposed new clause).
229 VP 1961/76–7 (2.5.1961).
230 VP 1945–46/278 (3.10.1945).

- ironical;[231]
- not in conformity with the standing orders;[232] or
- in conflict with the Constitution.[233]

Amendments may also be out of order because they infringe the restrictions imposed by standing orders in respect of financial proposals (*see* Chapter on 'Financial legislation').

The discussion of relevance in relation to second reading debate (*see* page 366) is also applicable to relevance in relation to detail stage amendments. However, an amendment to a bill, the nature of which has been agreed in principle, requires a more precise test of relevance than is the case in respect of the scope of general debate, and the relevancy rules are applied strictly to amendments.

An amendment may be moved to any part of a bill, if the amendment is within the title or relevant to the subject matter of the bill and conforms to the standing orders.[234] If the title of the bill is unrestricted, an amendment dealing with a matter not in the bill, but which is relevant to the principal Act or to the objects of the bill as stated in its title, may be moved, even though the clauses have a limited purpose.[235] Conversely, an amendment not relevant to the objects of the bill, or not within its scope, may not be moved. The inclusion of such words as 'and for related purposes' or 'and for other purposes' in the long title of a bill does not open the bill to the introduction of any amendment whatsoever and cannot be used as a means of circumventing the intention of the standing orders.[236]

An amendment to add further Acts to a schedule of Acts to be amended by a Statute Law (Miscellaneous Provisions) Bill has been permitted, the long title of the bill being '. . . to make various amendments to the statute law of the Commonwealth . . .'.[237]

If the title is restricted, an amendment dealing with a matter which is not in the bill, nor within its title, may not be moved.

No amendment, new clause or schedule may be moved if it is substantially the same as one already negatived, or which is inconsistent with one that has already been agreed to, unless the bill is reconsidered.[238] An amendment which purports to omit a clause or schedule is not in order as the correct course, if a clause/schedule is opposed, is to vote against the question 'That the clause/schedule be agreed to'. However, if a bill is being considered as a whole (*see* page 380) such a proposal may be expressed as an amendment.

231 E.g. amendments designed to alter the short title of the Government Preference Prohibition Bill 1914 to (a) the Anti-Trades and Labour Unions Bill 1914, (b) the Government Preference to Contractors, Lawyers, Doctors, and Others Bill 1914, and (c) the Government Preference to the Bar Association, to the British Medical Association, to the Contractors' and Employers' Associations, etc. Bill 1914, were ruled out of order, VP 1914/48–9 (21.5.1914). Similarly amendments proposing to substitute 'Reduciary', 'Reductionary' and 'Inflationary' for 'Fiduciary' in the Fiduciary Notes Bill 1931 (on the ground of being outside the scope of the bill), VP 1929–31/503 (26.3.1931); Words in short title 'Work Choices' to, inter alia, 'No Work Choices', VP 2004–07/768 (10.11.2005), H.R. Deb. (10.11.2005) 38.

232 VP 1945–46/420 (23.7.1946). An amendment to the Wheat Export Charge Bill 1946 proposed to add a subclause to the effect that the bill should not be submitted for assent until approved by a majority of wheat growers at a postal ballot. The Chair ruled the amendment was not in order as the standing orders required a bill which had passed both Houses to be forwarded for assent, and a committee of the whole, by amendment to a bill, could not alter the operation of the standing orders.

233 VP 1946–48/527 (29.4.1948); VP 2013–16/133 (21.11.2013). However, enforcement of the standing orders is the main concern of the Chair, who may not be in a position to judge constitutional implications.

234 S.O. 150(a).

235 H.R. Deb. (31.5.1928) 5400.

236 E.g. VP 2002–04/1701 (17.6.2004). There is no record of the House suspending standing orders to allow an unrelated amendment to be made to a bill.

237 VP 1983–84/145–6 (26.5.1983).

238 S.O. 150(e). *See* e.g. VP 1964–66/491 (2.12.1965), where an amendment to a proposed new clause was ruled out of order by the Chair as the amendment was substantially the same as a proposed amendment to an earlier clause negatived. Leave has been given for an amendment which had been defeated to be moved again; it was then agreed to, VP 2004–07/1249 (21.6.2006).

The terms of an agreement (or treaty) in a schedule cannot be changed, as the agreement has already been made. However, provisions elsewhere in the bill bringing the agreement into legal effect can be amended.[239]

Bill considered clause by clause

It should be noted here that clause by clause consideration of a bill is nowadays exceptional. It has become the usual practice for leave to be given for bills to be taken as a whole and for proposed amendments to be moved together (*see* page 380).

If a bill is to be considered clause by clause, the text of the bill is considered in the following order:

- clauses and proposed clauses, in numerical order;
- schedules and proposed schedules, in numerical order;
- postponed clauses (which have not been postponed to a specific point);
- preamble (if any); and
- title.

The schedules are considered before the clauses in the case of an amending bill (*see* page 378) and in the case of taxation and appropriation and supply bills.[240]

CLAUSES

Proceedings on clause by clause consideration begin by the Chair calling the number of the clause, for example, 'Clause 1', and stating the question 'That the clause be agreed to'.[241] If leave is given to consider a group of clauses together, for example, clauses 1 to 4, the Chair states the question 'That the clauses be agreed to'. The question is proposed without any motion being moved. A clause may be divided: a clause has been ordered to be considered by Divisions,[242] by proposed sections[243] and by paragraphs.[244] It has also been ordered that clauses be taken together[245] but it is usual when it is desired that clauses be taken together for leave to be obtained. Leave is necessary if a Member wishes to move, as one amendment, to omit more than one clause and substitute another Part.

An amendment may be moved only when the clause to be amended is before the House. When a clause has been amended, the Chair proposes a further question 'That the clause(s) as amended, be agreed to'[246] before proceeding to the next part of the bill.

NEW CLAUSES

The procedure for dealing with proposed new clauses is to consider them in their numerical order[247]—that is, at the point of consideration at which the new clause is to be inserted in the bill[248]—or at the end of the bill in the case of a proposed addition.[249] A proposed new clause can be amended in the same manner as an existing clause.[250] A

239 E.g. VP 1934–37/484 (4.12.1935); VP 1940/74 (27.5.1940).
240 S.O. 149(a), (d).
241 S.O. 149(c).
242 VP 1962–63/342 (4.12.1962). Consideration of the clause had begun before it was ordered to be considered by divisions and the first question following the order was 'That the clause to the end of Division 1 be agreed to' (thereafter 'That Division 2 be agreed to' etc.).
243 VP 1960–61/270 (17.11.1960). The clause proposed to insert new sections in the principal Act. Consideration of the clause had begun and the first question was 'That the clause to the end of proposed section 24 be agreed to'.
244 VP 1959–60/264 (18.11.1959). The clause had been debated before the order and the first question after the order was 'That the clause to the end of paragraph (a) be agreed to' (thereafter 'That paragraph (b) be agreed to' etc.).
245 VP 1932–34/260 (23.5.1932), 332 (23.9.1932).
246 S.O. 150(c).
247 S.O. 149(a).
248 VP 1978–80/1210–13 (20.11.1979); VP 1993–96/2146 (7.6.1995).
249 VP 1974–75/193 (25.9.1974); VP 1993–96/2047–8 (10.5.1995).
250 VP 1983–84/689 (30.5.1984).

new clause may be out of order for many of the same reasons as an amendment (*see above*), and in particular will not be entertained if it:

- is beyond the scope of the bill;
- is inconsistent with clauses agreed to or substantially the same as a clause previously negatived; or
- should be moved as an amendment to an existing clause in the bill.

If more than one new clause is proposed to a bill, each is treated as a separate amendment. However, several proposed new clauses, which may comprise a new Part or Division, may be moved together by leave.[251] New Parts or Divisions may only be moved together by leave.

SCHEDULES

With the exception of schedules belonging to amending bills, schedules are taken in numerical order after the clauses, and treated in the same manner as a clause, the questions proposed being 'That the schedule (or 'Schedule 2', for example) be agreed to'. A schedule to a bill can be amended[252] or omitted and another schedule substituted.[253] When a schedule has been amended, the further question is put 'That the schedule, as amended, be agreed to'.[254]

In the case of amending bills— that is, a bill whose principal purpose is to amend an existing Act or Acts, where the schedules contain the amendments[255]—schedules are considered in their numerical order before the clauses, and items within a schedule are considered in their numerical order. Consecutive items which amend the same section of an Act are considered together, unless the House otherwise orders.[256] Amendments can be moved to individual items, items can be omitted, or omitted and other items substituted, and items can be inserted or added.[257] If items are taken separately or in blocks of consecutive items the question is put in the form 'That the item(s) be agreed to'.[258]

POSTPONED CLAUSES

Consideration of a clause may be postponed by a motion which may be debated.[259] Debate is limited to the question of postponement, and the bill or the clause may not be discussed. Postponement motions have been moved, for example, in relation to a clause,[260] part of a clause,[261] clauses which had been taken together by leave,[262] a clause and an amendment moved to the clause,[263] and a clause which had been amended.[264]

251 VP 1980–83/914 (6.5.1982); VP 1983–84/86, 91 (12.5.1983).

252 *See* for example VP 1974–75/227 (15.10.1974); VP 1993–96/2390 (20.9.1995)–1 for alteration of terms within a schedule; VP 1976–77/555 (8.12.1976) for an amendment proposing to add a Part at the end of a schedule.

253 VP 1956–57/199–200 (7.6.1956).

254 VP 1993–96/2342 (29.8.1995); VP 1996–98/321 (26.6.1996).

255 The majority of bills are now of this type.

256 S.O. 149(d)(iii). These special provisions for amending bills were inserted in 1997 following Procedure Committee recommendations in response to concerns that the then new drafting practice of putting amendments in schedules *(see* p. 348), in conjunction with the practice of taking schedules as a whole, had removed the right of Members to debate and vote on individual amendments. Standing Committee on Procedure, *Bills—consideration in detail: Review of the operation of standing order 266*. PP 190 (1996).

257 E.g. VP 1996–98/319–32 (26.6.1996), 453–7 (11.9.1996); VP 1998–2001/378–9 (10.3.1999).

258 E.g. VP 1996–98/3051 (28.5.1998).

259 VP 1962–63/28 (27.2.1962); H.R. Deb. (27.2.1962) 222–34. The usual consideration in detail speech time limits of 5 minutes apply.

260 VP 1974–75/583 (15.4.1975).

261 VP 1970–72/771 (13.10.1971).

262 VP 1970–72/975 (22.3.2972).

263 VP 1970–72/1294 (25.10.1972).

264 VP 1956–57/192 (6.6.1956).

The postponement may be specific, for example, 'until after clause 6'.[265] In relation to the Family Law Bill 1974 the House agreed to a procedural motion which, inter alia, postponed clauses 1 to 47 until after clause 48,[266] the clause that was attracting the attention of most Members. If not specific, postponed clauses are considered after schedules and before the title, or if there is a preamble, before the preamble.[267]

On occasions a motion has been moved that a clause be postponed 'as an instruction to the Government that . . .'[268] or 'so that the Government may redraft it to provide . . .'.[269] The proposed instruction was not recorded in the Votes and Proceedings.

PREAMBLE

When all clauses and schedules have been agreed to, the preamble is considered. A preamble may be debated and amended.[270] The questions proposed from the Chair are 'That the preamble be agreed to' and, where appropriate, 'That the preamble, as amended, be agreed to'.

TITLE

Where a bill is considered clause by clause, the long title is the last part of the bill to be considered. The title is amended[271] if a clause has been altered beyond the terms of a bill's title as read a second time, as every clause within the bill must come within the title of the bill.[272] The title may also be amended if a bill is amended in such a way as to reduce its scope.[273] When a title is amended, the Chair proposes the question 'That the title, as amended, be the title of the bill'. When the amendment of the title occurs in the Federation Chamber the amendment needs to be specially reported to the House.[274]

RECONSIDERATION OF PART OF BILL DURING DETAIL STAGE

Parts of the bill may be reconsidered (*see* page 381) while it is still being considered in detail, by leave (that is, if no Member present objects). A clause has been reconsidered, by leave, immediately after it has been agreed to,[275] shortly after the clause has been agreed to[276] and after the title has been agreed to.[277] A clause, previously amended, has been reconsidered, by leave, and further amended,[278] and a new clause previously inserted has been reconsidered, by leave.[279] Two clauses have been reconsidered together, by leave.[280]

265 VP 1970–72/975 (22.3.1972).
266 VP 1974–75/639–40 (15.5.1975).
267 S.O. 149(a).
268 H.R. Deb. (18.5.1956) 2269.
269 H.R. Deb. (18.5.1956) 2294.
270 VP 1929–31/929 (22.10.1931).
271 VP 1976–77/269 (18.8.1976).
272 S.O. 140(b).
273 VP 1996–98/258 (18.6.1996).
274 S.O. 150(d). E.g. VP 1976–77/270 (18.8.1976); VP 1993–96/1417, 1405 (19.10.1994).
275 VP 1976–77/289 (24.8.1976).
276 VP 1973–74/154 (8.5.1973).
277 VP 1974–75/676 (21.5.1975).
278 VP 1977/152 (26.5.1977).
279 VP 1974–75/690 (22.5.1975).
280 VP 1961/30 (22.3.1961).

Bill considered as a whole, or by parts

In the majority of instances leave is granted for the bill to be considered as a whole.[281] The Chair asks 'Is it the wish of the House to consider the bill as a whole'. If there is no dissentient voice, the Chair then proposes the question 'That the bill be agreed to'. Traditionally, if a clause was to be opposed, the question on that clause was put separately and the bill not taken as a whole. However, it may suit the convenience of the House for opposition to a clause to be treated as an amendment, and the bill taken as a whole.[282]

Amendments may be moved to any part of the bill when the bill is considered as a whole. As a general rule they are taken in the order in which they occur in the bill. However, amendments may also be moved in an order convenient to Members but which does not reflect the sequence of the bill, and leave is not necessary for this.[283]

In the case of more than one amendment, the amendments may, by leave, be moved together.[284] This course may be consistent with the objectives of taking the bill as a whole. Leave may also be given for amendments to be moved in groups, for example to allow them to be considered and debated in subject groupings rather than following the sequence of the bill.[285] Although Members may be willing to have groups of amendments moved together by leave, it is not always possible for this to be done in the way desired. An example would be where there were both government and opposition amendments in the same area, in which case the amendments would be taken, if possible, in a way which did not result in a decision on one amendment making the other redundant. When an amendment is made to a bill taken as a whole, the further question is proposed 'That the bill, as amended, be agreed to'. The motion 'That the question be put' on the bill as a whole has been used as a form of closure to curtail the debate.[286]

On occasions parts of the bill may be considered together, by leave. The Chair may be aware, because of circulated amendments or personal knowledge, that a Member wishes to move amendments to particular clauses, for example, clauses 10 and 19. If the House does not wish to consider the bill as a whole and have the Member move the amendments together, by leave, it may, for example, be willing to consider clauses 1 to 9 together, clause 10 (to which the Member may move an amendment), clauses 11 to 18 together, and then the remainder of the bill (at which stage the Member will move the second amendment). Schedules have been taken together,[287] the clauses and the schedule have been taken together,[288] and a bill has been considered by Parts (clause numbers shown).[289] In each instance leave was required.

On occasion, to allow debate on the bill as a whole to continue without interruption by divisions on amendments, after each amendment has been moved, the House has agreed to allow debate to continue on the bill as a whole, including amendments moved

281 S.O. 149(b).
282 E.g. H.R. Deb. (2.12.2004) 144.
283 E.g. H.R. Deb. (17.6.2004) 30752–63; VP 2004–07/454–5 (22.6.2005), 1005–8 (2.3.2006).
284 VP 1978–80/198 (4.5.1978) (opposition amendments and proposed new clause not agreed to); VP 1978–80/287 (2.6.1978) (government amendments made); VP 1996–98/194 (29.5.1996), 257 (18.6.1996); VP 1998–2001/379 (10.3.1999).
285 E.g. VP 2002–04/1256–7 (15.10.2003).
286 H.R. Deb. (16.10.2003) 21628.
287 E.g. VP 1956–57/198–200 (7.6.1956).
288 E.g. VP 1960–61/333 (8.12.1960).
289 E.g. VP 1948–49/268 (16.3.1949).

up to that point. At the conclusion of the consideration in detail stage the question has then been put on each amendment in the order in which it had been moved.[290]

Report stage (for bills considered by Federation Chamber)

If a bill has been considered in detail by the Federation Chamber, when the bill has been fully considered, the question is put 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question(s)'), as appropriate. After this question has been agreed to, a certified copy of the bill, together with schedules of any amendments made by the Federation Chamber and any questions which the Federation Chamber was unable to resolve, is provided for the Speaker to report to the House.[291] The Speaker reports the bill to the House at a time when other business is not before the House.[292] If a bill is reported from the Federation Chamber without amendment or unresolved question, the question is put immediately 'That the bill be agreed to'. No debate or amendment is allowed to this question.[293]

If a bill is reported with amendments or with questions which the Federation Chamber had been unable to resolve, the report may be considered immediately if copies of the amendments or unresolved questions are available to Members,[294] and this is the usual practice. Otherwise the standing orders provide that a future time shall be set for considering the report and copies of the amendments or unresolved questions must then be available. However, the report may still be considered at once by leave of the House, or, if leave is not granted, following the suspension of standing orders.[295]

When the report is considered, the House deals first with any unresolved questions[296] (these are generally proposed amendments to the bill, but unresolved second reading amendments are also possible). Separate questions, open to debate or amendment, are put on each unresolved matter, but by leave, unresolved questions may be taken together.[297] The House then deals with any amendments made by the Federation Chamber. A single question is put 'That the amendments made by the Federation Chamber be agreed to'. No debate or amendment to this question is permitted. No new amendments to the bill may be moved except if necessary as a consequence of the resolution by the House of any unresolved question. Finally, the question is put 'That the bill (or the bill, as amended) be agreed to'. Once again, no debate or amendment of this question is allowed.[298]

Reconsideration of bill before third reading

At any time before the moving of the third reading, a Member may move without notice that a bill be reconsidered in detail, in whole or in part, by the House.[299] In the days of the former committee of the whole this practice was known as recommittal—the bill being returned to the committee for reconsideration. Precedents relating to the

290 Such action was taken in relation to amendments to the Native Title Amendment Bill 1997 with the prior agreement of Members arranged by the Whips (such prior arrangement is advisable to avoid divisions on the postponement motions). H.R. Deb. (29.10.1997) 10011–36 10098–152; VP 1996–98/2213–18, 2227–69 (29.10.1997). *See also* VP 2004–07/806–7 (29.11.2005), 1918–22 (30.5.2007).

291 S.O. 198.

292 S.O. 152(a).

293 S.O. 153(a).

294 S.O. 152(b), e.g. VP 1996–98/467–9 (12.9.1996); VP 1998–2001/930–1 (30.9.1999).

295 Since the establishment of the Main Committee/Federation Chamber a contingent notice of motion has appeared on the Notice Paper to facilitate this, *see* 'Contingent notices' at page 391.

296 E.g. VP 1996–98/146 (22.5.1996).

297 E.g. VP 1993–96/1524–5 (14.11.1994).

298 S.O. 153(b), e.g. VP 1993–96/1286 (1.9.1994); VP 1998–2001/931 (30.9.1999).

299 S.O. 154; *see also* S.O. 150(e).

recommittal of bills, where appropriate, have continuing relevance to reconsideration. Reconsideration offers the House the opportunity to make further amendments, or to amend (or remove) amendments previously made. There is no limit on the number of times a bill may be reconsidered, and there are precedents for a bill being reconsidered a second,[300] a third[301] and a fourth time.[302] While the reconsideration (recommital) of a bill was not uncommon during the early years of the Parliament, more recently the procedure has fallen into disuse.[303]

The motion for reconsideration must be seconded if not moved by a Minister.[304] Motions have been moved to reconsider clauses to a certain extent,[305] for the reconsideration of certain amendments[306] or to enable further amendments to be moved.[307] Clauses can be reconsidered in any sequence which the House approves.[308] An amendment to alter the scope of reconsideration may be moved to the motion to reconsider—that is, by adding other clauses or schedules to those proposed to be reconsidered or by omitting certain clauses or schedules proposed to be reconsidered.[309] If a bill is ordered to be reconsidered without limitation, the entire bill is again considered in detail. A bill, or that part of the bill reconsidered, may be further amended.[310] In the case of a partial reconsideration, only so much of the bill as is specified in the motion for reconsideration may be considered.[311] Several bills which have been taken together have been reconsidered in order that an amendment could be moved to one of the bills.[312]

The motion for reconsideration may be debated[313] but debate is confined to the reasons for reconsideration. On the motion for reconsideration, details of a proposed amendment should not be discussed,[314] nor can the general principles of the bill and the detail of its clauses be debated.[315] A Member moving for reconsideration can give reasons but cannot revive earlier proceedings.[316] A Member who has moved for the reconsideration of a clause is in order in speaking to a motion to reconsider another clause moved by another Member, but is not in order in moving the reconsideration of a further clause as the Member has exhausted his or her right to speak.[317]

See also page 379 for reconsideration of parts of a bill during the consideration in detail stage.

300 VP 1917–19/83–4 (30.8.1917), 85–6 (5.9.1917); VP 1914–17/458 (22.5.1916), 464 (23.5.1916).
301 VP 1911/164 (7.12.1911), 199 (2) (19.12.1911); VP 1903/44 (2) (30.6.1903), 47 (1.7.1903).
302 VP 1901–02/150 (4.9.1901), 151 (5.9.1901), 166 (20.9.1901), 175 (26.9.1901).
303 For the most recent example *see* VP 1962–63/360–1 (6.12.1962).
304 H.R. Deb. (15.11.1973) 3459.
305 VP 1905/95 (27.9.1905).
306 VP 1906/114 (30.8.1906).
307 VP 1906/114 (30.8.1906).
308 H.R. Deb. (27.9.1905) 2836.
309 VP 1917–19/85–6 (5.9.1917).
310 VP 1917–19/84 (30.8.1917).
311 H.R. Deb. (27.9.1905) 2832.
312 VP 1962–63/360–1 (6.12.1962).
313 H.R. Deb. (8.11.1973) 3040–5.
314 H.R. Deb. (2.8.1907) 1379; H.R. Deb. (4.7.1923) 640.
315 H.R. Deb. (5.9.1917) 1661.
316 H.R. Deb. (31.3.1920) 1094.
317 H.R. Deb. (27.10.1909) 5070.

Third reading and final passage

After completion of the consideration in detail stage, or following agreement to the second reading if no detail stage has occurred, the House may grant leave for the motion for the third reading to be moved immediately, or a future sitting may be set for the motion.[318] The latter option is, however, rarely used in practice in order to minimise unnecessary delay. The procedure for moving the third reading is based on one of the following alternatives, in order of frequency:

- in the case of the detail stage being bypassed, the House grants leave for the third reading to be moved immediately after the second reading (*see* page 372);
- following the adoption by the House of a Federation Chamber report on a bill, leave is usually granted for the third reading to be moved immediately; or
- if leave is not granted, a Minister may move a contingent notice of motion to suspend standing orders to enable the third reading to be moved immediately (*see* 'Contingent notices' at page 391).

The motion moved on the third reading is 'That this bill be now read a third time'.[319] The motion may be debated,[320] although such debates are not common. The scope of debate is more restricted than at the second reading stage, being limited to the contents of the bill—that is, the matters contained in the clauses and schedules of the bill. It is not in order to re-open or repeat debate on matters discussed on the motion for the second reading or during the detail stage, and it has been held that the debate on the motion for the third reading is limited to the bill as agreed to by the House to that stage.[321] Clauses may not be referred to in detail in the third reading debate,[322] nor may matters already decided during the detail stage be alluded to.[323] The time limits are as for a debate not otherwise provided for—that is, 15 minutes for the mover and 10 minutes for other Members. In practice, the opportunity to speak at this time may be taken by a Member who for some reason has been unable to participate in earlier debate (perhaps because of a guillotine), or, unacceptably, by a Member attempting to continue earlier debate.

A reasoned amendment cannot be moved to the motion for the third reading.[324] The only amendment which may be moved to the motion for the third reading is to omit 'now' in order to insert 'not', which question, if carried, finally disposes of the bill.[325] If the amendment is defeated debate may then continue on the motion for the third reading. A third reading amendment is rare and one has never been agreed to by the House.

When the question on the third reading is agreed to, the bill is read a third time by the Clerk reading its long title.[326] At this point the bill has passed the House and no further

318 S.O. 155(a).

319 S.O. 155(a).

320 E.g. VP 1978–80/273 (31.5.1978), H.R. Deb. (31.5.1978) 2886–7; VP 1996–98/264 (19.6.1996); VP 1998–2001/710 (30.6.1999); H.R. Deb. (15.5.2002) 2176–80; H.R. Deb. (5.8.2004) 32288–90 (cognate bill); VP 2010–13/299 (10.2.2011) (private Member's bill), 906 (15.9.2011) (private Member's bill), 2303 (29.5.2013); VP 2013–16/1764 (30.11.2015).

321 H.R. Deb. (7.11.1935) 1418.

322 H.R. Deb. (3.12.1918) 8637.

323 H.R. Deb. (4.5.1960) 1381.

324 The Speaker ruled out of order a proposed amendment 'That all words after "That" be omitted with a view to inserting the following words in place thereof: "the Bill be postponed for six months in order that a referendum of the Australian people might be taken to determine the acceptability or otherwise of the measure" ', VP 1951–53/272 (27.2.1952). An attempt has been made to suspend standing orders to allow a Member to move a reasoned amendment at this stage, VP 1996–98/2839 (23.3.1998).

325 S.O. 155(b).

326 The 'reading' of the bill by the Clerk has been taken to be a necessary formality, H.R. Deb. (30.10.1913) 2789.

question may be put.[327] The bill, as soon as administratively possible, is then transmitted by message to the Senate seeking its concurrence (*see* page 397).

Rescission of third reading

The House has, on occasions, rescinded the third reading resolution. In 1945 standing orders were suspended to enable the rescission of the resolution relating to the third reading of the Australian National Airlines Bill, and to enable the third reading of the bill to be made an order of the day for a later hour. Subsequently a message from the Governor-General recommending an appropriation in connection with the bill was announced and the bill was read a third time.[328]

The vote on the third reading of the Constitution Alteration (Simultaneous Elections) Bill 1974, which did not attract an absolute majority as required by the Constitution, was rescinded following a suspension of standing orders. Due to a malfunction, the division bells had not rung for the full period and several Members had been prevented from participating in the division on the third reading. The question on the third reading was put again, and passed by an absolute majority.[329]

The resolution on the third reading of the National Health Bill 1974 [No. 2], which had been passed on the voices, was rescinded, by leave, immediately following the third reading, and the question put again, as opposition Members desired a division on the question.[330]

The second and third readings of the Customs Administration (Transitional Provisions and Consequential Amendments) Bill 1986 were rescinded by leave, following the realisation that the second reading had not been moved, and the order of the day was called on again.[331]

The recorded decisions of the committee of the whole and the House on the committee (detail) stage, report and third reading of the Copyright Amendment Bill 1988 were rescinded on motion following the suspension of standing orders, a misunderstanding having occurred during the previous consideration.[332]

The recorded decision of the House on the third reading of the Taxation Laws Amendment Bill (No. 5) 1994 was rescinded on motion following the suspension of standing orders. The bill was then considered in detail and amended, and the question on the third reading put again. At the previous sitting leave had been given for the third reading to be moved immediately (i.e. omitting the detail stage) and intended government amendments had not been moved.[333] (*See also* 'Rescission of agreement to Senate amendments' in Chapter on 'Senate amendments and requests'.)

327 S.O. 155(c).
328 VP 1945–46/213 (1.8.1945).
329 VP 1974/28–9 (6.3.1974); H.R. Deb. (6.3.1974) 131–5.
330 VP 1974–75/467 (19.2.1975); H.R. Deb. (19.2.1975) 474.
331 VP 1985–87/893 (30.4.1986); H.R. Deb. (30.4.1986) 2774.
332 VP 1987–90/925 (24.11.1988).
333 VP 1993–96/1803–4 (8.2.1995).

PROCEDURAL VARIATIONS FOR DIFFERENT CATEGORIES OF BILLS

Private Members' bills

Private Members' bills may be taken during the periods on Mondays in the House and Federation Chamber reserved for committee and private Members' business. Bills are given priority over other private Member's business.[334] The mover of the second reading of a private Member's bill may speak to the second reading for ten minutes at the time of the bill's presentation, after which debate is automatically adjourned. The allocation of time for the resumption of the debate on a subsequent private Members' day is subject to the determination of the Selection Committee. When the debate is resumed the mover may speak in continuation for a further 5 minutes, if he or she so wishes. If the second reading is agreed to by the House, further consideration of the bill is given priority over other private Members' business.[335] A private Member's bill may be considered during time normally reserved for government business following the suspension of standing orders. This has been the usual practice when Private Members' bills are voted on. (For more detail *see* 'Private Members' bills in Chapter on 'Non-government business'.)

Constitution alteration bills

The passage of a bill proposing to alter the Constitution is the same as for an ordinary bill, with the exception that the third reading must be agreed to by an absolute majority. Such a bill may be initiated in either House.

Absolute majority

Section 128 of the Constitution provides that a bill proposing to alter the Constitution must be passed by both Houses, or by one House in certain circumstances (*see below*), by an absolute majority. If, on the vote for the third reading, no division is called for and there is no dissentient voice, the Speaker draws the attention of the House to the constitutional requirement that the bill must be passed by an absolute majority and directs that the bells be rung. When the bells have ceased ringing the Speaker again states the question and, if no division is called for and there is no dissentient voice, the Speaker directs that the names of those Members present agreeing to the third reading be recorded by the tellers in order to establish that the third reading has been carried by an absolute majority.[336] When only two Members have indicated they would vote 'No' after the doors had been locked, the Speaker has directed the names of those voting 'Aye' and 'No' be recorded, despite the fact that under the usual provisions the division would not have been proceeded with.[337]

If a bill initiated in the House is amended by the Senate and that amendment is agreed to by the House, thus causing a change to the bill, the question on the amendment must also be agreed to by the House by an absolute majority.[338] It follows that an absolute majority is not required in the case of the House disagreeing to an amendment of the Senate, as there is no change to the bill as agreed to by the House.[339]

334 S.O. 41(b).
335 S.O. 41(d).
336 E.g. VP 1976–77/597–600 (17.2.1977).
337 VP 2010–13/2375 (5.6.2013).
338 E.g. VP 1917–19/556 (10.10.1919); VP 1998–2001/770–1 (12.8.1999).
339 VP 1973–74/609–10 (5.12.1973); VP 1998–2001/768–9 (12.8.1999).

There was some uncertainty in the past as to whether a bill proposing to alter the Constitution required an absolute majority on the second reading as well as on the third reading.[340] In 1965 the Attorney-General expressed the following opinion:

> My own view is that the Second Reading of a Bill is no more than the process through which the Bill passes before it reaches the stage at which the House can decide whether or not to pass it; the passing of the Bill occurs when the question on the Third Reading is agreed to. The fact that amendments can be made in the Committee [detail] stage after the Second Reading, and that the Bill can be refused a Third Reading, or re-committed before the Third Reading is agreed to, confirms this view. I am accordingly of the opinion that an absolute majority is not required at the Second Reading stage and that there is no need to record such a majority at that stage.[341]

This reasoning is supported by standing order 155(c), which states 'After the third reading the bill has passed the House and no further question may be put'. In recent years the practice has been to establish the existence of an absolute majority only on the third reading—that is, the final act in the passage of the bill through the House.

If a bill does not receive an absolute majority on the third reading, it is laid aside immediately and cannot be revived during the same session.[342] However, in the case of the Constitution Alteration (Simultaneous Elections) Bill 1974, the bill failed to gain an absolute majority on the third reading because of a malfunction of the division bells. On the same day the House agreed to a suspension of standing orders to enable the vote to be rescinded and taken again. The question 'That this bill be now read a third time' was then put again and, on division, was agreed to by an absolute majority.[343]

Disagreements between the Houses

Section 128 of the Constitution provides for the situation where there is a deadlock between the Houses on constitution alteration bills. It is possible under certain conditions for a constitution alteration bill twice passed by one House to be submitted to referendum (and hence, if approved, assented to and enacted) even though not passed by the other House—*see* 'Constitution alteration bills passed by one House only' in the Chapter on 'The Parliament and the role of the House'.

Senate bills

The form of bills introduced into the Senate is governed by the limitations, imposed on the Senate by the Constitution, that a proposed law appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate[344] (*see* Chapter on 'Financial legislation'). Bills received from the Senate are therefore either ordinary bills or constitution alteration bills. Only a minority of bills introduced into the House (nowadays generally less than 5%) are in fact received from the Senate.

Introduction and first reading

A bill introduced into and passed by the Senate is conveyed to the House under cover of a message transmitting the bill for concurrence. The message takes the following form:

> The Senate has passed a Bill for "An Act [remainder of long title]", and transmits it to the House of Representatives for its concurrence.

If the House is sitting, the message is delivered to the Chamber by the Usher of the Black Rod where it is received at the Bar by the Serjeant on duty and taken to the Clerk

340 H.R. Deb. (9–10.4.1946) 1216–17.
341 Opinion of Attorney-General, dated 17 August 1965.
342 S.O. 173; J 1974/55 (14.3.1974).
343 VP 1974/19, 26–9 (6.3.1974).
344 Constitution, s. 53.

at the Table. If the House is not sitting, the message is delivered to the Clerk[345] or other staff.

Inside the Senate message is a copy of the bill bearing the certificate of the Clerk of the Senate:

> THIS bill originated in the Senate; and, having this day passed, is now ready for presentation to the House of Representatives for its concurrence.

At a convenient time in the day's proceedings the Speaker reads the terms of the message to the House. The action of reading the message in effect presents the bill to the House. The bill is then read a first time without any question being put[346] and, to the necessary extent, then proceeds as if it was a House bill[347] (that is, ordinary bill).

A message has been received from the Senate asking the House to consider immediately a bill earlier transmitted from the Senate. Consideration was not made an order of the day.[348]

The explanatory memorandum for a Senate bill is not presented when the bill is introduced, but immediately prior to the moving of the second reading, whenever that occurs.

Subsequent proceedings

If the second reading of a Senate bill is to be moved immediately after its first reading, copies of the bill must be available for distribution in the Chamber. Stocks of the bill are usually received from the Senate when the message transmitting the bill is sent to the House.[349] Leave is required to move the second reading immediately should copies of the bill not be available.[350] When the second reading is moved immediately after the first reading, debate must be adjourned after the Minister's second reading speech.[351] When copies of the bill are available, it may be the wish of the House that the second reading be moved at a later hour rather than immediately—in this case the debate must also be adjourned after the Minister's speech unless leave is obtained for it to proceed.

In most cases the second reading of a Senate bill is not moved immediately after its first reading (or at a later hour), and instead a motion is moved that the second reading be made an order of the day for the next sitting. The order of the day for the second reading may be referred to the Federation Chamber. When, on a future sitting day, the order of the day is called on (either in the House or the Federation Chamber), the second reading is moved and the second reading speech made. The second reading debate then generally proceeds directly—the mandatory provision requiring the adjournment of the debate after the Minister's speech does not apply in these circumstances.

It is usual for a contingent notice to be on the Notice Paper enabling a Minister to move the suspension of standing orders to permit a bill received from the Senate to be passed through all its stages without delay (*see* page 392).

345 S.O. 261.
346 S.O. 141.
347 S.O. 166.
348 VP 1998–2001/1343 (3.4.2000).
349 E.g. VP 1993–96/138 (27.5.1993).
350 E.g. VP 1974–75/383 (28.11.1974).
351 S.O. 142.

In the case of a Senate bill for which a private Member has responsibility for carriage, subsequent proceedings follow the procedures for private Members' bills (*see* Chapter on 'Non-government business').

If the bill is agreed to and not amended by the House, the Clerk's certificate is attached to the top right hand corner stating that 'This Bill has been agreed to by the House of Representatives without amendment'. It is returned to the Senate by message in the following form:

> The House of Representatives returns to the Senate the Bill for an Act [remainder of long title], and acquaints the Senate that the House of Representatives has agreed to the Bill without amendment.

When a Senate bill has been amended by the House, the bill is returned with a schedule of amendments certified by the Clerk.[352]

The further procedural steps involved when the Senate returns the bill with any of the amendments made by the House disagreed to, or further amendments made, are covered in the Chapter on 'Senate amendments and requests'.

PROCEDURES TO SPEED THE PASSAGE OF BILLS

There is no set period of time for the length of debate on any stage of a bill during its passage through the House. The length of time for debate on each stage of a bill's passage may be influenced by such factors as:

- its subject matter—whether the bill is of a controversial nature, whether it has the general agreement of the House, or whether it is of a 'machinery' kind;
- the nature of the Government's legislative program;
- the urgency connected with the passage of the bill;
- agreement reached between Government and Opposition; and
- the number of Members from each side who wish to speak on the bill.

When time for government business is under pressure, negotiations behind the scenes between the Leader of the House and Manager of Opposition Business or party whips and other Members may result in agreements regarding the number of speakers on particular bills or the length of Members' speeches. Such arrangements are not uncommon, although they are officially unknown to the Chair and cannot be enforced.

Cognate debate of related bills can be considered to be routine, and the granting of leave to avoid the usual delay between stages is very common. The other ways of speeding the passage of legislation outlined below involve the Government using its majority to limit debate or to impose a timetable.

Cognate second reading debate

When there are related bills before the House, it frequently suits the convenience of the House, by means of the cognate debate procedure, to have a general second reading debate on the bills as a group rather than a series of separate debates on the individual bills. A proposal for a cognate debate is usually put to the House by the Chair when the first bill of the group is called on.[353] If there is no objection[354] the debate on the second reading of the first bill is then permitted to cover the other related bills, and no debate (usually) occurs when the questions on the second reading of the subsequent bills are

352 S.O. 167.

353 The bills will usually be already grouped on the Daily Program following programming discussions between the Government and Opposition.

354 Occasionally there is objection, e.g. H.R. Deb. (29.11.2016) 4716.

put. Apart from this, normal procedures apply—the bills are taken in turn with separate questions put as required at each stage of each bill. If a Member wishes to move a second reading amendment to a bill encompassed by a cognate debate, other than to the first bill, the amendment may only be moved when the relevant order of the day for the later bill is called on.[355] Cognate debate is confined to the second reading stage. A separate detail stage, if required, occurs for each bill.

The House has allowed the subject matter of 16 bills to be debated on the motion for the second reading of one of those bills.[356] A group of bills relating to different subjects, but all Budget measures, has been debated cognately.[357] In 2004 and subsequent years the main appropriation bills were debated cognately in the Budget debate with additional appropriation bills (Nos 5 and 6) of the previous financial year.[358] Between 1994 and 1996 standing orders provided formal procedures for the cognate debate of related bills.[359] The traditional informal arrangements were resumed after the new provisions were found to be unduly prescriptive.

The normal cognate debate procedure operates, in effect, by leave. However, from time to time the House has ordered a cognate debate to occur. In the case of bills this has been done in recent years by means of 'debate management motions' following suspension of standing orders, as outlined at page 392. The Selection Committee has provided for cognate debate of private Members' bills.[360]

Bills considered together

On occasion, to meet the convenience of the House, standing orders are suspended to enable closely related bills to be considered together. A motion for the suspension of the standing orders may, depending on the particular circumstances, provide as follows:

- For:

(a) a number of bills to be presented and read a first time together;

(b) one motion being moved without delay and one question being put in regard to, respectively, the second readings, the detail stage, and the third readings, of all the bills together; and (if appropriate)

(c) messages from the Governor-General recommending appropriations for some of the bills to be announced together.[361]

This procedure facilitates consideration by the House of, for example, related taxation bills such as the Wool Tax (Nos 1 to 5) Amendment Bills,[362] where, because of the constitutional requirement that laws imposing taxation shall deal with one subject of taxation only,[363] a number of separate but related bills are presented. Such a motion to suspend standing orders used to be moved each session in relation to sales tax bills.[364]

355 E.g. VP 2002–04/1144 (9.9.2003), H.R. Deb. (9.9.2003) 19595. The mover of such an amendment to a later bill would be entitled to then continue to speak for his or her full speaking time, although it would be within the spirit of the cognate debate procedure not to do so. Alternatively, if the contents of the bills are closely related, it may be possible, and more convenient, to move an equivalent amendment to the first bill in the group instead.

356 H.R. Deb. (28.9.1988) 1009.

357 H.R. Deb. (23.5.2001) 26841.

358 H.R. Deb. (24.5.2004) 28852.

359 VP 1993–96/762 (10.2.1994), former S.O. 217C.

360 E.g. H.R. Deb. (24.8.2011) 9218.

361 VP 1976–77/433 (3.11.1976).

362 VP 1993–96/28 (5.5.1993).

363 Constitution, s. 55.

364 VP 1987–90/613 (3.6.1988); H.R. Deb. (3.6.1988) 3252; VP 1993–96/26–7 (5.5.1993).

- For the calling on together of several orders of the day for the resumption of debate on the motion for the second reading of a number of bills, with provision that they may be taken through their remaining stages together.
- For the calling on together of several orders of the day for resumption of debate on the motion for the second reading of a number of bills, with provision for:

(a) a motion being moved 'That the bills be now passed'; and

(b) messages from the Governor-General recommending appropriations in respect of some of the bills being then announced together.[365]

In such a case as the group of 32 bills dealing with decimal currency[366] and in other cases where the passing of a number of related bills is a formal matter, this form of procedure is of great advantage in saving the time of the House.

A suspension of standing orders to enable related bills to be guillotined in the one motion has also included provisions to allow groups of the bills to be taken together.[367]

In 2011 the motion to suspend standing orders to provide for a package of 19 Clean Energy bills to be taken together also set time limits for the completion of the second reading and consideration in detail stages (*see* 'Debate management motions' at page 392). While the 19 bills were to be debated concurrently, the motion provided for a single question to be put at each stage in relation to 18 of the bills together, and questions on the remaining bill to be put separately.[368] On another occasion in respect of a package of 11 Minerals Resource Rent Tax bills, the motion to suspend standing orders allowed the resumption of debate on the second readings of the bills to be called on together and the second readings to be debated together—providing in effect a cognate debate (*see* page 388) after which separate questions were put on the second readings[369] (and later stages) of each bill.

All stages without delay

On occasions, the House may consider it expedient to pass a bill through all its stages without delay, either by granting leave to continue consideration at each stage when consideration would normally be adjourned until the next sitting day, or by suspension of the standing orders to enable its immediate passage.

By leave at each stage

When it is felt necessary or desirable to proceed immediately with a bill which would normally require introduction on notice, a Minister (or Parliamentary Secretary) may ask leave of the House to present it. If there is no dissentient voice, the Minister presents the bill. If copies of the bill are available, the second reading may then be moved.[370] If copies of the bill are not available, the Minister must obtain the leave of the House to move the second reading immediately.[371] The second reading debate may then ensue, by leave. Where a bill has not required notice, or has been introduced on notice but it is desired for it to proceed immediately, leave may also be given for debate to ensue.[372]

365 VP 1970–72/1033 (27.4.1972).
366 VP 1964–66/472 (25.11.1965), 510 (8.12.1965).
367 VP 1998–2001/206 (9.12.1998) (16 'A New Tax System' bills).
368 VP 2010–13/884–5 (13.9.2011). Similar arrangements were made in 2013 for a package of bills introduced to repeal this legislation, VP 2013–16/91–2 (18.11.2013).
369 VP 2010–13/1033 (2.11.2011). However, during the second reading debate the question before the House was 'That the bills be now read a second time', VP 2010–13/1051 (3.11.2011), 1082–1114 (22.11.2011).
370 E.g. VP 1993–96/118 (26.5.1993).
371 VP 1974–75/383 (28.11.1974) (Senate bill).
372 VP 2010–13/2303 (29.5.2013).

At the conclusion of the debate and any proceedings immediately following the second reading, the House may grant leave for the third reading to be moved immediately.[373] Alternatively, after the detail stage has been completed, the remaining stages may proceed immediately, with the leave of the House.[374] A recent example of a bill passing each stage by leave was the Migration Amendment (Regional Processing Arrangements) Bill 2015.[375]

Following suspension of standing orders

When it is wished to proceed with a bill as a matter of urgency, but it is not considered desirable or expedient to seek leave at the appropriate stages, or leave has been sought and refused,[376] the standing orders may be suspended with the concurrence of an absolute majority if the suspension is moved without notice, or a simple majority if moved on notice, to enable the introduction and passage of a bill through all its stages without delay, or for a bill already before the House to proceed through its remaining stages without delay. Once the standing orders have been suspended, leave is not necessary to proceed to the various stages of the bill.[377]

CONTINGENT NOTICES

It is usual for a set of contingent notices for the suspension of standing orders to be on the Notice Paper, to avoid the need for an absolute majority in the circumstances above.

Several contingent notices for the purpose of facilitating the progress of legislation are normally given in the first week of each session. In the 45th Parliament these were:

> *Contingent on the motion for the second reading of any bill being moved*: Minister to move—That so much of the standing orders be suspended as would prevent the resumption of debate on the motion that the bill be read a second time being made an order of the day for a later hour.[378]

This contingent notice enables a motion to be moved to bypass the standing order requirement that, at the conclusion of the Minister's second reading speech, debate on the question for the second reading must be adjourned to a future sitting.

> *Contingent on any report relating to a bill being received from the Federation Chamber*: Minister to move—That so much of the standing orders be suspended as would prevent the remaining stages being passed without delay.[379]

This contingent notice covers the situation where a bill is reported from the Federation Chamber with amendments or unresolved questions and copies of the amendments or unresolved questions are not available for circulation to Members. In such circumstances the standing orders provide that a future time shall be set for considering the report.

> *Contingent on any bill being agreed to at the conclusion of the consideration in detail stage*: Minister to move—That so much of the standing orders be suspended as would prevent the motion for the third reading being moved without delay.[380]

> *Contingent on the second reading of a bill being agreed to and the Speaker having announced any message from the Governor-General under standing order 147*: Minister to move—That so much of the standing orders be suspended as would prevent the motion for the third reading being moved without delay.[381]

373 E.g. VP 1976–77/492 (18.11.1976).
374 E.g. VP 1974–75/424–5 (5.12.1974), 536 (5.3.1975).
375 VP 2013–16/1449 (24.6.2016).
376 VP 1977/336 (19.10.1977).
377 E.g. VP 1978–80/365–6 (23.8.1978).
378 E.g. VP 1985–87/1071 (20.8.1986) (earlier form of the contingent notice, moved after the Minister's second reading speech).
379 E.g. VP 1985–87/1547 (25.3.1987) (report from committee of whole).
380 E.g. VP 2004–07/339 (25.5.2005), 410 (15.6.2005). *Also* VP 1998–2001/2678 (27.9.2001); VP 2010–13/1427–8 (9.5.2012) (cases where the bills were not considered in detail).
381 E.g. VP 2013–16/1853 (4.2.2016); VP 2016–18/559 (16.2.2017).

These contingent notices are intended to overcome the situation where leave is not granted to move a motion for the third reading to be moved immediately after the consideration in detail stage, or after the second reading when no consideration in detail has occurred.

> *Contingent on any message being received from the Senate transmitting any bill for concurrence*: Minister to move—That so much of the standing orders be suspended as would prevent the bill being passed through all its stages without delay.[382]

This contingent notice facilitates the speedy passage of a Senate bill without any of the normal delays between stages provided by the standing orders.

Any Minister or Parliamentary Secretary and the Chief Government Whip may move a motion pursuant to one of these contingent notices; it is not necessary for the motion to be moved by the Minister who lodged the notice.

Debate management motions

Standing orders may be suspended to enable the introduction and passage of a bill through all stages without delay by a specified time,[383] to limit the duration of particular stages,[384] or to limit the number of speakers.[385] A motion to suspend standing orders for this purpose is, in effect, a kind of guillotine.

In recent Parliaments the Leader of the House has tended to use such motions (on notice) in preference to the less flexible formal guillotine procedure outlined below, which requires two or three separate motions to achieve the same end—that is, suspension of standing orders (if more than one bill), declaration of urgency and allotment of time.

In March 2014 motions for the 'suspension of standing or other orders on notice relating to the programming of government business' (quickly becoming referred to by the Government as 'debate management motions'), were for the first time recognised in the standing orders. Specific time limits are provided: whole debate 25 minutes, mover 15 minutes, Member next speaking 10 minutes, any other Member 5 minutes.[386]

As well as limiting time, motions of this nature have imposed other procedural variations in order to streamline proceedings—for example, to provide for bills to be debated cognately,[387] or to be taken together (*see* page 389).[388] Another variation has been to provide for bills to be taken cognately and, at the conclusion of the second reading debate on the first bill, for questions on the remaining stages (of each bill) to be put without delay and without amendment or debate.[389] Such motions commonly include a provision that any variations to the arrangements outlined are to be made only by a motion moved by a Minister.[390]

382 E.g. VP 1993–96/92 (13.5.1993), H.R. Deb. (13.5.1993) 892–4.
383 E.g. VP 1998–2001/752 (11.8.1999); VP 2002–04/273 (20.6.2002), 1379 (4.12.2003).
384 E.g. VP 2004–07/803 (29.11.2005), 849 (7.12.2005), 1218 (19.6.2006), 1915 (30.5.2007); VP 2013–16/942 (29.10.2014).
385 VP 2008–10/868–9 (12.2.09).
386 S.O. 1; VP 2013–16/391 (19.3.2014). Previously described as 'programming motions'.
387 E.g. VP 2004–07/821 (1.12.2005).
388 E.g. VP 2010–13/884–5 (13.9.2011).
389 E.g. VP 2008–10/827 (4.2.2009). A similar motion providing for cognate debate of Appropriation Bills has also suspended the operation of S.O. 143(b) (referral to committee), VP 2010–13/1412–3 (8.5.2012).
390 E.g. amendment to debate management motion (on notice) VP 2013–16/585 (19.6.2014); without notice VP 2013–16/664 (26.6.2014).

Bills declared urgent (guillotine)

Before the routine use of debate management motions the Government was able to resort to the use of the procedure for the limitation of debate (commonly described as the 'guillotine'), prescribed in detail by standing orders 82–85. A guillotine was usually put in place prior to the commencement of the debate it proposed to limit. However, if applied to one bill only, it could be applied during consideration of the bill.

The guillotine procedure was introduced to the House in 1918.[391] Statistics for the number of bills declared urgent each year since 1918 are given at Appendix 17. It can be seen that this figure increased considerably, to a record of 132 bills in 1992. The increase was attributed by Governments to the imposition from 1986 of Senate deadlines for the receipt of legislation from the House.[392]

The use of the guillotine declined significantly after the provision of increased debating time with the establishment of the Main Committee (later Federation Chamber).[393] Another contributing factor to the decline in the 37th Parliament was that, with the introduction of three sitting periods each year instead of two, the Government could introduce bills during one period with the expectation that they would not pass until the next. As noted above, in more recent Parliaments the formal guillotine procedure provided by standing orders 82–85 of declaring bills urgent and allotting time has been largely superseded by debate management motions, which in effect impose a guillotine by other means (*see* page 392).[394]

The preparation of the documentation necessary for use in the Chamber for the process of declaring bills urgent and allotting time and their subsequent passage required great care and could be very time-consuming. Also, because of the desirability of giving Members reasonable notice of government intentions in such matters, it was imperative that detailed advice of such intentions be given well in advance.

The guillotine may not be moved in the Federation Chamber, but, having been agreed to in the House, may be applied to bills considered in the Federation Chamber. However, because of the delay involved in moving business to and from the Federation Chamber, it is likely that in normal circumstances bills needing urgent consideration would be taken in the House.

In 2016 the Procedure Committee recognised that now that debate management motions had become established practice, it seemed unlikely that the existing guillotine procedures in the standing orders would be used again. The committee suggested that rather than omitting the whole section in the standing orders 'Debate of urgent matters', or allowing it to remain but in effect be redundant, it might be preferable to amend the section to recognise the use of debate management motions.[395]

Details of the process for setting in place a guillotine procedure are described in previous editions.

391 H.R. Deb. (4.10.1918) 6682–5; H.R. Deb. (9.10.1918) 6715–53; H.R. Deb. (16.10.1918) 6967–78. Greater detail on the history of the procedure appears in earlier editions.

392 H.R. Deb. (21.11.1989) 2558–64.

393 H.R. Deb. (9.11.1994) 2950.

394 The most recent declaration of urgency occurred in 2006, VP 2004–07/1556–7 (2.11.2006). Statistics in Appendix 17 for bills guillotined also include bills where time has been limited by means of such debate management motions.

395 Standing Committee on Procedure, *Maintenance of the Standing Orders*, April 2016, p. 26; *and see* Appendix C, pp. 39–40, for the committee's draft rewrite of S.O.s 82–85.

DIVISION OF A BILL

The House has only once divided a bill. In August 2002 the Research Involving Embryos and Prohibition of Human Cloning Bill 2002 was divided into two bills—the Prohibition of Human Cloning Bill 2002, and the Research Involving Embryos Bill 2002. As the standing orders make no provision for the division of a bill, a motion was first moved, following a statement by the Speaker, to suspend standing orders and to specify the necessary procedural arrangements.[396] This motion was extensively debated and agreed to on division. Pursuant to the procedures thus adopted, after the conclusion of the second reading debate on the original bill, instead of the question on the second reading, the question 'That the bill be divided into . . . (contents of each bill specified)' was put to the House.[397] This question having been agreed to, separate questions (without further debate) were put on the second reading of the two new bills. Further proceedings on each of the bills followed the normal course. A call for the division of a bill may be incorporated in a second reading amendment.[398]

The House has taken the position that the division of a bill by the House in which it did not originate is not desirable, and has not accepted Senate attempts to divide House bills—*see* 'Division of a House bill by the Senate' in the Chapter on 'Senate amendments and requests'.

LAPSED BILLS

When the House is dissolved or prorogued all proceedings come to an end and all bills on the Notice Paper lapse. If it is desired to proceed with a bill that has lapsed following a dissolution, a new bill must be introduced, as there is no provision for proceedings to be carried over from Parliament to Parliament. However, both Houses have provisions for the resumption of business that has lapsed due to a prorogation of Parliament.[399]

Any bill which lapses by reason of a prorogation before it has reached its final stage may be proceeded with in the next session at the stage it had previously reached, provided that a periodical election for the Senate or a general election has not taken place between two such sessions. (The proviso in relation to a general election is necessary because on occasions the Parliament has been prorogued prior to the House being dissolved for the purpose of an election.) A further proviso is that the House in which the bill originated must agree to the resumption of proceedings. The procedure is as follows:

- If the bill is in the possession of the House in which it originated and has either not been sent to the other House[400] or, if it has been sent, has been returned by message,[401] it may be proceeded with by a resolution of the originating House, restoring it to the Notice Paper. The stage which the bill had reached at prorogation may be made an order of the day for the next sitting[402] or for a specified future day.[403] Speaker Holder, in a private ruling, held that a bill cannot be proceeded with on the day of the resolution to restore, as it must first be

396 VP 2002–04/383 (29.8.2002); H.R. Deb. (29.8.2002) 6115–6.
397 VP 2002–04/386 (29.8.2002); H.R. Deb. (29.8.2002) 6196–7.
398 E.g. VP 2004–07/1983 (20.6.2007).
399 S.O. 174; Senate S.O. 136. *See* Ch. on 'The parliamentary calendar' for the effect of prorogation and dissolution.
400 E.g. VP 1974/32 (7.3.1974); VP 2016/34–36 (19.4.2016); VP 2016/55 (2.5.2016).
401 E.g. VP 1905/21 (28.7.1905), bill lapsed at the stage of consideration in committee of Senate amendments.
402 VP 1974/32 (7.3.1974); NP 4 (12.3.1974) 110.
403 VP 1908/17 (24.9.1908).

restored to and printed on the Notice Paper.[404] More recently, bills have been proceeded with immediately after the House has agreed to a motion that the proceedings be resumed immediately at the point where they were interrupted.[405]

- If the bill is in the possession of the House in which it did not originate, it may be proceeded with by resolution of the House in which it is, restoring it to the Notice Paper, if a message has been received from the originating House requesting resumption of consideration.[406] The House may agree to a single motion requesting the Senate to resume consideration of multiple bills, with the proviso that the House's request be conveyed to the Senate in a separate message for each bill.[407] The House orders consideration of messages requesting resumption of consideration to be made an order of the day for the next sitting (the most common practice) or for a specified future day. In the case of a private Senator's bill, if the motion for the consideration of the message is moved by a private Member, the bill is restored to the Notice Paper under Private Members' Business.[408]

Bills appropriating revenue and moneys are deserving of special consideration in this context. The Constitution provides:[409]

> A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

On occasions when the House has agreed to resume consideration of a lapsed bill appropriating revenue or moneys which, of constitutional necessity, originated in the House, and in respect of which a message from the Governor-General recommending an appropriation had been announced in the previous session, a new message is announced.[410] This has occurred before the motion to resume proceedings was moved,[411] and immediately after the motion to restore was agreed to.[412] A new message is also announced when the House requests the Senate to resume consideration of a House bill involving an appropriation. In these cases the message has been announced prior to the moving of the motion requesting the Senate to resume consideration of the bill.[413] Senate requests for resumption of consideration do not relate to appropriation bills (or taxation bills) as these are bills which the Senate may not originate.

Motions to resume proceedings on bills interrupted by prorogation and motions to request the Senate to resume consideration may be debated. Any bill so restored to the Notice Paper is proceeded with in both Houses as if its passage had not been interrupted by a prorogation and, if finally passed, is presented to the Governor-General for assent. If the House in which the bill originated does not ask for the resumption of proceedings, the bill may be reintroduced.[414]

404 VP 1908/12 (22.9.1908); NP 3 (22.9.1908) 12.
405 VP 2016/34–36 (19.4.2016), following suspension of standing orders; VP 2016/55 (2.5.2016), motion moved by leave.
406 E.g. House request to Senate VP 1974/32 (7.3.1974); VP 2016/47–8 (2.5.2016). Senate request to House VP 1974/45 (12.3.1974); VP 2016/51 (2.5.2016).
407 E.g. VP 2016/47 (2.5.2016), 13 bills.
408 E.g. VP 2016/51 (2.5.2016).
409 Constitution, s. 56.
410 VP 1905/18 (27.7.1905); VP 1908/33 (6.10.1908).
411 VP 1905/21 (28.7.1905).
412 VP 1908/33 (6.10.1908).
413 VP 2016/7–8 (18.4.2016), 1 bill; 47 (2.5.2016), 4 bills. There were no such cases prior to 2016 (2nd session of the 44th Parliament).
414 S.O. 174(d).

In 1990 the Senate, following suspension of its standing orders, sent a message requesting the House to resume the consideration of a bill which had lapsed in the House at the dissolution of the previous Parliament. The House returned a message to the Senate to the effect that the request was irregular in that it requested action prevented by the standing orders of the House and accepted parliamentary practice, and suggesting that the Senate should introduce the bill again and transmit it to the House in accordance with normal procedures. The Senate subsequently acted as suggested.[415]

Bills lapsed because of lack of quorum

Proceedings on bills (or other business) adjourned because of a lack of quorum are regarded as having lapsed. Proceedings adjourned by a count out may be resumed at a later sitting, on motion moved on notice, at the point where they were interrupted.[416]

ADMINISTRATIVE ARRANGEMENTS

Printing and distribution

Once a government bill has been drafted and approved for presentation to Parliament the Office of Parliamentary Counsel orders the printing of copies of the bill which are forwarded to the appropriate parliamentary staff. A bill is kept under embargo until it is introduced, when the custody of copies and the authority to print passes to the Clerk of the House while the bill is before the House and to the Clerk of the Senate while the bill is before the Senate.

The role of staff of the House in the distribution of bills was recognised early in the history of the House. In 1901 Speaker Holder drew the attention of Members to the fact that copies of a circulated bill had not passed through the hands of officers of the House, and expressed the view that it would be well in the future if the distribution of bills took place through the recognised channel. Prime Minister Barton stated that he would take particular care that in future all necessary distribution was done through the officers of the House. A few days later the Speaker repeated that the distribution of bills was a matter for the officers of the House, and one for which they accepted full responsibility.[417]

Introduced copy

A Minister or Parliamentary Secretary on presenting a bill hands a signed copy to the Clerk at the Table. The title of the responsible Minister's portfolio is shown on the first page of the bill. If there are any typographical errors in this copy, the errors are corrected by the Office of Parliamentary Counsel and initialled in the margin of the bill by the Minister (or Parliamentary Secretary). Similarly, private Members sign and present a copy of bills they introduce and initial any necessary corrections.[418] All future prints of the bill are based on this introduction copy. Copies of a bill are circulated in the Chamber immediately after presentation.

415 VP 1990–93/172 (11.9.1990), 196 (19.9.1990).

416 S.O. 59; for example of bill so resumed *see* VP 1993–96/2360–2 (31.8.1995) (motion moved by leave).

417 H.R. Deb. (19.6.1901) 1247; H.R. Deb. (26.6.1901) 1618.

418 A private Member has presented a replacement copy of a bill after a line of type had been omitted from the bill presented previously, VP 1993–96/2241 (27.6.1995).

Third reading print

If a bill has been amended at the detail stage, a 'third reading print', incorporating the amendment(s), is produced. The copies of the third reading print also have printed on the top left hand corner the Clerk's certificate recording the agreement of the House to the bill and certifying that it is ready for transmission to the Senate. It is the responsibility of staff of the House to arrange for a bill's reprinting. This may take some days in the case of a sizeable bill which has been heavily amended. The third reading print is checked carefully to ensure that the copy of the bill transmitted to the Senate accurately reflects all changes made to the bill by the House. This unavoidable delay is a factor of some importance in the programming of business in the closing stages of a period of sittings or on other occasions when it is the desire of the Government for a bill to be passed by both Houses expeditiously.[419]

Deputy Speaker's amendments

Clerical or typographical errors in a bill may be corrected by the Clerk acting with the authority of the Deputy Speaker.[420] In practice only bills introduced in the House are so amended. The Office of Parliamentary Counsel often asks for such correction, but where the matter has not been initiated by that office, its advice is first obtained as to whether or not any such amendment should be made. This type of correction is normally made prior to the transmission of the bill to the Senate but has also been made after the bill has been returned from the Senate.[421]

Clerk's certificate and transmission to the Senate

When the House passes a House bill, a certificate signed by the Clerk of the House is attached to an introduced copy of the bill.[422] The certificate is in the following form:

> This Bill originated in the House of Representatives; and, having this day passed, is now ready for presentation to the Senate for its concurrence.
>
> [Signature]
> *Clerk of the House of Representatives*
>
> House of Representatives
> [Date bill passed House]

A copy of the bill bearing the Clerk's certificate, together with a second copy for the Senate's records, is placed inside a folder known as a message to the Senate.[423] When a bill has been amended in its passage through the House, a copy of the third reading print, which has the Clerk's certificate printed on it, is placed in the message for transmission to the Senate, instead of a copy of the unamended bill. The message takes the following form:

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419 Rarely, in cases of extreme urgency, the first reading print accompanied by a schedule of amendments has been sent to the Senate instead of a third reading print (e.g. Broadcasting Legislation Amendment Bill 2001).

420 S.O. 156. The function was inherited from the role of the former Chairman of Committees, amendments then being made in the Committee of the Whole. The Senate Chairman of Committees has similar authority.

421 Such corrections are not made in the House to Senate amendments to the bill.

422 S.O. 157(a). The certificate is now impressed on the message copy of the bill by an inked stamp, then signed by the Clerk.

423 S.O. 157(b).

Message No. [ ]
Mr/Madam President
The House of Representatives transmits to the Senate a **Bill for an Act** [remainder of long title]; in which it desires the concurrence of the Senate.
[Signature]
Speaker
House of Representatives
[Date of despatch]
[Short title]

The message to the Senate is signed by the Speaker or, if the Speaker is unavailable, by the Deputy Speaker.[424] Because of the unavailability of the Speaker and the Deputy Speaker, a Deputy Chairman (the former equivalent of a member of the Speaker's panel) as Deputy Speaker has signed messages to the Senate transmitting bills for concurrence.[425]

In cases where standing orders are suspended to enable related bills to be considered together, the bills are transmitted to the Senate by means of one message. For example, in 1965, 32 bills relating to decimal currency, which were together read a third time in the House, were transmitted to the Senate within the one message.[426] Similarly, on other occasions, nine Sales Tax Assessment Amendment Bills have been transmitted to the Senate in the one message.[427]

It is the responsibility of the Serjeant-at-Arms to obtain the Clerk's signature on the certified copy of the bill and the Speaker's signature on the message and, if the Senate is sitting, to deliver the message to the Bar of the Senate, where a Clerk at the Table accepts delivery. If the Senate is not sitting, the Serjeant-at-Arms delivers the message to the Clerk of the Senate. Senate practice is that the bill is reported by the President when the Senate Minister representing the Minister responsible for the bill in the House indicates that the Government is ready to proceed with the bill.[428]

Error in certificate

An error occurred in June 2009 when the Clerk's certificate was attached to an earlier version of a bill than the version introduced to and considered by the House, and the Clerk of the Senate's certification of the Senate's agreement was then affixed to the incorrect version. Apart from the certified copy, the correct version of the bill had been transmitted to the Senate, and only the correct version had been published on the Parliament's website.

The error was not discovered until the checking processes for assent purposes were commenced, after both Houses had adjourned. The Clerk of the Senate reported the circumstances to the President, the Deputy President, parliamentary leaders and independent Senators. He advised that he considered that it would be constitutionally and procedurally proper for him to certify the Senate's agreement to the correct version of the bill (the incorrect version never having been seen by Senators). The Clerk of the House provided a certified copy of the correct version, which was then certified by the Clerk of the Senate. The matter was drawn to the attention of the Official Secretary to the Governor-General when the bill was sent for assent and to the Government.

424 S.O. 259.
425 J 1968–69/207–8 (18.9.1968).
426 VP 1964–66/472 (25.11.1965), 515 (9.12.1965); J 1964–66/452–3 (10.12.1965).
427 J 1983–84/1066–7 (5.9.1984); J 1985–87/536 (17.10.1985); J 1990–93/94–5 (16.5.1990).
428 *Odgers*, 14th edn, p. 303.

PRESENTATION OF BILLS FOR ASSENT

The Constitution provides that on the presentation of proposed laws for assent, the Governor-General declares, according to his discretion but subject to the Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves assent for the Queen's pleasure, or he may recommend amendments.[429] Before assenting, the Governor-General formally receives written advice from the Attorney-General as to whether there are any amendments that the Governor-General should recommend, and as to whether the Governor-General should, in the Attorney-General's opinion, reserve the bill for the Queen's pleasure. This advice is prepared by the Office of Parliamentary Counsel.

Preparation of bills for submission for assent

When a bill which originated in the House of Representatives has finally passed both Houses in identical form, the assent copies of the bill are printed, incorporating any amendments not yet incorporated and some minor adjustments, including a special cover and the addition to the back page of the Clerk's certificate stating that the bill originated in the House and has finally passed both Houses.[430] The Clerk's certificate in the circumstances of the passage of a normal bill is:

> I HEREBY CERTIFY that this Bill originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

On the back page of the assent copy of a bill are printed the words of assent used by the Governor-General as follows:

> IN THE NAME OF HER MAJESTY, I assent to this Act.
>
> *Governor-General*
> [Date]

If a bill were to be reserved for assent, the Governor-General would cross out these words and write in the following:

> I reserve this proposed law for Her Majesty's pleasure.
>
> *Governor-General*
> *[Date]*

The question has been raised as to whether it would be more correct to use the word 'bill' or the constitutional expression 'proposed law' instead of 'Act' in the words of assent. The Parliamentary Counsel has expressed a view for the retention of the word 'Act', on the ground that the Governor-General assents to the bill and converts it into an Act, in one action.

Three copies of bills are presented to the Governor-General for assent. When assented to, two copies are returned, one for the originating House and one for the other House. The Governor-General's Office forwards the other copy to the Office of Parliamentary Counsel.

It is desirable to have bills available for the Governor-General's assent before a Parliament is prorogued or the House is dissolved.[431] This may mean that there is not sufficient time for the specially printed assent copies of the bill to be prepared, and ordinary copies (that is, a print of the bill with manuscript amendments) may have to be submitted to the Governor-General. When this occurs, the normal assent copies are obtained as soon as possible and forwarded to the Official Secretary to the Governor-

429 Constitution, s. 58. Assent is given by the Governor-General signing the bill.
430 S.O. 175. For bills which originate in the Senate, assent arrangements are the responsibility of the Senate (Senate S.O. 137).
431 *See* Ch. on 'The parliamentary calendar'.

General with a note seeking the Governor-General's signature for permanent record. This procedure may also be adopted in other circumstances where a clearly demonstrable need for urgent assent exists.

The Governor-General advises each House by message of the assent to bills, and the messages are announced in each House.[432]

Presentation of first bill for assent

It has become the practice for the first bill to be assented to by a newly-appointed Governor-General to be presented by the Speaker in person, accompanied by the Clerk of the House. The Attorney-General has sometimes been present also and, as a formal procedure, at the Governor-General's request, provided advice as to the desirability of assent. The Speaker informs the House accordingly.[433]

Governor-General's assent

Other than on rare occasions the Governor-General, in the Queen's name, is pleased to assent to the bill immediately. The Queen may disallow any law within a year from the Governor-General's assent, an action which has never been taken. Such disallowance on being made known by the Governor-General by speech or message to each of the Houses of Parliament, or by proclamation, would annul the law from the day when the disallowance was made known.[434]

Bills reserved for the Queen's assent

The Constitution allows the Governor-General to reserve assent 'for the Queen's pleasure'.[435] As a consequence of the United Kingdom Statute of Westminster of 1931 and the passing of the *Statute of Westminster Adoption Act 1942* by the Australian Parliament, the necessity was removed of reserving for the Queen's assent certain shipping and related laws. The Constitution[436] provides that proposed laws containing any limitation on the prerogative of the Crown to grant special leave of appeal from the High Court to the Privy Council shall be reserved for Her Majesty's pleasure. However, since the passing of the *Privy Council (Limitation of Appeals) Act 1968* and the *Privy Council (Appeals from the High Court) Act 1975*, the latter bill being the last bill of any kind reserved for the Queen's assent,[437] it would appear that there will be no further bills coming within this ground of reservation.[438]

In respect of other bills reserved for the Queen's assent, in the lack of any legal requirement a decision would probably be based on the appropriateness of the bill (*Flags Act 1953*[439]) or the appropriateness of the occasion (that is, the Queen's presence in Canberra), or both (*Royal Style and Titles Act 1973*). In the latter case the Prime Minister

432 E.g. VP 1998–2001/279 (8.2.1999); J 1998–2001/437 (15.2.1999); VP 2010–13/262 (25.11.2010); J 2010–13/371 (22.11.2010).

433 E.g. VP 1978–80/70 (14.3.1978); VP 1987–90/1061 (8.3.1989); VP 1996–98/235 (30.5.1996); VP 2002–04/1087 (18.8.2003); VP 2008–10/516 (15.9.2008); VP 2013–16/451 (13.5.2014).

434 Constitution, s. 59. The Constitution Alteration (Removal of Outmoded and Expended Provisions) Bill 1983 proposed to remove this section, but the bill was not submitted to referendum.

435 Constitution, s. 58. 15 proposed laws have been reserved, *see* list at Appendix 19.

436 Constitution, s.74.

437 The *Australia Act 1986*, having been assented to by the Governor-General, came into operation on 3 March 1986 following proclamation by the Queen during her visit to Australia, Gazette S85 (2.3.1986).

438 *See also* Sir David Smith, 'The Clerk's tale' *Quadrant*, Oct. 2008, pp. 82–8.

439 Act No. 1 of 1954.

informed the House that the Queen had indicated that it would give her pleasure to approve the legislation personally.[440]

A proposed law reserved for the Queen's assent shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each House, or by proclamation, that it has received the Queen's assent.[441]

In the United Kingdom bills affecting the royal prerogative or personal interests of the Queen must receive signification of the Queen's consent *before* they can be passed.[442] There is no equivalent requirement or process in the Australian Parliament.

Presentation of double dissolution bills

When a Prime Minister is to request the Governor-General to dissolve both Houses of the Parliament because of disagreement between the Houses in respect of a bill (or bills), the Secretary of the Department of Prime Minister and Cabinet asks the Clerk in writing for a copy of the bill, duly certified by the Clerk as to the proceedings in the House on the bill, to accompany the submission to the Governor-General. There is no requirement of the Constitution or the standing orders of the House in respect of such a certificate, but it has become the practice for such a certificate to be attached to a copy of a bill which is to be the basis of a request for a dissolution of both Houses.

A certificate reciting the parliamentary history of the bill is attached to the Minister's copy of the bill as first introduced and also to the second bill passed after the interval of three months, with the exception of a bill amended in the House, in which case the third reading print is used for the first bill and the Minister's introduced copy for the second bill. The traditional form of the certificate has been as follows:

> THIS Bill originated in the House of Representatives and, on [date], was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on [date] and
>
> - had not been returned to the House of Representatives at the date of the prorogation of the Parliament on [date]; or
> - has not to date been returned to the House.

Where the history of the bill has been more complex the certificate reflects this. For example, the certificate used in respect of the Petroleum and Minerals Authority Bill 1973 (one of the six bills submitted as a basis for a double dissolution on 11 April 1974), as first introduced, was as follows:

> THIS Bill originated in the House of Representatives and on 12 December 1973 was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on 12 December 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974. The Bill lapsed by reason of the prorogation. On 7 March 1974 the House of Representatives requested the Senate to resume consideration of the Bill and on 13 March 1974 the Senate acquainted the House that it had agreed to resume consideration of the Bill. To date the Bill has not been returned to the House.

A more recent example is the certificate used for the Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] (one of the bills submitted as a basis for a double dissolution on 8 May 2016):

> This Bill originated in the House of Representatives and, on 4 February 2016, was passed by the House of Representatives. The Bill was transmitted to the Senate for its concurrence on 4 February 2016 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 15 April 2016. The Bill lapsed by reason of the prorogation. On 18 April 2016 the

440 H.R. Deb. (24.5.1973) 2642.

441 Constitution, s. 60; E.g. VP 1973–74/465 (22.10.1973). Only one reserved bill has not been assented to, *see* Appendix 19.

442 And in some cases the consent of the Prince of Wales is required. *May*, 24th edn, pp. 165–7, 661–2. There is a similar requirement in Canada, *House of Commons procedure and practice*, 2nd edn, 2009, pp. 755–6.

> House of Representatives requested the Senate to resume consideration of the Bill and on 18 April 2016 the Senate acquainted the House that it had agreed to resume consideration of the Bill. To date the Bill has not been returned to the House.

Should the deadlock between the Houses in respect of the legislation continue after the double dissolution, section 57 of the Constitution provides further that the Governor-General may convene a joint sitting of members of both Houses, which may deliberate and shall vote together on the proposed law. In 1974, the only occasion when a joint sitting for this reason eventuated, the Prime Minister requested certified copies of the six bills indicating details of their subsequent consideration by the Houses following the double dissolution.[443] The bills were necessary to support a submission to the Governor-General for the convening of a joint sitting. A certificate similar to those used on the bills submitted for the double dissolution was attached to a copy of each of the bills.

After a double dissolution the certified copies of the bills concerned, which are records of the House, are returned to the custody of the Clerk.[444]

(*And see* Chapter on 'Double dissolutions and joint sittings'.)

Presentation of constitution alteration bills

On the passage of a constitution alteration bill through both Houses, it is necessary to certify a copy of the bill for presentation to the Governor-General in order that a referendum may be held. A certificate, signed by both the Clerk and the Speaker and indicating the date of final passage, is printed at the top of the first page of the bill. The most recent example was in the following terms:

> THIS Proposed Law originated in the House of Representatives, and on [date], finally passed both Houses of the Parliament. There was an absolute majority of each House to the passing of this Proposed Law.

In the case of a constitution alteration bill which has twice passed the House and which has on each occasion been rejected by the Senate, or the Senate has failed to pass it or passed it in a form not agreeable to the House of Representatives, both bills passed by the House are presented to the Governor-General with certificates signed by the Clerk and the Speaker. For example, the certificates in respect of the Constitution Alteration (Simultaneous Elections) Bill 1974 was on the first occasion as follows:

> THIS Proposed Law originated in the House of Representatives and on 14 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate on 15 November 1973 and had not been returned to the House of Representatives at the date of the prorogation of the Parliament on 14 February 1974.

and on the second occasion:

> THIS Proposed Law originated in the House of Representatives and on 6 March 1974 was passed by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 6 March 1974 and has not to date been returned to the House.

The certificate in respect of the Constitution Alteration (Mode of Altering the Constitution) Bill 1974 introduced on the first occasion was in the following form:

> THIS Proposed Law originated in the House of Representatives, and on 21 November 1973 was passed by the House of Representatives by an absolute majority as required by section 128 of the Constitution. The Proposed Law was transmitted to the Senate for its concurrence on 21 November 1973. On 4 December 1973 the Senate returned the Proposed Law with amendments to which the House of Representatives did not agree. On 5 December 1973 the Senate insisted upon its

443 It would be expected that such a request would now be made by the Secretary of the Department of Prime Minister and Cabinet.

444 S.O. 28. The Clerk's certificate is oversigned by the Governor-General.

amendments disagreed to by the House. The House insisted on disagreeing to the amendments insisted on by the Senate and the Bill was laid aside.

The certificate in respect of the bill introduced on the second occasion was similar to that for the Constitution Alteration (Simultaneous Elections) Bill as indicated above.

Where a constitution alteration bill has been approved by the electors, and no petition disputing the referendum has been filed in the time allowed by law, the following certificate is printed on the bill and signed by the Clerk and the Speaker:

THIS is a copy of the Proposed Law as presented to the Governor-General, and, according to the Constitution, in pursuance of a Writ of His Excellency the Governor-General, submitted to a Referendum of the Electors. The period allowed by law for disputing the Referendum has expired, and no petition disputing the Referendum, or disputing any return or statement showing the voting on the Referendum, has been filed. The said Proposed Law was approved in a majority of the States by a majority of the Electors voting, and also approved by a majority of all the Electors voting.
The Bill is now presented to the Governor-General for the Queen's assent.

Amendment recommended by Governor-General

The Constitution makes provision for the Governor-General, in practice on the advice of the Attorney-General, to return to the House in which it originated, a proposed law presented for assent, with a recommendation for amendment.[445] On all occasions of such amendments the Governor-General has acted on advice when it has become apparent to the Government, after a bill has passed both Houses, that further amendment to the bill is desirable, for example, by reason of an error in the bill. On all but one occasion (*see below*) the Houses have agreed to the amendments recommended.

Standing order 176 supplements the constitutional provision concerning amendments recommended by the Governor-General to bills presented for assent. Such amendments are considered and dealt with in the same manner as amendments proposed by the Senate. Any amendment is recommended by message and is considered by the House.[446]

When the House has agreed to any amendment proposed by the Governor-General with[447] or without[448] amendment, such amendments, together with any necessary consequential amendments, are sent to the Senate for its agreement. The House transmits to the Senate by message a copy of the Governor-General's message, together with a copy of the bill forwarded for assent, acquaints the Senate of the action the House has taken in respect of the amendment, and requests the concurrence of the Senate.[449] Any amendments made by the Senate are dealt with in the same manner as amendments made by the Senate to House bills. The Senate returned the message of the Governor-General recommending amendments in the Customs Tariff (British Preference) Bill 1906, together with a copy of the bill as presented for assent, and acquainted the House that the Senate had disagreed to the amendments recommended by the Governor-General. The message from the Senate was ordered to be taken into consideration immediately and the House resolved not to insist on the amendments disagreed to by the Senate.[450] The Governor-General reserved the bill for the King's assent which was never given.

445 Constitution, s. 58. 14 proposed laws have been returned to one or other of the Houses by the Governor-General recommending amendments, *see* list at Appendix 19.
446 VP 1974–75/532 (5.3.1975).
447 VP 1905/147 (2.11.1905).
448 VP 1974–75/532 (5.3.1975).
449 J 1974–75/562–3 (5.3.1975).
450 VP 1906/175 (10.10.1906).

Amendments recommended by the Governor-General to Senate bills and which have been agreed to by the Senate are forwarded for the concurrence of the House by means of message. The form of the message is similar to that of the House and conveys recommended amendments of the Governor-General and an assent copy of the bill.[451] The message is considered in the same manner as amendments made by the Senate on the House's amendments to bills first received from the Senate.[452]

When recommended amendments are made, the assent copy of the bill is reprinted and presented again to the Governor-General for assent. The Speaker and the Clerk sign letters to the Governor-General and the Official Secretary, respectively, confirming that the recommended amendments have been made. If any amendments recommended have been disagreed to by the House, or if no agreement between the two Houses is arrived at prior to the last day of the session, the Speaker shall again present the bill for assent in the same form as it was originally presented.[453]

Errors in bills assented to

In 1976 the Governor-General purportedly assented to a bill which had not been passed by both Houses of Parliament as required by section 58 of the Constitution. A States Grants (Aboriginal Assistance) Bill 1976 passed the House[454] but did not proceed past the second reading stage in the Senate. A second bill, slightly different in content but with exactly the same title, passed the House[455] and the Senate.[456] Due to a clerical error in the Department of the House of Representatives, the Clerk's certificate, as to the bill having originated in the House and having finally passed both Houses, was placed on the first bill which had not passed both Houses and that bill was assented to. When the error was discovered, the Governor-General cancelled his signature on the incorrect bill and gave his assent to the second bill, which had passed both Houses.[457] A similar cancellation occurred in the case of the Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Bill 2001, when due to a clerical error a Senate amendment which had not been agreed to by the House was incorporated into the original assent print.[458]

While typographical corrections found necessary during the checking processes before assent may be made, it is not possible to make corrections in Acts after assent. It is considered that should a bill be assented to with typographical or clerical errors in it, if necessary a court would interpret the Act so as to remedy the mistake (the 'slip rule') and there would be no question of invalidity. Depending on the circumstances, legislative amendment at a suitable time may still be desirable.[459]

451 VP 1912/293 (18.12.1912).
452 S.O. 177.
453 S.O. 176(e).
454 VP 1976–77/240 (3.6.1976).
455 VP 1976–77/480 (17.11.1976).
456 J 1976–77/528 (9.12.1976).
457 VP 1976–77/575 (15.2.1977); H.R. Deb. (15.2.1977) 2–10.
458 VP 1998–2001/2379 (21.6.2001); H.R. Deb. (21.6.2001) 28261–2.
459 Advice from Attorney-General's Department, 17 October 1995.

ACTS

Publication of Acts

Acts are numbered in each year in arithmetical series, beginning with the number 1, in the order of assent.[460] When the signed assent copy of the Act is returned from the Governor-General, details concerning Act number and date of assent are transposed to a 'publication' copy of the Act. If there is no commencement provision the date of commencement is inserted (although modern practice is that explicit commencement provisions are always included in bills). Since 1985 the dates of Ministers' second reading speeches in each House have been noted on the last page of the Act. When the Act has been printed with the additional details and the new material checked, permission is given to release copies of the Act. Acts are published online on the Federal Register of Legislation.[461]

Details of assent are published in the Gazette by the authority of the Clerk of the House (or the Clerk of the Senate for bills originating in the Senate). The Gazette notification shows the Act number, long title, short title and date of assent.

The interpretation of Acts

Construction of Acts subject to the Constitution

Every Act must be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth.[462] In some circumstances an Act may be read down or read as if it did not contain any invalid provisions, so that it may be given effect to the extent that it is not in excess of the power of the Commonwealth.[463]

Regard to purpose or object of Act

In interpreting a provision of an Act, an interpretation that would best achieve the purpose or object of the Act, whether expressly stated in the Act or not, is to be preferred.[464] The purpose of an Act may be stated in an objects clause, its long title and, if one exists, the preamble. A preamble does not have separate legislative effect, but may be used for clarification if the meaning of a section is unclear.

Use of extrinsic material in the interpretation of an Act

If any material not forming part of an Act is capable of assisting in the construction of a provision of the Act, consideration may be given to the material to confirm that the meaning of the provision is the ordinary meaning conveyed by the text, or to determine the meaning of the provision when the provision is ambiguous or obscure or the ordinary meaning conveyed by the text leads to a result that is manifestly absurd or unreasonable.

460 *Acts Interpretation Act 1901*, s. 39.
461 <http://www.legislation.gov.au>
462 *Acts Interpretation Act 1901*, s. 15A.
463 E.g. *see Bank of New South Wales v. Commonwealth* (1948) 76 CLR 371.
464 *Acts Interpretation Act 1901*, s. 15AA.

Material that may be considered in the interpretation of a provision of an Act includes:

- all matters not forming part of the Act that are set out in the document containing the text of the Act as printed;
- any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or similar body that was laid before either House before the provision was enacted;
- any relevant report of a parliamentary committee presented before the provision was enacted;
- any treaty or other international agreement referred to in the Act;
- any explanatory memorandum relating to the bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House by a Minister before the provision was enacted;
- a Minister's second reading speech on the bill containing the provision;
- any document that is declared by the Act to be a relevant document;[465] and
- any relevant material in the Journals of the Senate, the Votes and Proceedings of the House of Representatives or in any official record of parliamentary debates.

In determining whether consideration should be given to extrinsic material, or in considering the weight to be given to any such material, regard shall be had to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, taking into account its context and the purpose or object underlying the Act, and to the need to avoid prolonging legal or other proceedings without compensating advantage.[466]

Section 16(5) of the *Parliamentary Privileges Act 1987* specifically permits the admission in evidence of records of proceedings in Parliament in relation to proceedings in a court or tribunal so far as they relate to the interpretation of an Act.

DELEGATED LEGISLATION

Delegated (also known as subordinate) legislation is legislation made not directly by an Act of the Parliament, but under the authority of an Act of the Parliament. Parliament has regularly and extensively delegated to the Executive Government limited power to make certain regulations under Acts. Other forms of delegated legislative authority include:

- ordinances (of Territories and regulations made under those ordinances[467]);
- determinations (for example, of the Public Service Commissioner,[468] the Presiding Officers[469] and the Remuneration Tribunal[470]);
- orders[471] and rules;[472]
- by-laws;[473] and

465 For example, the Portfolio Budget Statements and Portfolio Additional Estimates Statements are declared in Appropriation Acts to be relevant documents.

466 *Acts Interpretation Act 1901*, s. 15AB *and see* D. C. Pearce and R. S. Geddes, *Statutory interpretation in Australia*, 6th edn, LexisNexis Butterworths, 2006, pp. 68–93 for comment on the practical application of s. 15AB.

467 E.g. regulations made under the *Christmas Island Act 1958*, the *Cocos (Keeling) Islands Act 1955* and the *Heard Island and McDonald Islands Act 1953*.

468 Under the *Public Service Act 1999*.

469 Under the *Parliamentary Service Act 1999*.

470 Under the *Remuneration Tribunals Act 1973*.

471 E.g. under the *Environment Protection (Impact of Proposals) Act 1974*.

472 E.g. rules of court under the *Family Law Act 1975*.

473 E.g. under the *Federal Airports Corporation Act 1986*.

- standards, principles, guidelines, declarations, notices, plans of management and approvals.

Delegated legislation can take a multitude of forms and this list is not exhaustive. The Legislation Act uses the term 'legislative instrument' to cover the wide range of delegated legislation, although specific types of delegated legislation are excluded from the definition of legislative instrument and thus from the application of the Act.[474]

Delegated legislation is necessary and often justified by its facility for adjusting administrative detail without undue delay, its flexibility in matters likely to change regularly or frequently, and its adaptability for other matters such as those of technical detail. Once Parliament has by statute laid down the principles of a new law, the Executive may by means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.

Parliament retains ultimate legislative authority over delegated legislation. As well as being able to nullify delegated legislation using its power of disallowance, as outlined in the following pages, it is able to pass primary legislation to modify or overturn provisions made in delegated legislation.[475]

It is possible, although rare, for an Act to provide that provisions set out in the Act can be altered by regulation.[476] The *Re-establishment and Employment Act 1945* gave the Governor-General power to make regulations providing for the repeal or amendment of, or addition to, any provision of the Act,[477] subject to the (then) disallowance provision of the Acts Interpretation Act. The power thus given was unusual, and one that should not be given except under special circumstances (a wartime limit was placed on any amendments of the Act effected by the regulations). The Attorney-General stated that in this case it was thought that the methods for re-establishment and employment laid down in the Act, being to some extent of an experimental nature, might need urgent revision from time to time in the light of experience and, for that reason, the regulation-making power had been extended. Moreover, the cessation of operation of any regulation under the Act at the termination of the war would then necessitate an overhaul of the Act and amendments made by regulations.[478] The *Re-establishment and Employment Act 1951* repealed the power of amendment by regulation and provided for the repeal of the Re-establishment and Employment Regulations and the continuance of certain amendments.[479] In more recent times the *Administrative Arrangements Act 1987* empowered the Governor-General to make amendments to any Act by regulation if made necessary or convenient as a result of specified new administrative arrangements. However, a 'sunset' provision provided that this section of the Act would only be in effect for one year.[480]

474 *Legislation Act 2003,* ss. 8–10.

475 E.g. *Remuneration and Allowances Act 1990*, Schedule 4.

476 Known as a 'Henry VIII provision' (referring to the Statute of Proclamations 1539, which enacted 'that proclamations made by the King shall be obeyed . . . as though they were made by Act of Parliament'). *See also* D.C. Pearce and S. Argument, *Delegated legislation in Australia*, 3rd edn, LexisNexis Butterworths, 2005, pp. 14–15.

477 *Re-establishment and Employment Act 1945*, s. 137.

478 *See* Senate Standing Committee on Regulations and Ordinances*, 6th report*, S.1 (1946–48) 4.

479 *Re-establishment and Employment Act 1951*, ss. 3, 13.

480 *Administrative Arrangements Act 1987*, s. 20(2).

Legislative Instruments Act

Before 2005, delegated legislation was governed by the *Acts Interpretations Act 1901*, as outlined in earlier editions of this publication. The *Legislative Instruments Act 2003* commenced operation on 1 January 2005.

The Legislative Instruments Act re-enacted, with some amendment, the provisions of former sections 46A and 48 to 50 of the Acts Interpretation Act that related to regulations and extended their operation to all legislative instruments. Changes included the provision for registration to replace gazettal as the means of publication of legislative instruments, and the shortening of the time allowed for their presentation to each House. Explicit provision for partial disallowance was also new.[481] In contrast to the previous situation in which instruments were declared disallowable by their enabling legislation, instruments were now disallowable unless specifically exempted.

Legislation Act

In 2016 the *Legislative Instruments Act 2003* was renamed the *Legislation Act 2003*, and was extended in scope to establish a comprehensive regime for the publication of all Commonwealth legislation, including Acts, and related notices. The revised Act also created a new category of notifiable instrument, for notices of a legal nature that are not legislative but still of long term public interest.

The *Legislation Act 2003* did not change existing requirements relating to the making of legislative instruments, and did not change the existing provisions for parliamentary scrutiny and disallowance. Guidance to government agencies on their obligations under the Legislation Act is provided by the *Legislative instruments handbook*.[482]

Making and registration of legislative instruments

Notification of intention and consultation

Makers of legislative instruments are required, in most circumstances, to notify their intention to make a legislative instrument and then to consult with persons and organisations likely to be affected by the proposal.[483]

Federal Register of Legislation

All new legislative instruments made are required to be recorded in the Federal Register of Legislation.[484] Generally, a legislative instrument that is required to be registered is not enforceable unless it is registered.[485] Unless otherwise specified, a legislative instrument comes into force the day after the day it is registered.[486]

Sunset provisions

With some exceptions, a ten year sunset clause is imposed on all registered instruments, dating from the registration of the instrument.[487] Continuation of the

481 For example of motion for partial disallowance *see* VP 2004–07/969 (27.2.2006).

482 *Legislative instruments handbook*, Office of Parliamentary Counsel, 2016.

483 *Legislation Act 2003*, ss. 17–19.

484 The Federal Register of Legislation, established by the *Legislation Act 2003*, ss. 15A–E, is accessible online at <http://www.legislation.gov.au>.

485 *Legislation Act 2003,* s. 15K.

486 *Legislation Act 2003*, s. 12.

487 And taking effect on 1 April or 1 October. The sunset date for pre-existing instruments registered on 1 January 2005 varies (between 1 April 2015 and 1 April 2020) according to the year the instrument was made, *see* table in *Legislation Act 2003*, s. 50.

instrument may be granted by resolution of either House, in which case it is taken to have been remade.[488]

Parliamentary scrutiny and control

Delegated legislation is required to be laid before each House, thereby becoming subject to parliamentary scrutiny and, in most cases, to the Parliament's power of veto.

Consultation of the relevant enabling Act in conjunction with the Legislation Act is necessary to ascertain the conditions operating in relation to any particular form of delegated legislation or type of instrument. The provisions of an existing enabling Act in respect of delegated legislation may be different from the provisions of the Legislation Act—for example, by replacing the tabling or disallowance periods with a different period.[489] However, it should be noted that in such cases the Legislation Act may now override the provisions of the enabling Act.[490]

Under the Legislation Act legislative instruments must be tabled in each House within 6 sitting days following registration,[491] even in cases where the instrument is not disallowable. Unless laid before each House within this time limit, a legislative instrument ceases to have effect.[492] Explanatory statements for legislative instruments are also presented.[493]

In practice the tabling period may extend for some time, as a long adjournment or even dissolution and election could intervene between sitting days. In the latter case there could, for example, be four sitting days in one Parliament and two in the next. Instruments do not need to be presented again in the new Parliament.[494]

After a legislative instrument has been registered, no instrument the same in substance can be made while the original instrument remains subject to the tabling requirement, unless the remaking of the instrument has been approved by both Houses.[495]

Presentation to the House

After registration, legislative instruments are delivered to the Clerk (or staff of the House) and are recorded in the Votes and Proceedings as 'deemed documents'.[496] An instrument so delivered to the Clerk is deemed to have been presented to the House on the day on which it is recorded in the Votes and Proceedings. Documents received on a sitting day before 5 p.m. (3 p.m. on Thursdays) are recorded in the Votes and Proceedings of the day of receipt. In other circumstances they are recorded in the Votes and Proceedings of the next sitting day.

Although this is not common, legislative instruments can also be presented to the House in the same manner as ordinary documents,[497] and a motion to take note of the document or documents may be moved and debated. An example of this occurred in

488 *Legislation Act 2003*, s. 53.

489 E.g. *Telecommunications Act 1991*, ss. 408–9—changed to 5 days for regulations and instruments made during a restricted time, *see* S. Deb. (14.11.1991) 3253–4. The *Australian Capital Territory (Planning and Land Management) Act 1988* provided for 6 days; also no provision for deemed disallowance if motion not disposed of. *Public Governance, Performance and Accountability Act 2013*, s. 79—to be effective a disallowance resolution relating to a special account must be passed within 5 sitting days of a determination being tabled.

490 *Legislation Act 2003*, s. 57.

491 Previously, if no time was prescribed in the enabling Act, regulations had to be laid before each House within 15 sitting days after being made—*Acts Interpretation Act 1901*, former s. 48(1).

492 *Legislation Act 2003*, s. 38.

493 *Legislation Act 2003*, s. 39.

494 Any differences between the House and the Senate sitting calendars also need to be taken into account. *See also* 'Disallowance' at page 410 and 'Reckoning of time' at page 411.

495 *Legislation Act 2003*, s. 46.

496 Legislative instruments are included in the sessional index of papers presented to Parliament.

497 E.g. VP 2004–07/966 (27.2.2006).

1986 when a Minister presented an amending regulation to certain Export Control (Orders) Regulations and made a ministerial statement concerning them. Debate ensued on the question that the House take note of the documents (regulation and statement) to which a Member moved an amendment to disallow the regulation; debate was adjourned and not resumed.[498]

Disallowance

Not all legislative instruments that are required to be presented are able to be disallowed. The Legislation Act lists categories of legislative instrument that are not subject to disallowance, and those that are not subject to disallowance unless so subject under their enabling legislation or by means of some other Act.[499]

In most cases legislative instruments are effective unless and until disallowed, but an Act may provide that an instrument made pursuant to it does not come into effect until the disallowance period has expired.

If a notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House after a copy of the instrument was laid before that House; and within 15 sitting days of that House after the giving of that notice, the House passes a resolution, in pursuance of the motion, disallowing the instrument or provision, the instrument or provision so disallowed then ceases to have effect.[500]

If at the end of 15 sitting days of that House after the giving of that notice of motion:

- the notice has not been withdrawn and the motion has not been called on; or
- the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the instrument or provision specified in the motion is then taken to have been disallowed and ceases at that time to have effect.[501]

If the House is dissolved or expires, or the Parliament is prorogued, before the expiration of the 15 sitting days, any legislative instrument that is the subject of a disallowance motion is taken to have been laid before the House on the first sitting day after the dissolution, expiry or prorogation.[502] Any notice to disallow given in the previous Parliament (or in the case of prorogation, the previous session) must be given again to have effect.[503] For an instrument which is not the subject of a disallowance motion the count of 15 sitting days continues into the following session or Parliament.

While a legislative instrument is subject to disallowance, an instrument or provision that is the same in substance may not be made.[504] Where a legislative instrument or provision of a legislative instrument has been disallowed or taken to have been disallowed, an instrument or provision that is the same in substance may not be made within six months after the date of disallowance unless the House concerned has rescinded its resolution of disallowance or approved the re-making of the instrument or provision, as the case may be.[505]

498 VP 1985–87/882 (29.4.1986). If passed it is considered that this amendment would not have been effective, as disallowance must be pursuant to a motion of which notice has been given.
499 *Legislation Act 2003*, s. 44.
500 *Legislation Act 2003,* s. 42(1).
501 *Legislation Act 2003*, s. 42(2).
502 *Legislation Act 2003*, s. 42 (3).
503 A 'new' 15 sitting day period thus commences.
504 *Legislation Act 2003*, s. 47.
505 *Legislation Act 2003*, s. 48; VP 1996–98/502 (17.9.1996); *and see* J 2002–04/3415 (13.5.2004).

While a legislative instrument is subject to disallowance, a House may require any document incorporated by reference in the instrument to be made available for inspection.[506]

For advice on the calculation of the duration of disallowance periods *see* 'Reckoning of time' *below*.

ACTION IN THE HOUSE—GIVING NOTICE OF DISALLOWANCE

Each sitting day the Table Office produces a Disallowable Instruments List. This is a listing of instruments which have been presented and which are subject to possible disallowance, showing the number of sitting days remaining for Members to give notice of disallowance.[507]

When a notice of disallowance is given it appears in the Notice Paper with a note showing the number of sitting days remaining before the instrument or provision concerned is taken to be disallowed.[508]

The content of a notice of disallowance is usually only the proposal that the legislative instrument in question be disallowed. However, on occasion notices have included additional comment—for example, proposing alternative measures or giving reasons.[509]

Of the hundreds of pieces of delegated legislation presented each year very few are ever formally considered, let alone disallowed, by the House. Almost invariably, notices of disallowance are given by private Members,[510] and these are subject to the same procedures as other items of private Members' business. However, the Selection Committee does not select them for debate during the private Members' business period on Mondays and, in view of the fact that disallowance will occur unless a notice is called on and dealt with within the specified time, the general practice is for the Government to move that standing orders be suspended to permit them to be moved and debated during government business time.[511]

The passage of a resolution of disallowance or the deemed disallowance of a legislative instrument is notified in the Gazette 'for general information' by the Clerk of the House responsible.[512]

Reckoning of time

The periods specified for the presentation and disallowance of legislative instruments, or for that matter any period counted in sitting days, may extend for a considerable time. Months can elapse when a count continues into a new Parliament. Even in the same session, long adjournments can intervene between sittings. Any differences between the House and the Senate sitting calendars also need to be taken into account.

Pursuant to the Acts Interpretation Act any period of time prescribed or allowed by an Act dating from a given day, act or event, unless the contrary intention appears in the Act, is reckoned exclusive of the day of such act or event.[513] The day on which a

506 *Legislation Act 2003*, s. 41.

507 The list is publicly available via the House of Representatives web site <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/HoR>.

508 A notice of disallowance given by a private Member is placed under Notices, Private Members' Business, e.g. NP 133 (11.12.1986) 9744. A notice of disallowance given by a Minister is placed under Government Business, NP (9.9.1996) 831–2.

509 E.g. VP 1968–69/422 (30.4.1969); VP 1993–96/202 (1.9.1993).

510 An exception being notices given at the start of the 38th Parliament, H.R. Deb. (28. 5.1996) 1570 and H.R. Deb. (29. 5.1996) 1769, disallowing regulations made by the previous Government. The notices were not brought on for debate within the specified time and the regulations were deemed disallowed on 10 and 11 September 1996, *see* H.R. Deb. (17.9.1996) 4421. *See also* VP 2008–10/150 (12.3.2008); VP 2013–16/239–42 (12.12.2013) for disallowance motions moved by Ministers and agreed to (again in relation to regulations of previous governments).

511 E.g. VP 2013–16/704 (15.7.2014), 1617, 1620 (12.10.2015); VP 2016–18/679 (29.3.2017).

512 Gazette GN2 (13.5.1987) 55; S344 (18.9.1996).

513 *Acts Interpretation Act 1901*, s. 36(1).

legislative instrument is presented therefore is not taken into account for the purposes of determining the number of sitting days within which it may be disallowed. A sitting may extend beyond a calendar day but constitute only one sitting day.[514] Similarly, a sitting which is suspended and resumed on a later day constitutes only one sitting day.[515] Any disputed question on the reckoning of time would be, initially at least, for the House itself to decide. The possibility of the matter being subsequently the subject of litigation cannot be ruled out, in which case it could be a matter for the courts to consider.

A notice of disallowance lodged on the last possible sitting day has been regarded as valid, the provisions of standing order 108—that a notice only becomes effective when it appears on the Notice Paper—not being seen as cutting down the then provisions of the Acts Interpretation Act which referred to a notice given 'within 15 sitting days'.[516]

Notice to disallow before presentation

The question has been raised as to whether a notice of motion disallowing a legislative instrument should be accepted before the legislative instrument is laid before the House. The matter was canvassed in the Senate in 1942 when a Minister informed the Senate that Senators could move for the disallowance of a regulation without it being tabled, based upon the High Court judgment in Dignan's case.[517]

In response to a request for an opinion, the Attorney-General's Department advised the Clerk of the Senate on 25 March 1942 that the decision in Dignan's case should still be regarded as authority for the proposition that it is not a condition essential to the validity or operation of a resolution of disallowance that the regulations should first be laid before the House. The Chairman of the Senate Regulations and Ordinances Committee, in a memorandum on the disallowance of regulations, and on the judgments in Dignan's case, concluded that the question of whether disallowance is effective where a regulation is not laid before the Senate (or the House) was still an open one as far as the High Court was concerned, and that any doubt on the matter could be avoided if motions for disallowance were not moved before the regulations were tabled.[518] It was considered that a similar attitude might commend itself to the House of Representatives. Section 42 of the Legislation Act refers to disallowance where a notice has been given 'within 15 sitting days of that House after a copy of the instrument was laid before that House'.

In the House a notice of motion has been given before the relevant regulations were tabled. On 29 November 1940 Statutory Rules No. 269 (National Security Aliens Control Regulations) were made, and on 3 December 1940 a Member gave a notice of motion for their disallowance, whereas the regulations were not tabled until 9 December 1940.[519] On 2 April 1941 the Member raised a matter of privilege in which he claimed that the regulations were null and void as his motion for disallowance had not been dealt with within 15 sitting days after notice was given. The Minister replied that he believed the motion was out of order, as it was placed on the Notice Paper some days before the statutory rules were tabled; if the Member wished to take any action in the matter, the opportunity to do so was still open to him. The Speaker stated that the question of whether the statutory rules were null and void was a matter of law, the curtailment of any

514 VP 1978–80/596 (23.11.1978).
515 VP 1917–19/171 (18.1.1918); *see also* Ch. on 'Order of business and the sitting day'.
516 NP 154 (28.11.2000) 8674.
517 S. Deb. (6.3.1942) 235. In Dignan's case the High Court held that the Parliament could validly delegate law making powers to the Executive, *Dignan v. Australian Steamships Pty Ltd* (1931) 45 CLR 188.
518 *Odgers*, 14th edn, pp. 451–2.
519 NP 7 (4.12.1940) 15; VP 1940–43/45 (9.12.1940).

rights of the Member was a matter of privilege. The Member concluded the matter, not by moving a motion relating to privilege, but rather by giving notice of motion of no confidence in the Minister. Later in the day, standing orders having been suspended, the Member moved the no confidence motion but it lapsed for want of a seconder.[520]

Approval

The Parliament's control of delegated legislation is usually exercised through the disallowance procedure. An alternative means of parliamentary control is to provide that specific delegated legislation may come into force only with the explicit approval, by affirmative resolution, of both Houses. Although not common, this practice has been used from time to time in recent years, especially in respect of certain types of legislative instrument variously described as statements, charters, agreements, declarations, guidelines, etc.[521]

An Act may provide for the Houses to be able to amend the instrument in question during the process of approving it. If one House amends such an instrument the other House is informed by message, and when the message is considered, the motion put, for example, 'That the House approves the form of agreement … as amended by the Senate and conveyed in Senate Message No. . . .'. The motion can be amended to amend the amendments or make further amendments.[522]

The conditions for approval vary and depend on the requirement of the particular Act. The requirement may be simply that an instrument must be approved by both Houses to come into effect.[523] A more complicated requirement may be, for example, that an instrument comes into effect after 15 sitting days of being tabled in both Houses, unless a notice of motion to amend the instrument is given in either House, in which case the instrument, whether or not amended, must be approved by both Houses.[524]

While notices of motions of approval moved by Ministers are taken as government business, motions of amendment, as in the above example, would in the normal course be moved by opposition Members and be subject to the usual private Members' business procedures.[525]

Approval provisions have sometimes been inserted into bills in the Senate when it has been thought that particular instruments merited special control procedures.[526] However, there may on occasion be another reason for their use—the approval of regulations by both Houses at the time of presentation does offer the possibility of a more rapid and certain outcome than waiting the required period for potential disallowance. An Act has provided for either disallowance or approval in respect of the same regulations—the disallowance procedures ceasing to apply in the case of the regulations being approved.[527]

520 VP 1940–43/103, 105 (2.4.1941); H.R. Deb. (2.4.1941) 504–5, 553–7.

521 E.g. VP 1990–93/515–6 (14.2.1991), 1290–1 (19.12.1991); VP 2008–10/1374 (21.10.2009); VP 2010–13/140 (27.10.2010); VP2010–13/1753–5 (10.9.2012).

522 VP 1990–93/472–5 (21.12.1990).

523 *See*, for example, amendments moved at VP 1987–90/1622–3 (21.11.1989).

524 'Form of agreement' under the *Aged or Disabled Persons Care Act 1954*, ss. 10DA, 10DB.

525 VP 1990–93/537–9 (21.2.1991) (amendment moved), 595 (14.3.1991) (order of day discharged by mover).

526 *Odgers*, 14th edn, p. 448.

527 *Telecommunications Act 1991*, ss. 408–9— *see* S. Deb. (14.11.1991) 3253–4.

Regulations and Ordinances Committee

The Senate, in 1932, established by standing order a Standing Committee on Regulations and Ordinances to be appointed at the commencement of each Parliament, to which all regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate, and which are of a legislative character, stand referred for consideration and, if necessary, report. The committee scrutinises delegated legislation to ensure that:

- it is in accordance with the statute;
- it does not trespass unduly on personal rights and liberties;
- it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- it does not contain matter more appropriate for parliamentary enactment.[528]

The committee traditionally operates on a non-partisan basis and refrains from considering the policy of delegated legislation. The committee's reports usually consist of accounts of amendments made to legislation to accommodate the committee's objections. Notices of disallowance are given on occasion, but these are often withdrawn after undertakings are received from Ministers, for example, to have provisions changed.[529]

528 Senate S.O. 23.

529 For the history and operations of the committee *see Odgers*, 14th edn, pp. 435–9.

11
Financial legislation

While the processing of financial legislation[1] follows basically the same pattern as that of ordinary bills, there are additional requirements imposed by the standing orders, and ultimately, by the Constitution. Constitutional requirements also influence the form of financial legislation.

CONSTITUTIONAL PROVISIONS

Parliament's control of government finances by means of legislation

The Parliament has the ultimate control over government finances. This control is two-fold. First, taxes are imposed by legislation which must be agreed to by the Parliament. Secondly, government expenditure must also be authorised by legislation.

Section 83 of the Constitution states that 'no money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law'. This means that however much money the Government has, whether raised by taxation or by loan or even by sale of government assets, the money cannot be spent unless the Parliament has authorised the release of money for the expenditure by an Act of Parliament (an appropriation Act).[2]

The Consolidated Revenue Fund

Section 81 of the Constitution requires that all revenues or monies raised or received by the Executive Government of the Commonwealth must be paid into one Consolidated Revenue Fund (CRF). All appropriations are now made from the Consolidated Revenue Fund.[3] A special account may be established by determination of the Finance Minister or by legislation, in which case the CRF is appropriated for expenditure for the purposes of the special account, up to the balance for the time being of the special account.[4]

Financial initiative of the Executive

What is called the 'financial initiative of the Executive'—that is, the constitutional and parliamentary principle that only the Government may initiate or move to increase appropriations or taxes—plays an important part in procedures for the initiation and processing of legislation.

The principle of the financial initiative may be paraphrased as follows:

- The Executive Government is charged with the management of revenue and with payments for the public service.

1 The term 'money bill' is sometimes used in connection with financial legislation. However, usage of the term and definitions of what it encompasses have not been consistent.

2 Borrowings by the Commonwealth must also be authorised by legislation, *Public Governance, Performance and Accountability Act 2013,* s.56.

3 As noted in earlier editions (1 to 3), appropriations could previously be made from the former Loan Fund. Under transitional provisions an appropriation expressed to be an appropriation of the Loan Fund has effect as an appropriation of the CRF, *Financial Management Amendment Act 1999,* s. 6.

4 *Public Governance, Performance and Accountability Act 2013,* ss.78–80.

- It is a long established and strictly observed rule which expresses a principle of the highest constitutional importance that no public charge can be incurred except on the initiative of the Executive Government.
- The Executive Government requests money, the Parliament grants it, but the Parliament does not vote money unless required by the Government, and does not impose taxes unless needed for the public service as declared by Ministers.[5]

The reference to 'public charge' in this context means a charge on public funds (an appropriation) or a charge on the people (a tax). The traditional position is expressed in *May*—'A charge of either kind cannot be taken into consideration unless it is sought by the Crown or recommended by the Crown'.[6]

The financial initiative in regard to appropriation is expressed in, and given effect by, section 56 of the Constitution:

> A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.[7]

The principle of the financial initiative is also expressed in, and given effect by, the constitutional restrictions on the powers of the Senate to initiate and amend appropriation and taxation legislation, as outlined below.

The standing orders of the House in relation to financial legislation[8] reflect the principle of the financial initiative. In some matters the House has imposed on itself restrictions that appear to go beyond the letter of the Constitution, but which are based on constitutional convention. In 2013 the Speaker presented to the House a paper prepared by the Clerk's Office on the background to the constitutional provisions and their application: *The law making powers of the Parliament: three aspects of the financial initiative—updated notes for Members*.[9]

Limits on the Senate's powers in respect of financial legislation

Initiation

The form of bills introduced into the Senate is governed by the limitations imposed by section 53 of the Constitution that 'Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate.'

According to *Quick and Garran* this part of the Constitution crystallises into a statutory form what had been the practice under the British Constitution for more than 220 years prior to 1901. This view is based on a resolution of the House of Commons in 1678 that:

> . . . all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords.[10]

5 *See May*, 24th edn, pp. 711–19 and *Quick and Garran*, pp. 681–2. The latter commentary refers to the results which would follow from the absence of this principle: '… the scramble among the members of the Legislature to obtain a share of the public money for their respective constituencies, of the 'log-rolling', and of the predominance of local interests to the entire neglect of the public interest …' (cited from *Hearn's Government of England*, 2nd edn [1886], pp. 376–7).

6 *May*, 24th edn, p. 713.

7 As section 53 of the Constitution provides that proposed laws appropriating revenue or moneys shall not originate in the Senate, the 'House' referred to in section 56 is, for all practical purposes, the House of Representatives. For background to the phrase 'House in which the proposal originated' *see Quick and Garran,* pp. 682–3.

8 S.O.s 178–182.

9 VP 2010–13/2215 (14.5.2013).

10 *Quick and Garran*, p. 667.

However, section 53 goes on to state 'But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.' In relation to these exemptions *Quick and Garran* states that a bill containing, inter alia, clauses authorising the imposition or appropriation of fines or other pecuniary penalties, when the object of those fines or penalties is to secure the execution of the proposed law, could be introduced in the Senate. Similarly, one dealing with a subject such as fisheries beyond territorial waters, and imposing or appropriating fees for licences to fish in such waters could be introduced in the Senate, as could a bill dealing with mining in Federal Territories and authorising the issue of licences to mine upon payments of fees. A bill relating to navigation, requiring the owners of ferry boats to take out licences and pay fees could, says *Quick and Garran*, be brought into the Senate.[11]

The Whaling Bill 1935 designed, inter alia, to regulate the whaling industry in the Australian Antarctic Waters by the issue and control of licences to whaling companies registered in Australia, originated in the Senate and was agreed to by the House, after amendment.[12]

In its 1995 report on the third paragraph of section 53 of the Constitution, the House's Standing Committee on Legal and Constitutional Affairs recommended that bills which increase expenditure under a standing appropriation should not be originated in the Senate and that bills which affect the tax base or tax rates should be originated in the House of Representatives.[13]

In 2008 a bill was received from the Senate which, by increasing the rate of certain pensions, would have had the direct and intended effect of increasing expenditure under a standing appropriation.[14] The Speaker made a statement drawing attention to the issues involved and presented a copy of advice by the Clerk on the matter. In a motion declining to consider the bill, the House:

- noted the statement by the Speaker concerning the constitutional issues associated with the bill;
- expressed the opinion that such a bill should be introduced in the House of Representatives, and would require a message from the Governor-General in accordance with section 56 of the Constitution; and
- stated its belief that it was not in accordance with the constitutional provisions concerning the powers of the houses in respect of legislation as they had been applied in the House for such a measure to have originated in the Senate.[15]

In 2011, for similar reasons, the House declined to consider a Senate bill which proposed to widen the category of persons entitled to an allowance funded by a standing appropriation.[16] It was noted that the standing orders contained no provision under which

11 *Quick and Garran*, pp. 667–8.

12 J 1934–37/114 (24.10.1935); S. Deb. (30.10.1935) 1059, 1180; VP 1934–37/508 (6.12.1935).

13 PP 307 (1995). *See also* 'Certain amendments viewed as initiation' in Chapter on 'Senate amendments and requests'.

14 Urgent Relief for Single Age Pensioners Bill 2008. The expected increase in expenditure under the appropriation in the *Social Security (Administration) Act 1999* was $1.45 billion.

15 VP 2008–10/553–4 (23.9.2008), H.R. Deb. (23.9.2008) 8273–81. For a critical review of the respective positions of the two Houses on this bill *see* G. J. Appleby and J. M. Williams, 'A tale of two clerks: When are appropriations appropriate in the Senate?' *Public Law Review*, v. 20(3), September 2009: 194–213.

16 Social Security Amendment (Income Support for Regional Students) Bill 2011 (appropriation in the *Social Security (Administration) Act 1999*). VP 2010–13/310–13 (21.2.2011), *see* particularly speech by Attorney-General at H.R. Deb. (21.2.2011) 606–8.

a bill received from the Senate which would be characterised under House practice as a bill appropriating revenue or moneys could be considered. Like the 2008 case, the impact on expenditure was not a possibility or incidental effect; it was intended and substantial. This distinguishes these cases from some which have concerned the third paragraph of section 53 (in relation to Senate amendments—*see below*), and where there has been room for different views about the directness of or necessity for an impact on expenditure.

In 2009 the High Court considered the case of an Act which had the effect of increasing and extending the objects or purposes of the amount which could be paid out of the Consolidated Revenue Fund under existing words of appropriation in a second Act. The majority of the High Court rejected the submission that taken by itself the first Act contained no appropriation. In so ruling the Court, while acknowledging that section 53 was a matter for the Parliament and not the Court, applied and endorsed the practice of the House of Representatives which categorises a bill which would become such an Act as a type of appropriation bill[17]—*see* 'Bills containing special appropriations' at page 419.

The House position reflects the principle of the financial initiative that is behind the constitutional provisions. In brief, a bill which if introduced in the House would require a Governor-General's message recommending an appropriation, is a bill that should not originate in the Senate.

Amendment

The second paragraph of section 53 of the Constitution provides that 'The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government'. The third paragraph of section 53 provides 'The Senate may not amend any proposed laws so as to increase any proposed charge or burden on the people.' However, the Senate may request the House to make such amendments as the Senate itself is unable to make. The effect of these provisions is examined in more detail in the following chapter on 'Senate amendments and requests'.

Section 54 of the Constitution states that bills appropriating revenue or moneys for the ordinary annual services of the Government—that is, the main Appropriation Bills (and, if occurring, the main Supply Bills)—shall deal only with such appropriation. Section 55 of the Constitution requires that laws imposing taxation shall deal only with the imposition of taxation and furthermore with only one subject of taxation.

The importance of sections 54 and 55 is that they protect the Senate's right to amend non-financial measures. As the Senate is precluded from amending a main Appropriation Bill or a main Supply Bill or bills imposing taxation, these two sections together were inserted in the Constitution to prevent the House embodying in such bills other provisions (a process known as 'tacking'), a course which would prejudice the right of the Senate to amend such provisions.

17 *Pape v. Commissioner of Taxation* [2009] HCA 23 at 135, 164–171, 206. The Act concerned was the *Tax Bonus for Working Australians Act (No. 2) 2009* which increased expenditure under a standing appropriation in the *Taxation Administration Act 1953*.

FORMER FINANCIAL PROCEDURES

For an outline of financial procedures prior to 1963 *see* pages 345–6 of the first edition. In brief, proposed expenditure measures (budget estimates) were considered and debated in the Committee of Supply, and proposed taxation measures in the Committee of Ways and Means. The relevant appropriation or taxation bills were introduced following the committees' recommendation that the measures be approved.[18]

BILLS CONTAINING SPECIAL APPROPRIATIONS

Government expenditure is funded either by annual appropriations, contained in the annual Appropriation Acts (*see* page 424) or by special appropriations. The majority of total expenditure from the Consolidated Revenue Fund is by way of special appropriation.[19] Special appropriations may be specific or indeterminate in both amount and duration. Those not limited by amount, providing continuing funding for a particular purpose, are known as standing appropriations.[20]

A special appropriation bill is distinguishable from an ordinary bill in that it:

- contains words which appropriate the Consolidated Revenue Fund to the extent necessary to meet expenditure under the bill; or
- while not in itself containing words of appropriation, would have the effect of increasing, extending the objects or purposes of, or altering the destination of, the amount that may be paid out of the Consolidated Revenue Fund under existing words of appropriation in an Act. The existing words of appropriation may be in a principal Act to be amended by the bill, or may be in another Act entirely.[21]

Examples where the appropriation is in another Act include:

- bills that amend the Social Security Act 1991 to provide for, increase or widen eligibility for various social security payments, standing appropriation for which is contained in the *Social Security (Administration) Act 1999*;
- bills or amending bills that establish a Special Account.[22] The *Public Governance, Performance and Accountability Act 2013* provides standing appropriation for expenditure from Special Accounts;[23]
- bills that amend the *Governor-General Act 1974* or that used to amend the *Ministers of State Act 1952*[24]to vary the amount provided for the salary of the Governor-General and the salaries of Ministers, respectively, standing appropriations for which are contained in the Constitution.[25]

An example of a bill increasing an amount in a principal Act to be amended was the Apple and Pear Stabilization Amendment Bill (No. 2) 1977 which did not contain actual

18 These committees were 'committees of the whole House', that is, all Members were entitled to participate. The committees' proceedings took place in the Chamber of the House and the Chairman of Committees presided.

19 In recent decades over 75% of government expenditure has been funded by special appropriations (*see Odgers*, 14th edn, p. 397 for proportions historically). *Budget paper No. 4* gives tables listing the special appropriations administered by each portfolio, and the breakdown of agency resourcing funded by annual or special appropriation.

20 *See also Odgers*, 14th edn, p. 396.

21 This categorisation of bills has been cited and relied on by the High Court—*see* page 418 (*Pape v. Commissioner of Taxation*).

22 *See under* 'Consolidated Revenue Fund' at page 415.

23 *Public Governance, Performance and Accountability Act 2013,* s. 80 (for Special Accounts established by legislation) and s. 78 (for Special Accounts established by determination of the Finance Minister).

24 The *Parliamentary Business Resources Act 2017* now sets the total annual sum payable under section 66 of the Constitution for ministerial salaries (s. 55) which amount may be varied by regulation (s. 61).

25 Constitution, s. 3 and s. 66.

words of appropriation but extended for the 1978 season financial support under the Apple and Pear Stabilization Act 1971.

An example of a bill altering the destination of an amount was the ABC/SBS Amalgamation Bill 1986 (clause 30) which provided that money already appropriated for the Special Broadcasting Service be directed to the Australian Broadcasting Corporation.

Procedures peculiar to special appropriation bills

Introduction

The introductory and other stages through which such bills pass are similar to those described in connection with ordinary bills. However, the principle of the financial initiative of the Executive plays an important part in procedures for the initiation and processing of all legislation providing for appropriations of public moneys.

The requirement of section 56 of the Constitution for appropriations to be recommended by a message of the Governor-General is supplemented and given effect to by standing order 180:

> (a) All proposals for the appropriation of revenue or moneys require a message to the House from the Governor-General recommending the purpose of the appropriation in accordance with section 56 of the Constitution.
>
> (b) For an Appropriation or Supply Bill, the message must be announced before the bill is introduced.
>
> (c) For other bills appropriating revenue or moneys, a Minister may introduce the bill and the bill may be proceeded with before the message is announced and *standing order 147 (message recommending appropriation)* applies.
>
> (d) A further message must be received before any amendment can be moved which would increase, or extend the objects and purposes or alter the destination of, a recommended appropriation.

Section 56 has been interpreted by successive governments and the House as applying to a proposed law that would cause an increase in an appropriation of the Consolidated Revenue Fund, whether or not the proposal itself contains words of appropriation.

As the Governor-General acts on ministerial advice, it is not possible for a private Member to obtain the Governor-General's recommendation for an appropriation. Furthermore, when a recommendation is required, only a bill introduced by a Minister may be proceeded with before the message is announced. Therefore in practice only a Minister may introduce a bill which appropriates public moneys. In 2011 a bill that had been introduced by a private Member was examined and found to be a bill which would, if enacted, both appropriate moneys and impose a charge. The Speaker ruled that the bill could not proceed in its present form. A motion of dissent was debated and defeated.[26]

The permissive element in the standing order stating that such bills 'may be proceeded with before the message is announced' has become the firm practice, and messages concerning bills containing a special appropriation are announced after the bill has been read a second time,[27] not before the bill is introduced.[28]

Special appropriation bills which also deal with taxation may be introduced without notice under standing order 178. In practice such bills have also been introduced pursuant to notice and by leave.

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26 VP 2010–13/597–9 (2.6.2011), H.R. Deb. (2.6.2011) 5699, 5700–11.

27 S.O. 147.

28 *But see* VP 1993–96/2169 (8.6.1995)—message reported after second reading, 2185 (19.6.1995)—further message for the purpose of amendments reported after third reading.

Second reading amendment

In the case of a special appropriation bill, a private Member may move a reasoned amendment bearing on the appropriation, even though such an amendment could not be moved during the detail stage. The success of such a reasoned amendment would simply be declaratory of the opinion of the House and would not effect an amendment of the bill itself. Consequently, a second reading amendment is in order to the effect that a bill be withdrawn and re-drafted with a view to providing, for example, that a subsidy paid to gold producers also be paid as a bonus on gold recovered from gold mine dumps and tailings,[29] whereas an amendment to the bill to such effect could not be moved during consideration in detail unless a further message from the Governor-General recommending an appropriation for the purposes of the amendment was received. In response to a point of order that a proposed second reading amendment was out of order as it would increase the expenditure contemplated by the proposed legislation, the Speaker ruled that the proposed amendment was merely a declaration of opinion, that it, in itself, did not increase expenditure, and was therefore in order.[30]

Proceedings following second reading

The procedure on special appropriation bills immediately following the second reading differs from ordinary bills in that the Governor-General's message recommending appropriation is then announced—that is, just before the detailed consideration of the clauses of the bill.

Message recommending appropriation

Prior to August 1990 the terms of any message from the Governor-General recommending appropriation were made known to the House by the Speaker reading them out in full. Current practice is for the Chair just to announce the receipt of the message. The message normally takes the following form:

> [Signature]
>
> Governor-General Message No. [ ]
>
> In accordance with the requirements of section 56 of the Constitution, the Governor-General recommends to the House of Representatives that an appropriation be made for the purposes of a Bill for an Act [remainder of long title].
>
> Canberra [date]

Messages may however contain precise details on the relevant purposes of the appropriation.[31] Messages recommending an appropriation have been received from the Deputy of the Governor-General[32] and, in the absence of the Governor-General from Australia, from the Administrator.[33]

The message is drafted within the Office of Parliamentary Counsel, which arranges for the Governor-General's signature and delivers the message to the Clerk of the House.[34]

On occasions in the past a message recommending appropriation was received after the House had completed consideration of a bill. In such cases the message was reported

29 VP 1959–60/140 (14.5.1959); H.R. Deb. (12.5.1959) 2059–61, 2211. A more recent example is the amendment moved to the Private Health Incentives Bill 1998 that the bill be withdrawn and redrafted to provide for increased funding for the private hospital system, VP 1998–2001/72 (24.11.1998).

30 E.g. VP 1932–34/910 (12.7.1934).

31 E.g. VP 1987–90/896 (22.11.1988).

32 E.g. VP 1978–80/321 (8.6.1978); VP 1967–68/156 (16.8.1967).

33 E.g. VP 1977/176 (31.5.1977); VP 2013–16/1135 (25.2.2015). Messages from the Governor-General and the Administrator have been received in respect of the same bill (the latter in respect of an amendment), VP 2002–04/1471 (3.3.2004).

34 Messages required urgently may be received by email (previously facsimile).

to the House at the first opportunity[35] and the bill was not transmitted to the Senate for its concurrence until the message had been reported. In other circumstances a message not announced at the usual time was announced later, including, by leave, during the consideration in detail stage.[36] Although such procedures may have conformed with the requirement of the standing order then applying, that an appropriation message should be announced after the bill had been read a second time,[37] it was generally the practice to announce the message immediately after the second reading, and this is now the required practice.[38] (A message recommending an appropriation for the purposes of an amendment should be announced before the amendment is moved—*see below.*)

When bills are considered together after standing orders have been suspended, and it is necessary in respect of any of the bills to announce a message recommending an appropriation, the motion for the suspension of standing orders has included a provision to enable the message(s) to be announced after the motion 'That the bills be passed' or 'That the bills be now read a second time', etc, has been agreed to.[39]

If after a prorogation, the House agrees to resume, or requests the Senate to resume, consideration of a lapsed bill in respect of which a message recommending an appropriation has been announced in the previous session, a new message is announced.[40]

MESSAGE FOR AMENDMENT

If a Minister wishes to move any amendment which would increase, or extend the objects and purposes or alter the destination of, a recommended appropriation, a further message from the Governor-General must be received.[41] The message in this instance recommends that an appropriation be made for the purpose of an amendment (or amendments) to the bill. The wording of the message may reflect the principle of the financial initiative explicitly by stating that the recommendation is for the purposes of amendments to be moved by a Minister.[42] The message is regarded as covering only the amendments immediately before the House, and a further message may be needed for amendments moved on a later occasion, for example in response to Senate requests.

A message from the Governor-General recommending an appropriation for the purposes of an amendment to be moved to a bill is announced before the amendment is moved.[43] Normally the message is announced immediately after the message recommending an appropriation for the purposes of the bill.[44] Such a message has been announced, by leave, after the consideration in detail stage had commenced.[45] Where a bill has not been accompanied by a message for the purposes of the bill, a message for the purposes of an amendment has also been announced before the House commenced to consider the bill in detail.[46] A message recommending that the purposes of the

35 E.g. VP 1978–80/321 (8.6.1978); VP 1968–69/573 (23.9.1969); VP 1993–96/2169 (8.6.1995), 2185 (19.6.1995); VP 1996–98/2993 (13.5.1998).
36 VP 1993–96/1023 (12.5.1994).
37 Former S.O. 296.
38 S.O. 147.
39 VP 1970–72/1033 (27.4.1972); VP 1968–69/525 (27.8.1969); VP 1998–2001/207 (9.12.1998).
40 Section 56 of the Constitution requires the message to be announced in the session in which the bill is passed, *see* 'Lapsed bills' in Ch. on 'Legislation'.
41 S.O. 180(d).
42 E.g. Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011.
43 S.O. 180(d).
44 VP 1977/409 (4.11.1977); VP 1998–2001/882 (23.9.1999).
45 VP 1993–96/1023 (12.5.1994).
46 VP 1974–75/561–2 (9.4.1975).

appropriation proposed by the main appropriation bill for the year be varied in accordance with an amendment to be moved by a Minister, the proposed amendment being specified in the message, was announced to the House immediately before the bill was further considered in detail.[47]

When the Governor-General by message recommends an appropriation for the purposes of an amendment requested by the Senate in a bill which originated in the House, the message is announced before the requested amendment is considered by the House.[48] A message cannot recommend appropriation to the House in respect of a Senate *amendment* (quite apart from the question of the validity of the amendment), as the recommendation must be made to the House in which the proposal originated.[49] A replacement message has been provided where the long title of an appropriation bill has been amended.[50]

Consideration in detail

The only additional consideration in respect of special appropriation bills at the detail stage, not in common with ordinary bills, is imposed by standing order 180 and the principle of the financial initiative of the Executive. As outlined above, no amendment of a proposal for the appropriation of any public moneys may be moved which would increase, or extend the objects and purposes or alter the destination of, the appropriation recommended unless a further message is received.[51] This restriction effectively prevents private Members from moving such amendments.

A proposed amendment has been ruled out of order because it appeared to involve an appropriation,[52] or because its effect would be to increase the appropriation required,[53] alter the purpose of the appropriation,[54] alter the destination of the appropriation,[55] or go beyond the appropriation recommended.[56]

The assessment of whether amendments proposed by private Members would be in order can be difficult. At one extreme it may be argued that virtually any change in any bill will have some financial impact and, at the other extreme, it may be claimed that, unless an amendment explicitly and directly increases or alters an appropriation, it may be moved by a private Member. It is considered that neither of these positions is valid and that the only proper course is to examine each proposed amendment on its merits. The test that should be applied is to ask what is expected to be the practical result or consequence of the amendment in so far as an appropriation is concerned. An amendment by a private Member to a bill may be out of order, for instance, even though the bill as introduced did not have any direct financial impact, if it amended a principal Act and the Member sought to use the opportunity provided by the bill to move an amendment which would increase or vary the appropriation in the principal Act. It has been considered that the provisions of standing order 180 do not prevent a private Member from moving an amendment which, if successful, would reduce 'savings' proposed in a bill, provided the

47 VP 1974–75/944 (2.10.1975).
48 S.O. 181, e.g. VP 1978–80/286 (2.6.1978); VP 1974–75/544 (6.3.1975) (Administrator); VP 1998–2001/2025 (7.12.2000).
49 Constitution, s. 56.
50 VP 1990–93/1392 (26.3.1992); H.R. Deb. (26.3.1992) 1308.
51 S.O. 180(d).
52 VP 1993–96/2596 (21.11.1995).
53 VP 1970–72/149–50 (14.5.1970); VP 1977/409 (4.11.1977).
54 VP 1932–34/929 (26.7.1934).
55 VP 1968–69/256 (24.10.1968).
56 VP 1917–19/280 (15.6.1918).

effect was not to increase expenditure above that already provided for in the principal Act.[57]

It is not unusual for a Member to be advised in advance that a proposed amendment may be ruled out of order by the Chair on one of the grounds mentioned, but sometimes Members have proceeded to propose an amendment so that they could make a particular point. A Member unable to move an amendment in such circumstances may choose to put his or her view on the matter to the House in an appropriate second reading amendment,[58] or to read the amendment they would have moved into the Hansard record.[59]

APPROPRIATION AND SUPPLY BILLS

Summary of annual financial legislation

The Parliament appropriates moneys from the Consolidated Revenue Fund on an annual basis in order to fund expenditure by the Government. Prior to 1999 the appropriation of funds by the annual appropriation bills expired at the end of the financial year on 30 June. The annual appropriations, although related to activity in a specific year, no longer lapse at the end of the year—appropriations for departmental expenses are open ended, while appropriations for administered expenses are limited to expenses incurred in that year. Each annual appropriation Act now provides for the automatic repealing of itself prospectively (for example, on 1 July 2019 for the 2016–17 Acts).[60]

Appropriation Bill (No. 1) is a key element in 'the Budget'; it contains details of estimates for ordinary annual government services—that is, continuing expenditure by government agencies on services for existing policies.[61]

Appropriation Bill (No. 2) is also introduced as part of the Budget and appropriates funds for new administered expenses; non-operating costs; and payments to the States, Australian Capital Territory, Northern Territory and local government.[62]

Appropriation (Parliamentary Departments) Bill, also introduced as part of the Budget, appropriates funds for the parliamentary departments.

Appropriation Bills (No. 3) and (No. 4) and Appropriation (Parliamentary Departments) Bill (No. 2) are referred to as the additional or supplementary estimates. Appropriation Bill (No. 3) appropriates funds for administrative expenses, while Appropriation Bill (No. 4) provides for capital expenditure—thus they parallel Appropriation Bills (No. 1) and (No. 2) respectively.[63] They are needed in order to meet requirements that have arisen since the passage of Appropriation Bills (No. 1) and

57 E.g. VP 1996–98/984 (5.12.1996).

58 E.g. VP 1985–87/1672 (14.5.1987); H.R. Deb. (14.5.1987) 3282; VP 1987–90/864 (9.11.1988); VP 2004–07/2059–60 (13.8.2007).

59 E.g. H.R. Deb. (29.5.2002) 2586.

60 Earlier annual appropriation Acts without this provision have been repealed by separate legislation, e.g. *Statute Stocktake (Appropriations) Act 2013*.

61 Since 1994 usually introduced in May. *See* Treasurer's statement on change from the traditional August Budget, H.R. Deb. (17.12.1993) 4399–400.

62 Most payments to the States previously appropriated annually by Appropriation Bill (No. 2) now have standing appropriation under the *Federal Financial Relations Act 2009*.

63 Now generally introduced between October and February, but traditionally in April when the Budget took place in August. Other appropriation bills introduced to cover special expenditure—for example as Appropriation Bill (No. 3)—may cause the additional estimates to be numbered differently—for example (No. 4) and (No. 5). For further coverage of additional appropriation bills *see* page 432.

(No. 2). The Appropriation (Parliamentary Departments) Bill (No. 2) performs the same function in respect of the parliamentary departments.

Supply bills make interim provision for expenditure when the main appropriation bills are not going to be passed before the start of the financial year on 1 July. Supply bills are no longer part of the normal annual routine, but were necessary in the past when Budgets were introduced in August, and have sometimes been used since then in special circumstances (*see* page 433). As with the appropriation bills, (No. 1) refers to salaries and administrative expenses and (No. 2) provides for capital expenditure. The Supply (Parliamentary Departments) Bill provides funds for parliamentary expenditure.[64]

The **Advance to the Finance Minister**, and the advances to the Presiding Officers, are allocations of funds in the main appropriation bills and (if introduced) the supply bills in order to meet emergency or unforeseen expenditure during the course of the financial year (*see* page 434).

Ordinary annual services of the Government

The Constitution provides that a proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation (to avoid what is known as 'tacking' on to a bill other measures which the Senate could otherwise amend).[65] The Senate may not amend any proposed law appropriating revenue or moneys for the ordinary annual services of the Government.[66] The main appropriation bill (Appropriation Bill (No. 1)) for the year has, since soon after Federation, provided for the ordinary annual services of the Government, and a second appropriation bill has contained provision for expenditure not appropriately included in the main bill. The second bill (Appropriation Bill (No. 2)) has, in earlier years, been called Appropriation (Works and Buildings), Appropriation (Works and Services) and Appropriation (Special Expenditure). The second appropriation bill is considered, constitutionally, to be capable of amendment by the Senate.

Subsequent bills for equivalent purposes are treated similarly. Appropriation Bill (No. 3) and Supply Bill (No. 1) are for the ordinary annual services of the Government and are therefore not capable of amendment by the Senate. Appropriation Bill (No. 4) and Supply Bill (No. 2) are capable of amendment by the Senate, subject to the restrictions imposed by section 53 of the Constitution. As the parliamentary appropriation and supply bills are not for ordinary annual services of government they are therefore also subject to possible Senate amendment.

The distribution of appropriations between the (No. 1) and (No. 2) bills was the subject of negotiation and agreement between the Government and the Senate in 1965, when the Treasurer announced that henceforth there would be a separate bill (Appropriation Bill (No. 2)), subject to amendment by the Senate, containing appropriations for expenditure on:

- the construction of public works and buildings;
- the acquisition of sites and buildings;
- items of plant and equipment which are clearly identifiable as capital expenditure;
- grants to the States under section 96 of the Constitution; and

64 For further coverage of supply bills *see* page 433.
65 Constitution, s. 54.
66 Constitution, s. 53.

- new policies not authorised by special legislation (subsequent appropriations to be included in the Appropriation Bill (No. 1) not subject to amendment by the Senate).[67]

In 1999, with the introduction of accrual accounting to the budget process, the Senate agreed to government proposals to vary the contents of the two appropriation bills as follows:

- items regarded as equity injections and loans be regarded as not part of the annual services;
- all appropriation items for continuing activities for which appropriations have been made in the past be regarded as part of ordinary annual services;
- all appropriations for existing asset replacement be regarded as provision for depreciation and part of ordinary services.[68]

In recent years some additional appropriation bills for special purposes (*see* page 432) have been identified in their titles as being for ordinary annual services. The Senate has disputed such classification and has treated such bills as amendable.[69]

The components of the annual Budget

Appropriation Bill (No. 1)—the main appropriation bill

The main appropriation bill for the year (Appropriation Bill (No. 1)) is an integral part of the Government's budget proposals. The 'Budget' is the term ordinarily used for the annual financial statement presented to the House by the Treasurer[70] and includes the Appropriation Bills (Nos 1 and 2), the Appropriation (Parliamentary Departments) Bill, documents relating to the bills and other legislation to give effect to the Budget. The introduction of the Appropriation Bill (No. 1) is the first parliamentary step in placing the Budget before the House.

MESSAGE RECOMMENDING APPROPRIATION AND INTRODUCTION

The introduction of the Appropriation Bill (No. 1) is preceded by the announcement by the Speaker of a Governor-General's message recommending an appropriation for the purposes of the bill.[71]

The long title of the bill introduced must be identical to the title of the bill cited in the Governor-General's message.[72] Before an amendment can be moved to an appropriation or supply bill's title a further message is necessary, specifying the long title as proposed to be amended.[73]

Standing order 178 allows the bill to be introduced without notice by a Minister, in this instance the Treasurer.[74]

67 H.R. Deb. (13.5.1965) 1484–5.
68 Senate Standing Committee on Appropriations and Staffing, *Thirtieth report*, March 1999. J 1999/620 (25.3.1999), 777 (22.4.1999).
69 *And see Odgers*, 14th edn, pp. 388–91 for later negotiation between the Government and Senate on these matters.
70 Supplementary economic statements may be made at times other than the Budget in the form of a ministerial statement, by leave.
71 S.O. 180(b), e.g. VP 2010–13/2222 (14.5.2013).
72 In 1999 the Minister for Finance and Administration hand-amended the long titles of two appropriation bills in the Chamber, prior to the bills' presentation, to ensure consistency with the messages.
73 VP 1990–93/1392 (26.3.1992).
74 The Minister for Finance is responsible for administration of the Commonwealth Public Account and thus administers the bill. However the Treasurer is responsible for economic, fiscal and monetary policy and introduces the main appropriation bills.

SECOND READING—BUDGET SPEECH AND DEBATE

In moving the second reading, the Treasurer delivers the budget speech, in which he or she compares the estimates of the previous financial year with actual expenditure, reviews the economic condition of the nation, and states the anticipated income and expenditure for the current financial year, including the taxation measures proposed to meet the expenditure.[75] In making the budget speech, the Treasurer speaks without limitation of time (but in practice about 30 minutes) and at the conclusion of the speech debate is adjourned on the motion of an opposition Member, usually the Leader of the Opposition.

The debate on the second reading of the Appropriation Bill (No. l) is known as the 'budget debate'. It is traditionally resumed by the Leader of the Opposition later in the budget week. In the response to the Government's budget proposals, the Leader of the Opposition (or a Member deputed by the Leader) speaks without limitation of time (but in practice about 30 minutes). The scope of discussion in the budget debate is almost unlimited, as the standing order which applies the rule of relevancy makes the main appropriation bill one of the exceptions from its provisions.[76] Until recent years the budget debate traditionally continued over a period of several weeks. However, now that the Budget is (usually) presented in May less time is spent in considering it in order that the appropriation bills can be passed by the Parliament before the start of the financial year on 1 July. The appropriation bills have been subject to a declaration of urgency.[77] The budget debate may be, and now usually is, taken partly in the Federation Chamber.

REASONED AMENDMENT

An amendment relating to public affairs beyond the scope of the bill may be moved to the motion for the second reading of the main appropriation bill.[78] Such amendments are often moved by the Leader of the Opposition or a shadow minister and can be expected to refer to aspects of the Budget with which the Opposition is dissatisfied.[79] On occasion the second reading amendment has been moved at a later stage in the debate.[80] This procedure allows opposition Members to address themselves to the main question and to address the House again (speaking to the amendment) later in the debate. The Leader of the House, in moving a motion to reduce the time limits for speeches on the second reading debate on the Appropriation Bill (No. 1) 1978–79 from 20 to 15 minutes, explained that opposition Members, on the basis of an amendment being moved after they had spoken once, had two opportunities to address the House; the reduced time limits were necessary to give the maximum number of government Members the opportunity to address the House.[81]

If such a reasoned amendment were carried this would, in effect, place the Government's position in jeopardy. In 1963, on the first Budget to which the revised financial procedures applied, the Leader of the Opposition unsuccessfully moved an amendment to the effect that, for reasons specified, the House was of the opinion that the Government no longer possessed the confidence of the nation.[82]

75 E.g. H.R. Deb. (12.5.2009) 3531–9. The second reading has been moved on a later day prior to the resumption of debate, H.R. Deb. (11.5.2010) 3134–41, VP 2008–10/1732 (11.5.2010), 1760 (13.5.2010).

76 S.O. 76(c).

77 VP 1993–96/1052 (2.6.1994); VP 1996–98/591–8 (10.10.1996).

78 S.O. 145(b), e.g. VP 1993–96/194 (31.8.1993); VP 1996–98/408–10 (9.9.1996).

79 E.g. VP 1985–87/1110 (16.9.1986); VP 1993–96/193–4 (31.8.1993); VP 1996–98/408–10 (9.9.1996); VP 2002–04/1617–8 (24.5.2004).

80 E.g. VP 1978–80/990 (13.9.1979).

81 H.R. Deb. (24.8.1978) 716.

82 VP 1962–63/524 (20.8.1963), 534 (29.8.1963).

CONSIDERATION BY ESTIMATES COMMITTEES

Between 1979 and 1981 the House experimented with sessional orders providing for the proposed expenditures contained in Appropriation Bill (No. 1) to be considered in estimates committees.[83] An account of the operation of the estimates committees is given at page 359 of the first edition. In 2003 the Procedure Committee recommended that the House refer the proposed expenditures to its standing committees or committees composed of House members of joint committees, and that hearings be held for those departments where the responsible Minister or Presiding Officer was a Member of the House of Representatives.[84]

After copies of the budget documentation (*see* page 431) are presented in the Senate on budget night, the 'particulars of proposed expenditure' (the schedules in the appropriation bills containing the estimates) and the Portfolio Budget Statements are referred to Senate legislation committees. This allows Senate consideration of the estimates before the appropriation bills have passed the House of Representatives. The Senate legislation committees in estimates mode usually conduct public hearings over a two week period while the House is engaged in the budget debate.[85]

CONSIDERATION IN DETAIL

It is now standard practice for the consideration in detail stage of Appropriation Bill (No. l) to be taken in the Federation Chamber and the following text presumes that this is the case. However, this stage could be taken in the House.

The Federation Chamber first considers the schedule which expresses the services for which the appropriation is to be made ('the estimates'), before considering the clauses.[86] The order for considering the proposed expenditures is the order in which the portfolios are listed in the schedule which is traditionally in alphabetical order. As this order may not be convenient to individual Ministers or shadow ministers, it is the usual practice for a Minister to suggest a different order for consideration.[87] When the Federation Chamber has agreed to the order, it is recorded as a resolution.[88] The agreed order may be varied by further resolution.[89]

The Federation Chamber goes through the schedule portfolio by portfolio, debating for each portfolio the question 'that the proposed expenditure be agreed to.' The relevance rule applies during the detail stage. However, debate which covers departmental activity and government policy in the area, as well as financial details, is in order.

Previous Deputy Speakers have encouraged a question and answer format in the Federation Chamber rather than general debate. Consideration of each portfolio sometimes starts with introductory remarks by the responsible Minister. Shadow ministers usually play an important role and may speak first. Members seek the call to question the Minister, often not taking their full five minutes. Ministers may respond to questions individually, may wait until several Members have spoken before responding, or may respond to all questions in their closing remarks. Ministers may also offer, or be

83 VP 1978–80/1011–13 (20.9.1979), 1589 (27.8.1980) (amended); VP 1980–83/419–21 (20.8.1981) (renewed and revised).

84 The recommendation was not acted on. Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives.* PP 211 (2003). This report also discusses the background to the demise of the estimates committees after 1981.

85 For details *see Odgers*, 14th edn, pp. 478–83.

86 S.O. 149(d).

87 E.g. H.R. Deb. (5.6.1995) 1142; H.R. Deb. (5.6.2008) 4765.

88 E.g. VP 1993–96/2115 (5.6.1995); VP 2008–10/366 (5.6.2008).

89 E.g. VP 1978–80/410 (21.9.1978); VP 1996–98/3096 (3.6.1998); VP 2008–10/393 (17.6.2008).

requested, to take some of the questions on notice.[90] On one occasion when the Minister for a portfolio area was a Senator, a Member by leave presented a list of questions and the Minister representing the Senate Minister undertook to obtain answers.[91]

A timetable for the consideration in detail stage is now circulated in advance showing the day and time allocated to each portfolio and the name of the Minister attending. Periods allocated to portfolios have varied between 60 and 30 minutes.

After completing consideration of the schedule, the Federation Chamber then considers the remainder of the bill in the same way as an ordinary bill. It is usual, however, for the remainder of the bill to be taken as a whole and agreed to formally.[92]

AMENDMENTS

A private Member may not move an amendment which would infringe the financial initiative of the Executive.[93] A private Member may move to reduce the amount of the proposed expenditure or may move to omit or reduce items, but may not move to increase an amount or alter the purposes of the proposed expenditure. The traditional form of the amendment is 'That the proposed expenditure for the Department of . . . be reduced by $. . .'.[94] The Member may then state the reason for moving the amendment, for example, 'as an instruction to the Government to . . .', 'because the Government has failed to . . .', 'because, in the opinion of the House, the Government should . . .'. The reason is not recorded in the Votes and Proceedings.[95]

In 1941, under now superseded financial procedures, an amendment was successfully moved in Committee of Supply to reduce the first item by £1.[96] The Government resigned four days later.[97] However, a successful private Member's motion to reduce a budget appropriation does not necessarily place the Government in jeopardy. For example, in 1995 an appropriation in Appropriation Bill (No. 4) was reduced as a result of an amendment moved by an opposition Member.[98]

An amendment to an appropriation bill to increase, or extend the objects and purposes or alter the destination of the appropriation recommended by the Governor-General must be preceded by a further message which must be announced before the amendment is moved.[99] An amendment to an appropriation bill which does not affect the appropriation recommended may be moved without obtaining a further message.[100]

PROPOSED IMPROVEMENTS TO PROCEDURES FOR CONSIDERATION OF ESTIMATES

In 2003 the Procedure Committee reviewed arrangements for the consideration of the annual estimates by the House, in response to criticisms of then current practice.[101] The committee focused on the problem of time allocation, noting that in recent years the estimates debates had been curtailed because of the time restraints imposed by the need to

90 The answers to such questions do not become part of the formal proceedings of the House—the response is up to the Minister concerned, usually by way of a letter to the Member asking the question.

91 H.R. Deb. (18.6.2008) 5323.

92 E.g. VP 2010–13/2392 (6.6.2013).

93 A private Member would not have available the Governor-General's message required by S.O. 180(d).

94 E.g. VP 1977/353 (25.10.1977); VP 1993–96/324 (5.10.1993).

95 H.R. Deb. (14.9.1972) 1469; H.R. Deb. (5.10.1993) 1638.

96 The item reduced was for salaries for Senate staff. Nowadays a second reading amendment would be used to express disapproval of the Budget or government policies behind the Budget.

97 VP 1940–43/190 (1.10.1941), 193 (3.10.1941), 195 (8.10.1941).

98 VP 1993–96/2655 (28.11.1995) (proposed payment of $243,537 to fund a Minister's legal fees in relation to a State Royal Commission—the amendment was not opposed by the Government).

99 VP 1974–75/944 (2.10.1975); VP 1990–93/1736 (17.9.1992), 1762–3 (12.10.1992).

100 VP 1974–75/954 (8.10.1975); VP 1990–93/197 (19.9.1990).

101 Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives.* PP 211 (2003): p. 19.

have the appropriation legislation introduced in mid-May agreed to by both Houses of the Parliament before the beginning of the financial year on 1 July. The committee's solution was to make better use of the opportunities offered by the then Main Committee (now Federation Chamber) for 'parallel processing' by separating the general budget debate from the second reading of Appropriation Bill (No. 1) in order to enable the estimates debates—the consideration in detail stage—to begin much earlier. The committee proposed that the second reading would be agreed to without further debate immediately following the Leader of the Opposition's reply. After this, the 'budget debate' (on the motion 'That the House approves the Budget'), and the consideration in detail stage of the bill could take place concurrently.[102] This proposal was not adopted and instead the House has relied on extended and additional meetings of the Federation Chamber to provide the time needed for sequential budget and estimates debates.[103]

In 2016 the Procedure Committee inquired into the consideration in detail of the main appropriation bill, with reference to the conduct of debate, including the allocation of the call; and into the adequacy of the standing orders in facilitating the debate. The committee recommended the adoption of standing orders specifically relating to the main appropriation bill in order to clarify the existing rules and practice, including rules for the consideration in detail stage,[104] and recommended, as a trial, that speech time limits for this stage be reduced from five minutes to two minutes.

In relation to the allocation of the call, the committee observed that the practice that had developed of allocating the call during the detail stage as it was allocated in Question Time had resulted in a disproportionate amount of time being allocated to the government side, noting that this had only become an issue in recent years as more government Members had participated in the debate. The committee argued that the call should be allocated consistent with the practice applying in all other debates—that is, as far as practicable the call should alternate and afford a roughly equal number of speaking opportunities and time to each side of the House.[105]

Appropriation Bill (No. 2)

This bill is also introduced without notice following the Speaker's announcement of a Governor-General's message recommending an appropriation for the purposes of the bill.[106] The bill is introduced immediately after Appropriation Bill (No. 1). The procedure for the passage of Appropriation Bill (No. 2) is similar to that for the main appropriation bill except that when the second reading is debated separately the wide range of debate and amendment allowed on the second reading consideration of the main bill is not permitted and normal relevancy rules apply. Should the House consider the bill in detail, it would be considered in the same manner as the main appropriation bill; that is, the schedule is considered before the clauses.[107] However, it is generally the practice for leave to be granted for the third reading to be moved immediately after the second reading.

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102 *ibid*., pp. 24–27.

103 From an average of 8 hrs in the years leading to the 2003 Procedure Committee report, to just over 13 hrs in 2009 and 2010, and to an average of over 17 hrs in later years (to 2015—less than 14 hrs was available in 2016 because of the election). The Procedure Committee had recommended at least 17 (the amount of time available when budget bills were introduced in August).

104 Proposed S.O.s 182A and 182B.

105 Standing Committee on Procedure, *Consideration in detail of the main appropriation bill*, Feb. 2016. *And see* statement by Deputy Speaker, H.R. Deb. (31.5.2017) 5932–3.

106 E.g. VP 2008–10/994–5 (12.5.2009).

107 S.O. 149(d).

Appropriation (Parliamentary Departments) Bill

This bill is also introduced without notice following the introduction of Appropriation Bill (No. 2) and provides for funds for the operations of the parliamentary departments. The practice for the passage of the bill has been the same as that for Appropriation Bill (No. 2), with the rule of relevancy applying.

Budget papers and related documents

Associated with the Budget are certain related documents and bills. After debate on Appropriation Bill (No. 1) has been adjourned, budget-associated documents are normally presented. The nature and titles of these documents have varied. In recent years the Treasurer presented the following papers:

- Budget Strategy and Outlook, containing information on the economic and financial outlook, together with information on the fiscal strategy (Budget paper No. 1);
- Budget Measures, providing a comprehensive statement on the budget expense, revenue and capital measures in the Budget (Budget paper No. 2);
- Federal Financial Relations, providing information on the Australian Government's financial relations with the States, Territories and local government (Budget paper No. 3);
- Agency Resourcing, containing information on resourcing for Australian Government agencies, (including special appropriations, special accounts and a summary of agency resourcing) (Budget paper No. 4).

Together with a pamphlet copy of the Treasurer's speech these documents are presented as the 'Budget Papers'. At the same time the Treasurer may also present other 'Budget related papers'. Alternatively such papers may be presented by another Minister or a Parliamentary Secretary at a later stage of proceedings. Portfolio Budget Statements, also listed as 'Budget related papers', are available from individual departments after the Budget.[108] Budget and budget related documents may be accessed on the internet.[109]

After the presentation of the papers by the Treasurer a motion may be moved that the documents be made Parliamentary Papers. This motion may be debated but debate must be relevant to the motion, and does not allow the subject matter of the documents, including the state of the economy or events in the preceding financial year, to be debated.[110]

Other budget related business may follow.[111] Budget related bills may be introduced,[112] ministerial statements explaining budget decisions in detail are sometimes made or presented, and customs and excise tariff proposals connected with the Budget are often moved. In recent years additional appropriation bills (*see below*) for the current financial year have been introduced at this time.

The term 'budget measure' is used to describe bills introduced to implement the financial proposals announced in the Treasurer's budget speech. That a bill is described as

108 Portfolio Budget Statements (PBS) and Portfolio Additional Estimates Statements (PAES) are declared in Appropriation Acts to be relevant documents for the purposes of section 15AB of the *Acts Interpretation Act 1901*—that is, they may be used as extrinsic material in the interpretation of the Appropriation Acts. PBS and PAES are presented in the Senate but the practice has been not to present them in the House (a practice to which the Procedure Committee has objected, *see* Standing Committee on Procedure, *House estimates: consideration of the annual estimates by the House of Representatives.* PP 211 (2003): pp. 30–31).

109 <www.budget.gov.au>.

110 H.R. Deb. (15.8.1972) 139–42. Such documents are now (since the resolution of 28.3.2018) automatically made Parliamentary Papers and a motion is not needed.

111 E.g. VP 1993–96/2029–31 (9.5.1995); VP 2008–10/994–6 (12.5.2009).

112 E.g. a Taxation Laws Amendment Bill.

a budget measure does not in itself bestow on it any special procedural status or immunity from amendment, as is occasionally assumed.

Explanatory memorandums for appropriation bills

While the standing orders exempt appropriation and supply bills from the requirement that they be accompanied by an explanatory memorandum,[113] for the first time in 2008 the Appropriation Bills (Nos 1 and 2) and the Appropriation (Parliamentary Departments) Bill were introduced with explanatory memorandums explaining the bills and the changes compared to previous appropriation bills.[114]

Additional appropriation bills

Where an amount provided in the Appropriation Acts (Nos 1 or 2) is insufficient to meet approved commitments falling due in a financial year, additional or supplementary appropriation may be sought in further appropriation bills. These are usually designated Appropriation Bill (No. 3) for expenditure in respect of the ordinary annual services of the Government, and Appropriation Bill (No. 4) for expenditure for other than the ordinary annual services. Similarly, an Appropriation (Parliamentary Departments) Bill (No. 2) may be introduced in respect of the departments supporting the Parliament. Appropriations may also be sought in these bills for new expenditure proposals. Appropriation Bill (No. 3) is not considered in the same detail as Appropriation Bill (No. 1). However, as with Appropriation Bill (No. 1), a wide range of debate and amendment is permitted on the second reading of an additional appropriation bill for expenditure for the ordinary annual services of the Government[115]—that is, (usually) Appropriation Bill (No. 3).

As well as providing for increased appropriations, additional appropriation bills have been used to reallocate funds previously appropriated for other purposes—Appropriation Bills (Nos 3 and 4) 1992–93 were introduced with this explanation.[116] Further additional appropriation bills may be introduced if funds provided by the Nos 3 and 4 bills prove insufficient—for example, Appropriation Bills (Nos 5 and 6) 2007–2008.[117] In 1995 an amendment moved by an opposition Member to Appropriation Bill (No. 4) 1995–96 (to reduce expenditure on a proposal) was agreed to.[118]

Appropriation Bill (No. 5) 1991–92 was introduced, while Appropriation Bills (Nos 3 and 4) were before the House, with the purpose of separating for urgent consideration certain appropriations from Appropriation Bill (No. 3),[119] which was later correspondingly amended.[120]

Additional appropriation bills for special purposes

On occasion additional appropriation bills are introduced for special purposes, for example:

113 S.O. 141(b).
114 H.R. Deb. (13.5.2008) 2609.
115 S.O.s 76(c), 145(b).
116 H.R. Deb. (24.11.1992) 3401–3.
117 VP 2008–10/229 (13.5.2008).
118 VP 1993–96/2655 (28.11.1995). The Senate subsequently agreed to a further amendment to the bill, which was agreed to by the House; VP 1993–96/2703–4 (30.11.1995).
119 VP 1990–93/1372 (24.3.1992), H.R. Deb. (24.3.1992) 969.
120 VP 1990–93/1392–4 (26.3.1992).

- Appropriation Bill (No. 3) 1990–91 appropriated funds to meet urgent requirements arising as a consequence of the Gulf War;[121]
- Appropriation (Supplementary Measures) Bills (Nos 1 and 2) 1999 appropriated funds for book industry assistance, for a welfare program and for expenditure on environmental matters;[122]
- Appropriation (East Timor) Bill 1999–2000 appropriated funds for expenditure related to East Timor;[123]
- Appropriation (Tsunami Financial Assistance) Bill 2004–2005 and Appropriation (Tsunami Financial Assistance and Australia–Indonesia Partnership) Bill 2004–2005 appropriated funds for assistance to Indonesia in response to the December 2004 tsunami disaster.[124]

Such bills are preceded by the announcement of a Governor-General's message recommending appropriation[125] and may be introduced without notice.[126]

The Appropriation (Tsunami Financial Assistance) Bill 2004–2005 listed above was identified in its title as being for 'ordinary annual services', and more recently several appropriation bills for special purposes have followed this precedent.[127] This classification has been a matter of ongoing dispute between the Government and the Senate (*see* page 425). In the House the practice has been not to recognise these bills as ones to which the relevancy exemption provided by standing order 76(c) applies.

Supply bills

Supply bills are no longer part of the regular annual routine. Their function is to provide funds in the interim period when the main appropriation bills are not scheduled to pass before the commencement of the financial year on 1 July. This was the usual practice when the Budget was presented in August. Supply Bills (Nos 1, 2 and Parliamentary Departments) would be introduced in April or May to appropriate money from the Consolidated Revenue Fund to make interim provision for expenditure for the following financial year from 1 July pending the passing of the main appropriation bills for that year. The amount provided in each supply bill was usually limited to not more than five months' requirements—that is, the first five months of the forthcoming financial year, in the main based on expenditures or appropriations of the previous year.

Since the 1994 change to May Budgets, supply bills have been used in 1996 when a general election in February and change of government meant that a May Budget was not practical, and in 2016 when the pending general election left insufficient time for the main appropriation bills to be passed.[128] In 2016 the supply bills appropriated

121 VP 1990–93/515 (14.2.1991), H.R. Deb. (14.2.1991) 652.
122 VP 1998–2001/803 (26.8.1999) (bills introduced on notice).
123 VP 1998–2001/1106–7 (25.11.1999).
124 VP 2004–07/219 (9.3.2005).
125 S.O. 180(b).
126 S.O. 178.
127 E.g. Appropriation (Regional Telecommunications Services) Bill 2005–2006; Appropriation (Northern Territory National Emergency Response) Bill (No. 1) 2007–2008; Appropriation (Drought and Equine Influenza Assistance) Bill (No. 1) 2008; Appropriation (Economic Security Strategy) Bill (No. 1) 2008–2009; Appropriation (Nation Building and Jobs) Bill (No. 1) 2009.
128 Supply bills introduced and passed on 4 May, Budget on 5 May; both Houses dissolved on 9 May, election 2 July.

approximately 5/12ths of the whole year amount, excluding budget measures, and the main appropriation bills appropriated the remaining 7/12ths, plus budget measures.[129]

Procedures for supply bills, including the financial initiative limitation on amendment, are the same as for appropriation bills. As in the case of the main appropriation bills, the wide scope of debate and amendment allowed in respect of Supply Bill (No. 1) for the ordinary services for the year[130] would not extend to Supply Bill (No. 2) providing for certain other expenditure. However, supply bills differ from the main appropriation bills in that there is no budget speech or budget debate, as such.

Supply bills additional to Supply Bills (Nos 1 and 2) have been introduced. Supply Bills (Nos 3 and 4) 1992–93 were introduced concurrently with Appropriation Bills (Nos 1 and 2) 1992–93, with the expectation that Parliament would agree to the earlier passage of the interim provisions.[131]

Advance to the Finance Minister

The Appropriation Acts (Nos 1 and 2) and, when they are used, the Supply Acts (Nos 1 and 2) each provide an appropriation of funds for what is known as the Advance to the Finance Minister (AFM). These amounts enable the Finance Minister (that is, the Minister for Finance) to make money available for expenditure that the Finance Minister is satisfied is urgently required and was unforeseen or erroneously omitted from, or understated in, the Appropriation or Supply Act.

Amounts are issued from the advances by determination of the Finance Minister. Such determinations are legislative instruments and are presented to the Parliament, although they are not subject to disallowance. The Minister also accounts to the Parliament for expenditure from the advances by means of the presentation of an annual report on the use of the AFM provision.[132]

Advances to the Presiding Officers

The Appropriation (Parliamentary Departments) Acts and Supply (Parliamentary Departments) Acts each contain provisions for an Advance to the responsible Presiding Officer. The advance enables the President and the Speaker, separately in relation to the Departments of the Senate and the House of Representatives respectively, and jointly in relation to the Department of Parliamentary Services[133] and the Parliamentary Budget Office, to make money available for expenditure they are satisfied is urgently required and was unforeseen or erroneously omitted from, or understated in, the relevant Appropriation or Supply Act.

Amounts are issued from the advance by determination of the Presiding Officers. Such determinations are legislative instruments and presented to the Parliament, although they are not subject to disallowance. Details of expenditure under the advance are also included in the advances annual report referred to above.

129 Previously, appropriation bills preceded by a supply bill had appropriated the whole year amount, subsuming the supply bill amount already appropriated. (The original 2016–17 appropriation bills lapsed at dissolution and were reintroduced with the same names and substantially the same content at the commencement of the next Parliament.)

130 S.O. 76(c).

131 VP 1990–93/1638–9 (18.8.1992), H.R. Deb. (18.8.1992) 62–4.

132 *See Budget Paper No. 4 2012–13*, p. 12. The operation of the AFM provision was canvassed in *Wilkie v. The Commonwealth* [2017] HCA 40, which challenged the legal basis of the funding of the Australian Marriage Law Postal Survey, held in September/November 2017. The High Court ruled the Minister's determination under the AFM provision not to be invalid.

133 And before amalgamation, the three former joint departments.

TAXATION BILLS

Strictly, taxation bills are those which *impose* a tax or charge in the nature of a tax.[134] They cannot originate in, or be amended by, the Senate.[135] The form of a bill in this class is governed by section 55 of the Constitution which provides that laws imposing taxation shall deal only with the imposition of taxation (to avoid what is known as 'tacking'—*see* page 418), and, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; laws imposing duties of customs shall deal with duties of customs only and laws imposing duties of excise shall deal with duties of excise only.[136] Examples of taxation bills are income tax bills, customs tariff bills and excise tariff bills. Certain bills imposing fees may be considered as taxation bills if the fees involved are revenue raising measures rather than charges having a discernible relationship with the value of services rendered (*see below*).

Reflecting the requirements of the Constitution, House practice distinguishes between bills dealing with taxation, such as tax assessment bills, and tax bills. Tax assessment bills provide the means for assessing and collecting tax. Tax bills, which impose the burden upon the people, are the bills which have been regarded as imposing taxation, and are therefore not capable of originating in the Senate or of being amended by the Senate. This practice has been recognised by the High Court as carrying out the constitutional provisions on a correct basis.[137] It has also been reviewed and accepted by the House's Standing Committee on Legal and Constitutional Affairs.[138]

A former Chief General Counsel of the Attorney-General's Department advised that bills dealing with taxation can be further categorised as follows:

A. provisions imposing taxation;
B. other provisions dealing with the imposition of taxation (e.g. provisions removing or adding exemptions or deductions, increasing or reducing rates or otherwise defining a taxable amount); and
C. provisions not dealing with the imposition of taxation (e.g. provisions for the assessment, collection and recovery of tax and provisions providing for penalties).[139]

It has been held by the High Court:

- that Part VIII of the *Customs Act 1901*, which dealt with the payment and computation of duties payable under the Customs Tariff, was not a law imposing taxation within the meaning of section 55 of the Constitution;
- that the Act imposing taxation is not the *Customs Act 1901–1910* (which is a Customs Regulation Act) but the Customs Tariff Act. To hold that a Customs Regulation Act was a law imposing taxation would deny the power of the Senate to originate or amend it;
- that the *Income Tax Assessment Act 1936–1939* was not a law imposing taxation within the meaning of section 55 of the Constitution;

134 In practice the term is also sometimes used to describe bills which, while not actually imposing taxation, deal with taxation.
135 Constitution, s. 53.
136 To ensure that these constitutional requirements are satisfied, a tax may be imposed by multiple imposition bills (accompanied by a single assessment bill)—one bill imposing the tax to the extent that it is a duty of customs, another to the extent that it is a duty of excise and a third to the extent that it is neither a duty of customs nor a duty of excise (e.g. Goods and Services Tax, Minerals Resource Rent Tax).
137 Attorney-General's Department, *The Australian Constitution annotated*, AGPS, Canberra, 1980, pp. 179–81.
138 *The third paragraph of section 53 of the Constitution*, PP 307 (1995) 104–5.
139 Advice dated 30 August 1993 re Taxation (Deficit Reduction) Bill 1993 (attachment).

- that the *Land Tax Assessment Act 1910* was not an Act imposing taxation within the meaning of section 55 of the Constitution. It is not every statute dealing with the imposition of taxation that is a taxing law. The Land Tax Assessment Act is certainly a law relating to taxation; that is, it deals with the imposition, assessment and collection of a land tax. That does not make it a law imposing taxation;
- that the provisions of the *Sales Tax Assessment Act (No. 2) 1930–1936*, imposing liability for an amount by way of additional tax in case of default, imposed penalties, not taxes, and did not make the Act a law imposing taxation; and
- that the *Sales Tax Assessment Act (No. 5) 1930–1953* was not a law imposing taxation and section 55 of the Constitution had no relation to it.[140]

A Sales Tax (Exemptions and Classifications) Bill is not a bill imposing taxation within the meaning of section 55 of the Constitution as the bill merely states goods which are exempt and classifies others for the purpose of imposition of sales tax.[141] Such a bill may be amended by the Senate[142] and amendments to such legislation have been moved by private Members in the House of Representatives (provided they satisfy the requirements of the standing orders).[143]

The High Court held in 1987 that:

> . . . The test under the second paragraph of s. 55 in deciding whether the subject of taxation imposed by an Act is single is whether, looking at the subject matter which is dealt with as if it were a unit by Parliament, it can then, in the aspect in which it has been so dealt with, be fairly regarded as a unit, or whether it then consists of matters necessarily distinct and separate.

It considered that, in applying this test, weight should be given to Parliament's understanding that the Act in question dealt with one subject of taxation only and that the Court should not resolve the question against Parliament's understanding unless the answer was clear.[144] The decision in this case reflected the established division between a tax Act and an assessment Act, the former being the Act imposing the tax. In this the Court held that adding a new category of fringe benefit did not amount to the imposition of taxation.

The High Court, in holding that section 34 of the *Migration Act 1958*, inserted by the *Migration Amendment Act 1987*, was invalid, said that the provision (which concerned the imposition of charges on certain passengers travelling to Australia), although purportedly exacting a fee for immigration clearance, was to be characterised as a tax and that the provisions of the section were a law 'imposing taxation'. It held that the expression 'fees for services' 'should be read as referring to a fee or charge exacted for particular identified services provided or rendered individually to, or at the request or direction of, the particular person required to make the payment'. The Court held that section 55 required that both an amending Act imposing taxation and the amended principal Act deal only with the imposition of taxation and that it was not within the competence of Parliament to purport to insert by an amending Act a provision imposing taxation in an existing valid Act which contained provisions dealing only with other matters.[145]

140 *The Australian Constitution annotated*, pp. 179–81.
141 H.R. Deb. (23.11.1960) 3183–92.
142 VP 1940–43/236–7 (20.11.1941); VP 1960–61/289 (23.11.1960).
143 VP 1940–43/227–8 (18.11.1941); VP 1993–96/2131–5 (7.6.1995).
144 *State Chamber of Commerce and Industry v. Commonwealth* (1987) 73 ALR 161 at 162 (Fringe Benefits Tax Case No 2).
145 *Air Caledonie International v. Commonwealth* (1988) 165 CLR 462.

The Court similarly ruled that provisions in the *Copyright Amendment Act 1989*, amending the *Copyright Act 1968* to provide for a scheme to raise a fund to compensate copyright owners, imposed taxation and were therefore invalid.[146]

In the *Northern Suburbs General Cemetery Reserve Trust v. The Commonwealth* the High Court rejected a challenge to the Commonwealth's training guarantee legislation. The Court again recognised the distinction between laws imposing taxation and those dealing with the imposition of taxation.[147]

The traditional view, that the setting of rates or the increasing of taxation is not the imposition of taxation, was questioned in proceedings following the introduction of the Taxation (Deficit Reduction) Bill 1993. Contrary to previous practice, this bill introduced budget measures increasing a range of taxes, and including amendments to several principal Acts, in the one 'omnibus' bill. Nevertheless, the bill had been prepared with regard to the distinction recognised by the High Court between bills imposing taxation and those dealing with taxation, and the Chief General Counsel of the Attorney-General's Department was of the view that, applying the reasoning expounded by the High Court, none of the provisions actually imposed taxation. The constitutional validity of the bill was however queried in the Senate and the matter was referred to its Standing Committee on Legal and Constitutional Affairs. The committee received conflicting evidence, but reported that in its view there was a real risk which was significant that the High Court would find the bill, if enacted, to be a law imposing taxation within the meaning of section 55 of the Constitution.[148] In response the Government, rejecting the report's conclusions but to avoid uncertainty, withdrew the bill and replaced it with a package of eight separate bills. To allow the issue to be settled, one of the bills, the Taxation (Deficit Reduction) Bill (No. 2) 1993, was deliberately drafted as a test bill (by combining two minor rate increases involving different subjects of taxation) in order to facilitate a High Court challenge;[149] however, a challenge was not mounted.

In 2004 the High Court held that section 55 does not prevent the Commonwealth Parliament from combining provisions that impose taxation with (at least) provisions for the assessment, collection and recovery of taxation.[150]

Procedures peculiar to taxation bills

Introduction

The principle of the financial initiative of the Executive (*see* page 415) also plays an important part in the procedure of the House in relation to taxation bills. Standing order 179 provides that only a Minister may introduce a bill which proposes to impose, increase, or decrease a tax or duty, or change the scope of any charge. It is considered that this requirement extends not only to taxation rates but also to proposals which would increase or decrease the total sum of tax payable.

In 1988, following presentation of a private Member's bill concerning certain taxation deductions, the Chair noted that the bill sought only to ensure that an earlier interpretation

146 *Australian Tape Manufacturers Association Ltd v. Commonwealth* (1993) 112 ALR 53.

147 *Northern Suburbs General Cemetery Reserve Trust v. Commonwealth* (1993) 176 CLR 555.

148 Senate Standing Committee on Legal and Constitutional Affairs. *Constitutional aspects of the Taxation (Deficit Reduction) Bill 1993*. PP 453 (1993).

149 H.R. Deb. (27.9.1993) 1096–7. *See also* treatment in *Odgers*, 14th edn, pp. 403–4.

150 *Permanent Trustee Australia Limited v. Commissioner of State Revenue* (2004) 220 CLR 388.

of certain provisions prevailed, and not to alleviate tax.[151] In 2011 the Speaker ruled that a bill that had been introduced by a private Member could not be proceeded with because it was found to impose a charge (as well as appropriate moneys).[152]

In November 2011 a private Member moved to suspend standing orders to permit him to move amendments to the Minerals Resource Rent Tax Bill 2011 which would extend its scope by including additional minerals. The Speaker ruled that the proposed motion was out of order as it would allow an action contrary to a fundamental principle of the scheme of government established by the Constitution.[153]

In response to the restrictions imposed on them by standing order 179, private Members have employed a range of alternative approaches to make their views known in relation to taxation proposals. In 2002 a private Member's bill made provision for the Taxation Commissioner to assess certain amounts, which were stated in the objects clause of the bill as intended to be used in the calculation of a tax to be imposed and administered by another Act (and in the calculation of increased expenditure to be appropriated by another Act).[154] In the same year, having introduced a bill providing for the assessment and collection of a levy, a Member presented as a document a copy of a proposed companion bill providing for the imposition of the levy, as the standing orders prevented him from introducing the companion bill.[155]

A Member, wishing to have the Income Tax Assessment Act amended in respect of certain deductions, has given a notice of motion expressing his views and calling on the Government to introduce legislation.[156] Private Members' bills have been introduced which sought to amend the Customs and Excise Tariff Acts to provide for mechanisms by which a decrease in duty could be effected by subsequent parliamentary action.[157] Another option open to a private Member wishing to achieve a reduction in a tax rate or burden would be to introduce an amendment to a government bill (*see* 'Consideration in detail' at page 439).

In order to protect the revenue by not giving advance notice of the Government's intention, a tax bill is invariably submitted to the House without notice as permitted by standing order 178. Bills dealing with (but not imposing) taxation are treated procedurally as ordinary bills, with the exception that they may also be introduced without notice. Bills relating to taxation and appropriating revenue fall into a dual category. Such composite bills have been introduced pursuant to notice,[158] without notice,[159] and by leave.[160]

Second reading amendment

As with special appropriation bills, a reasoned amendment may be moved to a taxation bill which could not be moved as a detail stage amendment because of the principle of the financial initiative of the Executive. Thus in respect of the Government's legislative proposal to curtail a certain tax avoidance measure with effect from 17 August 1977, and

151 H.R. Deb. (10.11.1988) 2790–1.
152 A motion of dissent to the ruling was negatived, VP 2010–13/597–9 (2.6.2011), H.R. Deb. (2.6.2011) 5699, 5700–11.
153 VP 2010–13/1085 (22.11.2011), H.R. Deb. (22.11.2011) 13418.
154 Tobacco Excise Windfall Recovery (Assessment) Bill 2002, H.R. Deb. (16.9.2002) 6224–6. The introduction of the other two bills of the proposed package was noted as being dependent on government action.
155 Plastic Bag Levy (Assessment and Collection) Bill 2002, H.R. Deb. (21.10.2002) 8121–3, VP 2002–04/510 (21.10.2002).
156 NP 182 (29.11.1995) 9872.
157 H.R. Deb. (5.3.2001) 24900, 24904.
158 Income Tax (Arrangements with the States) Bill 1978; VP 1978–80/271 (31.5.1978).
159 Live-stock Slaughter Levy Collection Amendment Bill 1977; VP 1977/155 (26.5.1977).
160 Dairying Industry Research and Promotion (Miscellaneous Amendments) Bill 1976; VP 1976–77/217 (28.5.1976).

others with effect from 7 April 1978, an amendment by a private Member to curtail such measures from 1 July 1977 would not have been in order, as it would have had the effect of producing an additional sum (charge) from taxation. However, a private Member's reasoned amendment to the effect that, while not denying the bill a second reading, the House was of the opinion that the operative date for all clauses in the bill terminating tax avoidance schemes should be 1 July 1977, was in order.[161]

Consideration in detail

The order of consideration of taxation bills at this stage, as with appropriation or supply bills, differs from ordinary non-amending bills in that, when the bill is considered clause by clause, any schedule is considered before the authorising clauses.[162]

Only a Minister may move an amendment to increase or extend the scope of the charge proposed beyond the total already existing under any Act of Parliament.[163] A Member prevented by the standing orders from moving an amendment may still wish to propose it, even though it will be ruled out of order. Alternatively, the Member may choose to express the matter in general terms in a second reading amendment, or to read into the Hansard record the text of the amendment he or she would have liked to move.[164] An amendment to a customs tariff proposal which sought to impose a duty on a date sooner than that stated in the legislative proposal, thereby having the effect of producing an additional sum (charge) from customs duties, has been ruled out of order.[165] In 2013 amendments which sought to bring forward the date, under current legislation, on which a fixed carbon price (carbon tax) would be replaced by an emissions trading scheme were ruled out of order. The Speaker noted that while the expected and likely effect of the resulting liability might not exceed that set by the current law, it would be legally possible that the amendments could have the effect that the liability would exceed it, and that in her view the uncertainty was too great to allow the amendments to proceed.[166] The Speaker later ruled the same amendments to the [No. 2] bill of the same title acceptable, after they had been modified to provide that the relevant charge should not exceed the sum contained in existing legislation, and thus removing any uncertainty about the legal effect of the amendments.[167]

A Member who is not a Minister may move an amendment which does not increase or extend the scope of the charge proposed beyond the total already existing under any Act of Parliament.[168] An amendment to decrease the tax imposed by a bill would therefore be in order and thus, in moving an amendment to a government bill a private Member may do what he or she cannot do by introducing a private Member's bill—that is, propose the reduction of a tax (for example, by the exclusion of items or by the insertion of provisions for lower rates).[169]

161 *Income Tax Assessment Amendment Act 1978*; VP 1978–80/203 (5.5.1978); H.R. Deb. (7.4.1978) 1244–50; H.R. Deb. (5.5.1978) 1924.
162 S.O. 149(d).
163 S.O. 179(b), for a comment on this restriction on private Members *see* H.R. Deb. (15.5.1980) 2873.
164 E.g. H.R. Deb. (29.5.2002) 2586.
165 VP 1926–28/481 (14.12.1927).
166 Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 H.R.Deb. (21.11.2013) 1016–7.
167 H.R. Deb. (26.6.2014) 7603.
168 S.O. 179(c).
169 E.g. VP 2010–13/1106–7 (22.11.11); H.R. Deb. (22.11.11) 13434–41.

Customs and excise tariff proposals

Customs duties (levied on imports and exports) and excise duties (charged on goods produced in Australia) are imposed by the *Customs Tariff Act 1995* and *Excise Tariff Act 1921*, respectively.

Customs and excise tariff measures are usually not initiated by a bill, as considerations relating to timing and drafting make a bill an unsuitable vehicle to initiate the variety and number of tariff proposals that come before the House. Such measures are generally introduced by way of motion, in the form of custom tariff and excise tariff proposals. As 'proposals dealing with taxation', these may be submitted to the House without notice.[170] Bass Strait freight adjustment levy proposals were regarded as duties of excise.[171]

The moving of a customs tariff (or excise tariff) proposal is normally treated as a formal procedure for the purpose of initiating the collection of the duty. It may be debated[172] and an amendment may be moved,[173] although a private Member's amendment cannot have the effect of increasing or extending the scope of the charge proposed beyond the total already existing in any Acts.[174] It is usual for the debate to be adjourned by an opposition Member and for all tariff proposals to be listed together on the Notice Paper under the one order of the day. Debate on a proposal may be resumed on a later day[175] but this is a rare occurrence. Collection of duties is thus commenced on the authority of an unresolved motion, and this has been accepted as a convention.

When the Parliament is prorogued or when the House has expired by effluxion of time or been dissolved or is adjourned for a period exceeding seven days, a notice of a customs or excise tariff proposal may be published in the Gazette and the proposal is deemed to have effect as from such time after the publication of the notice as is specified in the notice. Any proposals given notice in this way must be proposed in the Parliament within seven sitting days of the next meeting of the House.[176]

Customs officers are provided with protection by the Customs and Excise Acts from commencement of proceedings for anything done by them for the protection of the revenue in relation to a tariff or tariff alteration:[177]

- until the close of a parliamentary session in which a customs or excise tariff or tariff alteration is moved, or until the expiry of 12 months, whichever happens first; or
- where a notice of a tariff proposal has been published in the Gazette, under section 273EA of the Customs Act or section 160B of the Excise Act, within seven sitting days of the House or six months from the date of publication of the notice, whichever happens first. Where the details of the notice are subsequently proposed in the Parliament within seven sitting days, the protection outlined in the first paragraph applies.

The effective life of a tariff proposal is limited to these specified periods. When the Parliament was unexpectedly dissolved in November 1975, action was taken to publish a

170 S.O. 178.
171 *Bass Strait Freight Adjustment Levy Collection Act 1984*, s. 6.
172 VP 1978–80/1263 (21.2.1980); H.R. Deb. (1.5.1980) 2522.
173 VP 1970–72/1104 (25.5.1972). The amendment in this instance was to the effect to omit from the excise tariff proposals all excise on wine.
174 S.O. 179(b)(c).
175 VP 1970–72/1188 (13.9.1972); H.R. Deb. (13.9.1972) 1352–6. A proposal has been agreed to on the day of its introduction, VP 1996–98/1599 (4.6.1997) (question put after closure motion agreed to).
176 *Customs Act 1901*, s. 273EA; *Excise Act 1901*, s. 160B.
177 *Customs Act 1901*, s. 226; *Excise Act 1901*, s. 114.

notice in the Gazette of those tariff proposals which were before the House at the time of dissolution. Some of these proposals had been in operation since September 1974. The proposals listed in the Gazette notice were moved in the House on the third day of the new Parliament.[178]

Consolidation and validation of tariff proposals

The duties proposed in custom and excise tariff proposals must ultimately be levied by legislation. A customs tariff amendment bill or an excise tariff amendment bill, as the case may be, is usually introduced at an appropriate time to consolidate most of the outstanding proposals introduced into the House and incorporate them in the schedules of the Customs Tariff and Excise Tariff Acts. These bills are retrospective in operation, in respect of each proposal, to the date on which collection commenced.

After a tariff amendment bill has received assent, unless a prorogation or dissolution has intervened causing the motions on the proposals to lapse, the Minister or Parliamentary Secretary usually moves to discharge the orders of the day in respect of those proposals now contained in the Act. For convenience this is usually done on the next occasion that tariff proposals are moved in the House.

In the absence of a tariff amendment bill, tariff proposals then before the House may be affirmed towards the end of a period of sittings by means of a tariff validation bill. Validation bills have also been introduced after tariff amendment bills have not been passed by the Senate, covering the measures in the rejected bills.[179] A validation bill provides that duties demanded or collected because of the tariff proposal are taken to have been lawfully imposed and lawfully demanded or collected. When a validation bill is passed the related proposals are not discharged from the Notice Paper as they have not yet been incorporated in the tariff schedule by means of a tariff amendment Act.

178 H.R. Deb. (19.2.1976) 115–6.

179 The Excise Tariff Validation Bill 2009 and Customs Tariff Validation Bill 2009 covered the 12 month period from the date of the original tariff proposals. At the same time new tariff proposals were introduced, in effect extending the same measures, pending the reintroduction and passage of the tariff amendment bills that the Senate had initially rejected, H.R. Deb. (12.5.2009) 3447–53. These were the so-called 'alcopops bills'— Excise Tariff Amendment (2009 Measures No. 1) Bill 2009 and the equivalent customs tariff bill, and the [No. 2] bills with the same titles.

12
Senate amendments and requests

PROCEDURE FOLLOWING SENATE CONSIDERATION

The standing orders of both Houses establish procedures for dealing with amendments made to a bill by the other House. The amendment procedures, and provision for negotiation by message, are designed to cover every contingency, but in the event of the negotiations between the Houses finally failing, the bill may be laid aside, or, in the case of a bill which originated in the House of Representatives, resort may be had to the procedures of section 57 of the Constitution.

Limitations on Senate power of amendment

Section 53 of the Constitution, as well as limiting the rights of the Senate in the initiation of legislation (*see below*), provides that the Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue for the ordinary annual services of the Government. Nor may the Senate amend any proposed law so as to increase any proposed charge or burden on the people. However, the Senate may, at any stage, return to the House any proposed law which the Senate may not amend, requesting the omission or amendment of any items or provisions therein. It further provides that, except as provided in the section, the Senate has equal power with the House in respect of all proposed laws.

Certain amendments viewed as initiation

Views taken in the Senate in relation to amendments and requests in 2003 and 2012 had regard to the restriction in section 53 that 'Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate'. In respect to bills dealing with but not imposing taxation, it was held that a Senator could not propose that the Senate request an amendment which would add additional materials to those to be included in a scheme of taxation, or which would increase tariff rates on certain items; the making of such requests was seen as the equivalent of the Senate initiating an imposition of tax.[1] A similar view has been taken in respect to appropriation. Although noting precedents to the contrary, *Odgers* states that the better view is that the Senate should not make requests for the insertion of appropriation provisions in bills originating in the House, seeing such action as turning a bill into an appropriation bill.[2]

Agreement by Senate without amendment or requests

Should the Senate agree to a bill without amendment, or without requests in the case of those bills which the Senate may not amend, the bill is accordingly certified by the Clerk of the Senate and returned to the House by message. The terms of the message are not announced to the House in full, the Speaker merely stating 'I have received a message

1 Statement by President Hogg, J 2010–13/2294 (19.3.2012); *and see Odgers,* 14th edn, pp. 417.
2 *Odgers*, 14th edn, p. 399, citing statement by President Calvert, S. Deb. (16.9.2003) 15275.

from the Senate returning the [short title] without amendment (or requests, as appropriate)'. The message is announced at a convenient time between items of business. When a message is received notifying Senate agreement to a bill, the final step in the legislative process is for the bill to be forwarded to the Governor-General for assent.

On occasion the Senate has included extraneous matter in a message returning a bill without amendment, for example:

- adding as a rider a protest against the inclusion in the bill of provisions similar to those in a bill passed by the Senate and transmitted for concurrence of the House, and declaring the matter not to be regarded as a precedent;[3]
- acquainting the House of a resolution agreed to by the Senate referring a matter related to the subject of the bill to the (then) Joint Committee of Public Accounts for inquiry and report;[4]
- requesting the concurrence of the House in a Senate resolution on aspects of the same subject matter as the bill.[5]

After announcing the latter message, the Speaker noted that the message sought to include in the legislative process on a bill other matters not necessary for the enactment of the measure and accordingly he did not propose to call for a motion on the resolution.[6]

Senate amendments

When a bill which the Senate may amend is amended by the Senate, a schedule of the amendments is prepared indicating where the amendments occur in the bill and detailing the amendments. This schedule is attached to the bill, certified by the Clerk of the Senate and transmitted to the House by message. Several related bills have been returned with amendments under cover of the one message and the amendments to each bill have been considered separately.[7] An amendment to the title of a bill is normally mentioned in a Senate message.[8]

The standing orders provide that if a House bill is returned from the Senate with amendments, the amendments shall be made available to Members and a time set for the House to consider them.[9] The amendments are printed as a schedule; the bill is not reprinted with the amendments incorporated. A suggestion that a bill be reprinted incorporating Senate amendments has been rejected.[10] In practice a printed stock of the schedule of Senate amendments accompanies the message, in which case the consideration of the Senate's amendments may take place immediately.[11] It may not, however, suit the convenience of the House to proceed immediately with consideration of the amendments and a Minister (or Parliamentary Secretary) may move that the amendments be taken into consideration at the next sitting or at a later hour.[12]

Procedures for the consideration of Senate amendments are similar to those applying during the consideration in detail stage—speeches are limited to five minutes and the

3 VP 1920–21/471 (26.11.1920).
4 VP 1996–98/2533 (27.11.1997).
5 VP 1996–98/2151 (22.10.1997).
6 H.R. Deb. (22.10.1997) 9444; *and see* H.R. Deb. (6.3.2000) 13975–6.
7 VP 1932–34/350–2 (30.9.1932).
8 E.g. VP 1993–96/1845 (1.3.1995).
9 S.O. 158(a).
10 H.R. Deb. (20.6.1950) 4517–18.
11 E.g. VP 2016–18/437 (1.12.2016)
12 E.g. VP 2013–16/1747 (25.11.2015).

number of times a Member may speak is not restricted, and a motion moved (including an amendment) need not be seconded.[13]

It was originally the practice for Senate amendments to be taken clause by clause. However, it is now established practice for multiple amendments to a bill to be taken together, by the Minister or Parliamentary Secretary in charge of the bill moving that the amendments be agreed to or that the amendments be disagreed to. If the Minister is prepared to accept only some of the amendments, they are grouped accordingly and the relevant motion moved in respect of each group. A motion may be moved separately in respect of an individual amendment—for example, if the Minister is aware that Members desire a separate vote on a particular matter. Whether amendments are to be taken together or separately is decided by arrangements of which the Chair has no knowledge; he or she puts the question on the proposed order or grouping in accordance with the motion moved.[14] If the proposed order or grouping is challenged, a motion may be moved—for example, that the amendments be considered together and one question put on them.[15] By agreement of the House, the amendments may be considered in specified groups and a specified order other than their numerical order.[16] When the House's consideration of Senate amendments has been subject to a guillotine motion, the grouping of amendments has been determined by the decision of the House on the allotment of time.[17] Standing orders have been suspended to permit Senate amendments to related bills (under cover of separate messages) to be considered together and for one motion to be moved in respect of all the amendments.[18]

A Senate amendment may be agreed to with or without amendment, agreed to with a consequential amendment,[19] agreed to in part with a consequential amendment,[20] agreed to with a modification, agreed to with a modification and a consequential amendment,[21] disagreed to,[22] or disagreed to but an amendment made in its place.[23] An amendment to a Senate amendment may be made, as long as it is relevant to the Senate amendment.[24] A motion to agree to a Senate amendment has been withdrawn, by leave.[25]

As an alternative to the House considering Senate amendments, consideration may be postponed, or the bill may be laid aside.[26]

When the House agrees without amendment to Senate amendments to a House bill, a message is sent to the Senate (without the bill) informing it that the House has agreed to the amendment made by the Senate in the bill.[27]

If amendments to Senate amendments are agreed to by the House, the House sends a message returning the bill with a schedule of the House amendments and asking the

13 S.O. 159.
14 H.R. Deb. (8.12.1987) 3004–5; E.g. VP 1998–2001/510–11 (12.5.1999), VP 2013–16/381 (18.3.2014).
15 VP 1998–2001/2004 (7.12.2000). Standing orders may also be suspended in these circumstances, VP 2004–07/1986–7 (20.6.2007).
16 VP 1974–75/483 (20.2.1975); VP 1996–98/2968–9 (8–9.4.1998); *and see* VP 2002–04/672, 678 (12.12.2002).
17 VP 1993–96/1886 (2.3.1995).
18 VP 1998–2001/658 (24.6.1999) (4 bills), 684 (29.6.1999) (7 bills), 699–700 (30.6.1999) (4 bills).
19 VP 1974–75/837 (19.8.1975); VP 1996–98/1267 (6.3.1997).
20 VP 1906/159 (30.10.1906).
21 VP 1909/222–3 (4.12.1909).
22 VP 1996–98/289 (24.6.1996); VP 1998–2001/176 (3.12.1998).
23 VP 1993–96/849–54 (22.3.1994); VP 1998–2001/510 (12.5.1999); VP 2002–04/457 (25.9.2002) (motion to disagree to Senate amendments and make other amendments in their place moved by opposition Member and agreed to).
24 S.O. 158(b)(ii). E.g. VP 1990–93/1107–10 (5.11.1991); VP 1996–98/3149 (25.6.1998).
25 VP 1910/84 (23.8.1910).
26 S.O. 158(b). A new bill may be introduced in place of a bill laid aside—Committee of Public Accounts Bill (No.2) 1913, VP 1913/215 (16.12.1913), H.R. Deb. (16.12.1913) 4505–7.
27 S.O. 161(a). E.g. J 1996–98/360 (20.6.1996); J 1998–2001/2257 (9.12.1999).

Senate to agree to the House amendments.[28] The schedule contains reference to each amendment of the Senate which has been amended by the House, and is certified by the Clerk. The message also indicates that the House desires the reconsideration of the bill by the Senate in respect of any amendments disagreed to.[29] If a Senate amendment has been disagreed to and no amendment made in its place, a message is sent to the Senate informing it that the House has disagreed to the amendment for the reasons (*see below*) indicated in a schedule annexed to the bill and desires the reconsideration by the Senate of the bill in respect of the amendment.[30] It has not been the practice to send messages to the Senate when bills have been laid aside.

For proceedings in case of continued disagreement—that is, when the Senate insists on amendments disagreed to by the House—*see* page 462. The Senate has agreed not to insist on amendments disagreed to by the House, but has made a further amendment which has been agreed to by the House.[31]

Further and non-relevant amendments by House

No amendment may be moved to an amendment of the Senate that is not relevant to the Senate amendment. A further amendment may not be moved to the bill unless the amendment is relevant to or consequent on the Senate amendment.[32] When it has been argued that proposed government amendments at this stage are beyond the scope permitted, the Chair has had regard to advice from the responsible Minister. It is noted that government amendments are drafted by the Office of Parliamentary Counsel, and that OPC staff are aware of the requirements of the standing orders.[33]

Standing orders have been suspended to enable a Minister to move an amendment which was not relevant to Senate amendments being considered. Such an amendment has been made, following the suspension of standing orders, prior to[34] and after[35] consideration of the Senate's amendments, and after the consideration of Senate requests.[36] Where standing orders have been suspended in these circumstances, the Minister moves 'That in the message returning the bill to the Senate, the Senate be requested to reconsider the bill in respect of the amendment made by the House to [clause specified].[37]

Rescission of agreement to Senate amendments

A resolution adopting a (former) committee of the whole report agreeing to Senate amendments to a bill has been rescinded on motion following the suspension of standing orders. This action followed a message from the Senate informing the House of errors in the Senate schedule of amendments on the bill previously transmitted to the House and considered by Members. The corrected schedule of amendments was then considered and

28 S.O. 161(b).
29 E.g. J 1974–75/752 (4.6.1975); J 1993–96/2344 (20.10.1994).
30 S.O. 161(c); J 1974–75/752 (4.6.1975); VP 1996–98/289–91 (24.6.1996); J 1996–98/387 (25.6.1996), 431 (27.6.1996) (reasons not recorded in Journals).
31 VP 2002–04/1396 (4.12.2003).
32 S.O. 160. E.g. VP 2004–07/1502 (18.10.2006) (amendment ruled out of order); VP 2004–07/1819 (28.3.2007) (amendment in order).
33 *And see* H.R. Deb. (18.10.2006) 49 (objection raised).
34 VP 1973–74/249–51 (31.5.1973); VP 1993–96/2680–6 (30.11.1995); VP 1996–98/3202–3 (2.7.1998); VP 2002–04/1367–8 (3.12.2003).
35 VP 1973–74/268 (21.8.1973).
36 VP 1998–2001/777–8 (12.8.1999).
37 VP 1974–75/490 (25.2.1975); VP 1993–96/2686 (30.11.1995); VP 1998–2001/778 (12.8.1999).

agreed to.[38] On 8 June 2000, standing orders having been suspended, the House rescinded a resolution agreeing to Senate amendments in order to allow an amendment to be moved to one of the Senate amendments that had previously been agreed to.[39]

Reconsideration of Senate amendments—rescission of resolution to lay bill aside

Following the suspension of standing orders, the resolution to lay a bill aside has been rescinded to permit Senate amendments previously rejected by the House to be reconsidered. The suspension of standing orders also provided for further non-relevant amendments to be moved by a Minister, for one motion to be moved in respect of all the amendments, and for time limits for the debate and for Members' speeches.[40]

Reasons

When the House disagrees to a Senate amendment to a bill, a Member (usually the relevant Minister) must move the motion 'That the amendment(s) be disagreed to' and present to the House written reasons for the House not agreeing to the amendments.[41]

The requirement for reasons also applies in the case of Senate bills if the House disagrees to any amendments made by the Senate to amendments of the House.[42] In practice reasons are not given when a Senate amendment is disagreed to in cases where the House then makes a substitute amendment. There is no requirement for reasons when Senate *requests* for amendment are not agreed to.

After presenting the reasons, copies of which are circulated, the Minister moves that they be adopted by the House. An amendment cannot be moved to the reasons, as the question before the Chair is that the reasons be adopted,[43] but an amendment has been moved to that question.[44] The reasons are included with the message returning the bill to the Senate.

The former practice of appointing a committee to draw up reasons was discontinued in 1998.[45]

Senate requests for amendments

Section 53 of the Constitution reads, in part:

> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government. *(paragraph 2)*
>
> The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. *(paragraph 3)*
>
> The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein, and the House or Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modification. (*paragraph 4*)

Senate standing orders[46] supplement the constitutional expression 'at any stage' by providing that requests may be made:

38 VP 1990–92/1645–54 (19.8.1992) (amendments not passed by the Senate had mistakenly been included in the schedule).
39 VP 1998–2001/1520, 1526 (8.6.2000).
40 VP 1996–98/3202 (2.7.1998) (Native Title Amendment Bill 1997 [No. 2]).
41 S.O. 161(c).
42 S.O. 170(b).
43 H.R. Deb. (8.12.1983) 3557–8.
44 VP 1913/204 (11.12.1913).
45 VP 1996–98/3170 (30.6.1998).
46 Senate S.O. 140.

- on the motion for the first reading;
- in committee after the second reading has been agreed to;
- on consideration of any message from the House referring to the bill; or
- on the third reading of the bill.

In practice requests are normally made during the Senate committee (detail) stage.

Upon the adoption of the report from a committee recommending the Senate make a request, a message is sent to the House returning the bill and requesting the House itself to make the desired amendment to the bill as indicated in a schedule annexed to the bill. Agreement must thus be reached with respect to the amendment requested before the bill proceeds to the third reading stage in the Senate.[47]

Standing orders have been suspended to permit Senate requests for amendments to related bills (under cover of separate messages) to be considered together, for messages from the Governor-General recommending appropriation for the purposes of all the requested amendments to be announced together, and for one motion to be moved in respect of all the requested amendments.[48]

Bills which the Senate may amend, in parts, and must request, in parts

In considering a bill which constitutionally it is capable of amending, the Senate may nevertheless have to request amendments in respect of certain parts of the bill. For example, the Social Security Legislation Amendment Bill (No. 1) 1995, a special appropriation bill, was capable of amendment by the Senate but not so as to increase any proposed charge or burden on the people. In the Senate the bill was reported with amendments and a request.[49]

In such instances the message returning the bill to the House indicates a request for amendment, set out in a schedule, and informs the House that the amendments, set out in another schedule, have been made to the bill. As, in such a case, the bill, having been reported with a request, has not proceeded to the third reading stage in the Senate, the House can consider only the request. Although the detail of the Senate amendments has been included in the material circulated to Members, such amendments are not in fact considered unless and until the bill is eventually returned to the House after the resolution of the request.

If the requested amendment is to be made, a Governor-General's message recommending an appropriation for the purposes of the amendment is announced to the House, the requested amendment made[50] and the Senate informed accordingly by message, whereupon the bill is read a third time.[51] The bill is returned to the House indicating that the Senate has agreed to the bill as amended by the House at the request of the Senate and the House's agreement to any further amendments is sought and may be obtained.[52]

A Senate request may be considered at the same time as Senate amendments if the request is made after the bill's third reading in the Senate. Such a situation could occur

47 *Odgers*, 14th edn, p. 369.
48 VP 1998–2001/684 (29.6.1999) (4 bills; the motion also extended the speech time-limits for the leading speakers).
49 J 1993–96/3723–4 (29.8.1995).
50 E.g. VP 2004–07/2150 (19.9.2007).
51 E.g. J 2004–07/4467 (20.9.2007).
52 E.g. VP 2004–07/2162 (20.9.2007).

during negotiation by message over Senate amendments that the House has disagreed to.[53]

Senate amendments which, in the view of the House, should be made as requests

From time to time the Senate makes an 'amendment' to a bill, when, after being briefed on the matter, the Speaker may conclude that there are reasons to believe that the Senate proposal should have been sent to the House as a request for an amendment. In such cases, prior to the consideration of the Senate message, it is usual for the Chair to make a statement drawing the House's attention to the constitutional significance of the purported amendment, and for the House then to agree to a resolution stating its attitude to the matter. Action taken by the House on these occasions has included:

- declining to consider the purported amendment and informing the Senate that it would consider a request for the amendment;
- disagreeing to the purported amendment and laying the bill aside;
- disagreeing to the purported amendment but then itself proceeding to make amendments in the same terms as those disagreed to (in specific circumstances, *see* 'Amendments requiring a Governor-General's message' at page 452);
- in order not to delay the legislation, resolving to refrain from the determination of its constitutional rights and considering and agreeing to the amendment;
- making no objection in view of uncertainties of interpretation.

Appendix 18 lists bills where the House has objected to or queried Senate 'amendments' and gives a summary of the actions and positions of the two Houses in relation to each bill.

Senate standing orders make provision for amendments returned by the House in these circumstances to be changed to requests.[54]

Increases in proposed charges or burdens on the people

Paragraph 3 of section 53 of the Constitution states that the Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. The precise meaning of 'proposed charge or burden' has not been conclusively determined, nor agreed between the Houses. The Senate's decisions in relation to its power of amendment were questioned on this ground in relation to the following bills:

- Sugar Bounty [Bonus] Bill 1903
- Financial Emergency Bill 1932
- States Grants (Tertiary Education Assistance) Bill 1981
- States Grants (Technical and Further Education Assistance) Bill 1988
- Social Security Legislation Amendment Bill (No. 4) 1991
- Local Government (Financial Assistance) Amendment Bill 1992
- Social Security Amendment Bill 1993
- Taxation Laws Amendment Bill (No. 2) 1993

53 E.g. in the case of the Commonwealth Inscribed Stock Amendment Bill 2013, the Senate requested an amendment in place of an amendment disagreed to by the House, and also made further amendments. In this case the requested amendment was made by the House, the Senate amendments agreed to and a message was returned to the Senate advising it of the House's actions, VP 2013–16/184-7 (9.12.2013), J 2013–16/316 (10.12.2013); no further action was taken in the Senate in respect of the bill and the bill was sent for assent.

54 Senate S.O. 130.

- Taxation Laws Amendment Bill (No. 4) 1993
- Student Assistance Amendment Bill 1994
- Taxation Laws Amendment Bill (No. 3) 1994
- Income Tax Rates Amendment (Family Tax Initiative) Bill 1996
- Taxation Laws Amendment (Research and Development) Bill 2001.
  (*See also* bills listed under 'Amendments requiring a Governor-General's message' at page 452.)

Difficult questions of interpretation can arise in this area. At one extreme, almost every amendment will cause some degree of 'charge or burden on the people',[55] whilst at the other extreme it may be felt that unless an amendment 'necessarily, clearly and directly' causes an increased 'charge or burden' it is available to the Senate. It is considered that neither position is appropriate and that, in examining any such question, the better course is to ask what are the probable, expected or intended practical consequences of the proposed amendment. It has been considered that a Senate alteration which would reduce 'savings' from the level proposed in a bill can be made as an amendment where the alteration would not lead to expenditure beyond that provided under the existing law—that is, where expenditure would not be greater than under the status quo.[56] Such conclusions are consistent with the view that the maximum reasonable discretion should be extended in favour of Senate rights.

The Speaker is briefed on these matters whenever necessary. Sometimes a statement is made,[57] on other occasions it may be concluded that no statement is necessary.

Inquiries into the interpretation and application of the 3rd paragraph of s. 53

In 1994 the question of the interpretation and application of the provisions of the third paragraph of section 53 of the Constitution was referred by each House to its respective Standing Committee on Legal and Constitutional Affairs. The Senate reference was partly transferred to its Procedure Committee in May 1996. In November 1995 the House committee, having earlier circulated and received comments on an exposure report, presented a comprehensive final report, canvassing in detail the issues involved and recommending, inter alia, that there should be a compact concerning the interpretation and application of the provisions of paragraph 3 between the Houses. Among other things, the committee recommended that:

- the third paragraph of section 53 should be regarded as applicable to proposed laws relating to appropriation and expenditure (other than proposed laws appropriating revenue or moneys for the ordinary annual services of Government);
- the third paragraph should continue to apply to a bill containing a standing appropriation where a Senate alteration to it would increase expenditure under the appropriation;
- where a bill does not contain an appropriation, the Senate should not amend it to increase expenditure out of a standing appropriation, whether or not the bill itself affects expenditure under the appropriation;

55 In *The State of Western Australia v. The Commonwealth* (Matter No. P4 of 1994) the High Court heard submissions on s. 53. It was argued that the *Native Title Act 1993* was invalid, it being claimed that s. 53 had been contravened because the Senate had amended the bill in ways which would involve a burden on the people. One of the amendments was to establish a parliamentary committee, and it was argued that this would involve administrative and other expenses. While the Court did not hold that s. 53 was justiciable, it commented that none of the Senate amendments appeared to increase a charge or burden on the people.

56 E.g. VP 1996–98/937 (2.12.1996) (expenditure measure); VP 1996–98/916–7 (21.11.1996) (taxation measure).

57 E.g. VP 2008–10/620–1 (16.10.2008) (cases cited in Appendix 18).

- a bill which increases expenditure under a standing appropriation should not be originated in the Senate;
- the third paragraph should be regarded as applicable to tax and tax related measures;[58]
- fines, penalties, licence fees and fees for services should not be regarded as charges or burdens on the people for the purposes of the third paragraph;
- bills which affect the tax base or tax rates should be originated in the House of Representatives;
- the third paragraph applies to all Senate amendments which would increase a charge or burden on the people, including amendments which would increase a tax rate or expand a tax base regardless of whether the bill originated in the Senate or the House;
- where a bill does not itself propose a charge or burden, the Senate should not amend the bill to increase the rate or incidence of taxation;
- for the purposes of determining whether an alteration moved in the Senate to a bill increases a proposed charge or burden, the alteration should continue to be compared to the existing level of the charge or burden and not the level of the charge or burden proposed by the bill;
- a request should be required where an alteration to a bill is moved in the Senate which will make an increase in the expenditure available under an appropriation or the total tax or charge payable legally possible;
- the Houses should negotiate a procedure which would allow the Senate to make requests for amendments to bills originated in the Senate where the third paragraph prohibits a Senate amendment, the procedure being based on the provisions of the fourth paragraph of section 53 and the subject of a compact between the Houses.[59]

In November 1996 the Senate Procedure Committee reported on the matter, proposing the terms of an agreement for the interpretation and application of the third paragraph, including provisions to the effect that:

- the paragraph should apply to bills in respect of appropriations only if such bills contain appropriations, or amend Acts which do so in such a way as to affect expenditure under the appropriation, and that it should not apply to bills originating in the Senate;
- government 'amending' bills which increase expenditure should contain a clause appropriating the additional money and be classified as appropriation bills and be first introduced in the House;
- where a government bill originating in the House amends an Act containing such an appropriation—before the moving of each proposed Senate amendment to such a bill, the responsible Senate Minister should state the Government's view as to whether the amendment would affect expenditure from the appropriation and give reasons for that view;
- a Senate amendment stated by a Minister to have the effect of increasing expenditure from such an appropriation would be moved as a request;

58 *See also*, for example, views of Sir Kenneth Bailey, Sir Robert Garran (April 1950) and Attorney-General Duffy (Opinion 90/15078, November 1990).

59 House of Representatives Standing Committee on Legal and Constitutional Affairs, *The third paragraph of section 53 of the Constitution: final report*, November 1995; PP 307 (1995).

- a similar approach in respect of bills 'involving' taxation—a proposed Senate amendment would be moved as a request where the Minister stated that it would raise the level of taxation;
- a bill which increases the level of taxation or the amount of tax payable by taxpayers should be classified as a bill 'imposing' taxation—and therefore be first introduced in the House and not able to be amended by the Senate. (The committee recognised that if this provision was adopted the procedure in relation to bills 'involving' taxation would rarely be invoked.)[60]

Notes commenting on the Senate committee's proposals were presented to the House on 2 December 1996.[61] These notes drew attention to a number of matters, including the fact that the procedures recommended by the committee for the consideration of Senate alterations did not seem to cover 'non-amending' bills—that is, 'original bills which contained a special appropriation clause'. It was pointed out that Senate alterations to such bills which led to increased expenditure were caught by the constitutional provision, yet the Senate committee's proposals seemed not to allow for them. It was also pointed out that the report was silent on the question of the test or criteria to be applied to proposed Senate alterations.

Since the House and Senate committee reports on the 3rd paragraph of section 53, the House has sometimes shown its preference to avoid delaying the business of the Parliament with debates on the matter. On occasions when the Chair has drawn the attention of the House to Senate amendments where the position was unclear, the House has thought it appropriate not to take any objection. This position was taken in respect of the following bills:

- Social Security Legislation Amendment (Newly Arrived Resident's Waiting Period and Other Measures) Bill 1996
- Telecommunications Bill 1996
- Taxation Laws Amendment (Trust Loss and Other Deductions Bill) 1997
- Telecommunications (Consumer Protection and Service Standards) Bill 1999
- Telecommunications (Universal Service Levy) Amendment Bill 1999
- New Business Tax System (Thin Capitalisation) Bill 2001.

Amendments requiring a Governor-General's message

Section 56 provides that a proposed appropriation must be recommended by a message from the Governor-General to the House in which the proposal originates. To accommodate this requirement, which precludes a message to the House for the purpose of a Senate amendment, the House has disagreed to purported Senate amendments and, after the announcement of a Governor-General's message recommending appropriation, proceeded to make amendments in the same terms, requesting the Senate's concurrence. This action was taken in respect of the following bills:

- Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997
- Ballast Waters Research and Development Funding Levy Collection Bill 1997
- Child Support Legislation Amendment Bill 1998

60 Senate Procedure Committee, *Section 53 of the Constitution / Incorporation into the standing orders of continuing and sessional orders*, November 1996.

61 VP 1996–98/937 (2.12.1996).

- New Business Tax System (Miscellaneous) Bill 1999
- Higher Education Legislation Amendment (2005 Budget Measures) Bill 2005 (*see below*)
- National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007
- Medical Research Future Fund Bill 2015
- Northern Australia Infrastructure Facility Bill 2016 (*see below*).

Speaking in response to the Chair's statement in relation to the first of these bills, the Minister stated that the section 56 requirement for the Governor-General's message could not be dismissed as a mere procedural matter, and that it was fundamental to the preservation of the financial initiative of the Executive Government.[62]

Variation of the destination of an appropriation

In 1907 a ruling of the President of the Senate was given to the effect that the Senate did not have the power to make amendments which altered the destination of an appropriation.[63] In subsequent years the House objected to Senate amendments to two bills on this ground:

- Manufactures Encouragement Bill 1908
- Appropriation (Works and Buildings) Bill 1910–11.

In the case of the Higher Education Legislation Amendment (2005 Budget Measures) Bill 2005 the Senate made amendments which would have had the effect of moving expenditure between financial years. The view was taken in the House that this would amount to a change in the destination of an appropriation; and that where expenditure was transferred in such circumstances the proposed appropriation needed to be recommended by a message from the Governor-General. The House disagreed to the Senate amendments and, after the required message had been announced, made its own amendments in their place.[64] Before the Senate considered (and agreed to) the House amendments the Chairman of Committees read a statement explaining that the amendments had been moved by the Government in the Senate as amendments on the basis of 'the well-established principle that amendments in the Senate may re-allocate appropriations without increasing the amount of expenditure'.[65] A similar view was taken by the House in the case of the Northern Australia Infrastructure Facility Bill 2016, when Senate amendments expanded the area defined as 'Northern Australia', even though the bill had a cap on the total appropriation available.[66]

Bills imposing fees amounting to taxation

Section 53 of the Constitution, which prevents the Senate from amending bills imposing taxation, makes the proviso that a bill shall not be taken to impose taxation by reason only of its containing provisions for the payment of fees for licences or services. However, impositions described as fees or charges may in fact amount to taxation and there have been occasions when the Senate's treatment of such bills has been questioned.[67] In these cases the Senate did not agree with the bills' classification by

62 H.R. Deb. (1.12.1997) 11660–61. (In each case the Senate agreed to the House's amendments.)
63 S. Deb. (3.10.1907) 4165–7. *Odgers* regards this ruling to be in error (*see* 14th edn, p. 414).
64 VP 2004–07/841 (5.12.2005).
65 S. Deb. (9.12.2005) 45. *See also Quick and Garran*, p. 671.
66 VP 2016/65–6 (3.5.2016). The Senate reaction was also similar, S. Deb. (3.5.2016) 3423–4.
67 For details of bills involved *see* 3rd edition, p. 426.

Parliamentary Counsel as bills imposing taxation, and dealt with them as 'amendment bills'. The view taken by the Senate was that where there was reasonable doubt whether a bill should be classified as a bill imposing taxation it was proper to lean towards a ruling which preserved the Senate's amendment power.[68]

In each of these instances the Senate returned the bills concerned to the House 'without amendment' and no dispute between the Houses arose. However, the relative constitutional positions of the Houses might require consideration should the Senate in fact amend such a bill.

Question on requested amendments

The motion moved in the House is 'That the requested amendments be made' or 'That the requested amendments be not made'.

The question 'That the requested amendments be not made' may be amended to read 'That the requested amendments be made' without being out of order on the grounds of being a direct negative, as the negation of the question 'That the requested amendments be not made' would not, in itself, cause the amendments to be made.[69]

However, proposed amendments to the question put by the chair must not infringe the Government's financial initiative. In the two cases footnoted above the requested amendments sought to decrease a proposed tax; if they had sought to increase a tax, or extend its scope, only a Minister could have moved that they be made.[70] Possible amendments by private Members are also restricted by the need to obtain a Governor-General's message if the amendment requested by the Senate would need an appropriation.[71] To avoid this issue, on a Minister moving 'That the requested amendments be not made' a Member has moved as an amendment 'That all words after "That" be omitted with a view to substituting the following words: "the House calls on the Government to recommend an appropriation from the Governor-General consistent with the request from the Senate" '.[72]

Requested amendments made

When the message containing requests is announced to the House, the House may consider the requests immediately, or set a time for considering them.[73] The House may agree to make the requested amendments,[74] with or without its own amendment[75] (which may include modifications of the requested amendment and a consequential amendment[76]).

The House may make amendments requested by the Senate involving appropriation only if a message from the Governor-General recommending an appropriation for the purposes of the amendment or amendments has been received by the House.[77] In one case requested amendments were made before the associated message from the Governor-General had been received, as it had not been realised that a message was

68 *Odgers*, 6th edn, p. 591.
69 VP 1993–96/364 (18.10.1993); VP 2016–18/378–9 (24.11.2016).
70 S.O. 179.
71 S.O. 180.
72 VP 2016–18/433 (1.12.2016).
73 S.O. 165.
74 E.g. VP 1974–75/942–3 (2.10.1975); VP 2008–10/1867 (17.6.2010).
75 E.g. VP 1974–75/910 (10.9.1975); *and see* Appendix 18, Customs Tariff (British Preference) Bill 1906.
76 E.g. VP 1973–74/642–5 (12.12.1973).
77 E.g. VP 1993–96/2358–9 (31.8.1995); VP 1998–2001/2025 (7.12.2000); VP 2004–07/2150 (19.9.2007).

required.[78] The message was received after the House had adjourned. At the next sitting the Speaker drew attention to the matter, the message was reported and the House then went on to agree to Senate amendments to the bill. It was considered that, although the requirements of the standing orders had not been met, the requirements of the Constitution had.

A schedule of requested amendments made by the House is attached to the bill, which is then returned to the Senate with a message, stating how the House has dealt with the requests and asking the Senate to agree to the bill.[79] The substance of the message is:

> The House of Representatives returns to the Senate **a Bill for an Act** [long title], and acquaints the Senate that the House of Representatives has considered the message of the Senate requesting the House to make certain amendments in such Bill.
>
> The House of Representatives has made the requested amendments.

After the reporting of a message from the House advising that the House had made requested amendments, the Senate has recommitted a bill in order to make further requests.[80]

Requested amendments not made

The House may decide not to make the requested amendment,[81] and in this instance a message is sent to the Senate in the following form:

> The House of Representatives returns to the Senate **a Bill for an Act** [long title], and acquaints the Senate that the House of Representatives has considered the message of the Senate requesting the House to make an amendment in such Bill.
>
> The House of Representatives has not made the requested amendment.[82]

Reasons for the House not agreeing to take the requested action are not necessary. On the bill's return the Senate may pass it without the requested amendment having been made or may purport to press or insist on its request (*see below*).

If it is unwilling to comply with a Senate request, instead of responding to the request the House may lay the bill aside.[83]

Requested amendments not made, but replacement bills introduced

In 1901 the Consolidated Revenue Bill (No. 1) was ordered to be laid aside following a Senate request that the bill be amended so as to show the items of expenditure. Prime Minister Barton explained that estimates were circulated with the bill but the estimates were not part of the bill in the form of a schedule. He assured the House that there was no attempt to belittle or injure the Senate. The bill having been referred back to the House, and being a House bill, was now at the disposal of the House. A course was proposed which enabled the House to concede to the Senate message but which would put the course of procedure into a correct constitutional channel. A motion 'That the bill be laid aside' having been agreed to, standing orders were suspended to enable a replacement bill, the Consolidated Revenue Bill (No. 2) with scheduled estimates, to be introduced and pass all stages that day.[84]

78 VP 2008–10/1025 (14.5.2009), 1031 (25.5.2009); H.R. Deb. (25.5.2009) 4031.

79 S.O. 165.

80 J 1996–98/434–5 (27.6.1996), 443, 446 (28.6.1996) (the further requests had in fact been negatived when the bill was first considered by the Senate).

81 E.g. VP 1993–96/2429 (27.9.1995); VP 1998–2001/455 (29.3.1999); VP 2008–10/947–8 (17.3.2009).

82 E.g. J 1993–96/3884 (28.9.1995).

83 For examples *see* following section (replacement bills introduced); *see also* VP 1980–83/667–8 (17.11.1981) (House declined to consider purported amendments, bill laid aside). No message is sent to the Senate when a bill is laid aside.

84 H.R. Deb. (14.6.1901) 1174–86; VP 1901–02/61–2 (14.6.1901); *and see* Appendix 18.

On other occasions bills have been laid aside in response to pressed requests (*see below*) and replacement bills introduced and passed incorporating the amendments requested.[85]

Pressed requests

On occasions the Senate, on receiving a message from the House that the House has not made a requested amendment, has purportedly pressed or insisted upon its request. There has been a difference of opinion as to the constitutionality of the action of the Senate in pressing requests. The House has never conceded the Senate's power to do so. However, while passing a preliminary resolution refraining from determining its constitutional rights or obligations, the House has on most occasions taken the Senate's message into consideration. The arguments of those who advocate the constitutional propriety of pressed requests include the following:[86]

- the term 'at any stage' in section 53 of the Constitution means that the sending of requests is not limited to one occasion;
- there is no prohibition in the Constitution;
- the writers of the Constitution did not intend such a prohibition;
- the Senate could easily circumvent such a prohibition (that is, by slightly modifying the request on each occasion); and
- that the difference between an amendment and request is procedural only.

The alternative constitutional position is expressed by *Quick and Garran*:

> There does, however, seem to be a substantial constitutional difference between the power of suggestion and the power of amendment, as regards the responsibility of the two Houses. A short analysis will make this clear. In the case of a bill which the Senate may amend, the Senate equally with the House of Representatives is responsible for the detail. It incorporates its amendments in the bill, passes the bill *as amended*, and returns it to the House of Representatives. If that House does not agree to the amendments, the Senate can "insist on its amendments," and thus force the House of Representatives to take the responsibility of accepting the amendments or of sacrificing the bill; whilst the House of Representatives cannot force the Senate to take a direct vote on the bill in its original form.
>
> On the other hand, in the case of a bill which the Senate may not amend, the House of Representatives alone is responsible for the form of the measure; the Senate cannot strike out or alter a word of it, but can only suggest that the House of Representatives should do so. If that House declines to make the suggested amendment, the Senate is face to face with the responsibility of either passing the bill as it stands or rejecting it as it stands. It cannot shelve that responsibility by insisting on its suggestion, because there is nothing on which to insist. A House which can make an amendment can insist on the amendment which it has made; but a House which can only "request" the other House to make amendments cannot insist upon anything. If its request is not complied with, it can reject the bill, or shelve it; but it must take the full responsibility of its action. This provision therefore is intended to declare the constitutional principles (1) that the House of Representatives is solely responsible for the form of the money bills to which the section relates; (2) that the Senate may request alterations in any such bill; (3) that if such request is not complied with, the Senate must take the full responsibility of accepting or rejecting the bill as it stands.[87]

This view is supported by legal opinion, notably an opinion presented to the House on 16 March 1943,[88] which made the following points:

85 Appropriation Bill 1903–4; Supply Bill (No. 3) 1916–17.

86 *See also Odgers*, 14th edn, pp. 373–4.

87 *Quick and Garran*, pp. 671–2.

88 *Constitutional opinion on whether the Senate has a right to press a request for the amendment of a money bill*—by Sir Robert Garran, Sir George Knowles, Professor K. H. Bailey and Mr G. B. Castieau, VP 1940–43/514 (16.3.1943) (not ordered to be printed).

- the words 'at any stage' in section 53 of the Constitution do not, in a parliamentary context, mean the same thing as 'at any time and from time to time'; they plainly refer to the recognised stages in the passage of a bill through the Chamber;
- the question is not one of strict law on which the courts will pronounce; it is a matter of constitutional propriety, as between the Houses themselves;
- the question should be answered by reference to general considerations, drawn from the provisions of sections 53 to 57 of the Constitution as a whole;
- the plain implication of the *Quick and Garran* view was that the Senate can make a given request but once at any particular stage of a bill;
- as stated by Sir Harrison Moore, the consequence of the opposite view was that the distinction between the power to request and the power to amend was merely formal;
- Sir Isaac Isaacs indicated that, once the Senate had made a request, its power of suggestion in regard to a matter was exhausted as far as that stage was concerned; it has no right to challenge again the decision of the House in respect to matters in regard to which it has made requests and received a definite answer;[89]
- Sir John Latham stated that the only practical way in which a distinction might be drawn between making a request and amending a bill was by taking the view that a request could be made only once and that, having made it, the Senate has exercised all the rights and privileges allowed by the Constitution;[90]
- a different opinion, expressed in the Senate by Sir Josiah Symon, that the Constitution gave the Senate substantially the power to amend, though in the form of a request[91] meant that the Constitution, in declaring that the Senate might not amend but might request amendments, was contradicting itself, cancelling in the fourth paragraph of section 53 what it had enacted in the second; in respect of this view the opinion presented to the House stated that the Constitution did intend a substantial difference; it was thought clear that the Constitution did not intend to stultify itself by giving back in one clause what it had taken away in another; and
- the essence of the difference between an amendment and a request was that in the case of a request the form of the bill rests solely with the House; to press a request was to insist upon it—which was a contradiction in terms and unconstitutional.

On the 23 occasions[92] on which the Senate has pressed or insisted upon requests for amendments to bills the House has considered and dealt with the Senate messages as summarised below (*see* Appendix 18 for details):

- on ten occasions the pressed requests were accepted, accepted in part and compromise reached over requests not accepted, or alternative amendments made and compromise reached. It has been usual in such circumstances for the House to declare that it is refraining from the determination of its constitutional rights with respect to the messages purporting to press the requests:

  Customs Tariff Bill [1902]
  Excise Tariff (Spirits) Bill [1906]
  Customs Tariff (British Preference) Bill [1906]

89 H.R. Deb. (3.9.1902) 15691.
90 H.R. Deb. (30.11.1933) 5249.
91 S. Deb. (9.9.1902) 15824.
92 To December 2016.

Customs Tariff Bill [1907]
Customs Tariff Bill [1921]
Customs Tariff Bill [1933]
Income Tax Bill 1943
Veterans' Entitlements Bill 1985
States Grants (Schools Assistance) Bill 1988
Wool Tax (Nos 1 to 5) Amendment Bills 1991;

- on two occasions bills were laid aside and replacement bills were introduced and passed incorporating the amendments requested:
  Appropriation Bill 1903–4
  Supply Bill (No. 3) 1916–17;
- on four occasions the pressed requests were not accepted, were not further pressed, and the bills passed by the Senate:
  Appropriation Bill 1921–22
  Customs Tariff Bill (1936)
  Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000
  Members of Parliament (Life Gold Pass) Bill 2002;
- on one occasion the House declined to consider the message purporting to press requests, the requests were not further pressed, and the bill was passed by the Senate:
  Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003;
- on two occasions the House declined to consider messages purporting to press requests, the orders of the day for consideration of further action in relation to the bills concerned being subsequently discharged:
  Sales Tax Amendment Bills (Nos 1A to 9A) 1981
  Dairy Industry Stabilisation Levy Amendment Bill 1985;
- on one occasion the pressed requests were not accepted and the bill was laid aside:
  Student Assistance Amendment Bill 1994;
- on one occasion the pressed requests were not accepted, were further pressed, and the House declined to consider them further (for more detail *see* page 460):
  States Grants (Primary and Secondary Education Assistance) Bill 2000;
- on one occasion the pressed requests were not accepted, but the House was dissolved and the bill lapsed before the House message was considered by the Senate:
  Health Insurance Amendment (Compliance) Bill 2009;
- on one occasion the House was dissolved before the Senate message was considered by the House, and the bill lapsed:
  States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001.

Odgers suggests that in respect to the pressing of requests the Houses have interpreted the rule 'by application'—in effect that the Senate's right to press requests has been established by usage.[93] As against this suggestion the comments of others are relevant, for example:

93 *Odgers*, 14th edn, p. 374.

> The reality of the situation is that a government has often been prepared to forfeit constitutional niceties for the sake of getting its legislation made. It may be faced with the choice of modification of its proposals or having its bill rejected thereby setting in train the section 57 double dissolution procedure. Often the subject matter of the requests will not warrant this. The somewhat plaintive words of Latham on reiterated Senate requests for the inclusion of certain items in the Customs Tariff in 1933 exemplify this:
>
> > The Constitution has provided for such a case (rejection of a bill by the Senate) in section 57, under which this House is placed in a position to force a double dissolution. It appears to me, however, that the three items rabbit traps, spray pumps, and dates, however important they may be, hardly justify a double dissolution.
>
> But this may not always be the attitude adopted. The day could well come when the House of Representatives declines to consider reiterated requests and asserts that the Senate is acting unconstitutionally with the possible consequences, as far as the operation of section 57 is concerned, adverted to previously.[94]

In recent years when a message has been received from the Senate purporting to press requests for amendments, it has been the practice of successive Speakers to make a statement referring to the principles involved and which the House has endorsed, whether declining to consider the message or not. In a 1988 case the Deputy Speaker made the following statement on behalf of the Speaker:

> I draw the attention of the House to the constitutional question this message involves. The message purports to repeat the requests for amendments contained in Message No. 274 which the House rejected at its sitting earlier today. The 'right' of the Senate to repeat and thereby press or insist on a request for an amendment has never been accepted by the House of Representatives.
>
> On several previous occasions when a request was pressed on the House by repetition the House had regard to the claim that the public welfare required passage of the legislation which was the subject of the pressed request and gave the pressed request the House's consideration notwithstanding that the House resolved to refrain from determining its constitutional rights. The House so informed the Senate of the terms of its resolution in its message to the Senate in reply.
>
> It is not certain whether the Senate's right to press a request by repetition is justiciable in the courts. However it is a matter of constitutional propriety as between the Houses based on the provisions of sections 53 to 57 of the Constitution. Strong arguments that the Constitution does not give the Senate the right to press a request were advanced by Quick and Garran who were intimately involved in the development of the Constitution. Their views may be found on pages 671–2 of their treatise on the Constitution.
>
> In 1943, some 40 years later, the question was examined by four eminent constitutional lawyers, Garran, Knowles, Bailey and Castieau, who, after considering other learned opinion, summed up the question in the following words:
>
> > In our opinion, the Constitution in denying the right of amendment and conferring the right of request intended a substantial difference. In this we respectfully agree with the views expressed by Sir Harrison Moore, Sir Isaac Isaacs and Sir John Latham. We think it clear that the Constitution did not intend to stultify itself by giving back in one clause what it had taken away in another. The essence of the difference between request and amendment is that in the case of a request the right of decision as to the form of the Bill rests solely with the House of Representatives. To press a request is to insist upon it—which is a contradiction in terms, and also in our opinion unconstitutional.
>
> Other more recent legal opinion has been of a similar view, including the opinions of Professors Richardson, Sawer and Pearce.
>
> I respectfully agree with these opinions, as I had reason to indicate to the House as recently as 11 April 1986. I might also add that my immediate predecessors, Speaker Snedden on 21 October 1981 and Speaker Jenkins on 20 August 1985, also indicated their agreement to these opinions in similar statements.
>
> It rests with the House whether it will consider Message No. 295 insofar as it purports to press the requests that were contained in Message No. 274.

94 D. Pearce, 'The legislative power of the Senate', in *Commentaries on the Australian Constitution*, Leslie Zines (ed.), Butterworths, Sydney, 1977, p. 130.

> In the circumstances of the present case, the House may deem it expedient to pass a resolution, as has been done on occasions in the past, that the public welfare demands the early passage of the legislation and that the House refrains from determining its constitutional rights.[95]

On more recent occasions the Chair has read out shorter statements to similar effect (referring to rather than quoting the opinions of the constitutional experts).[96]

In 1986 the Senate purported to press requests concerning the Veterans' Entitlements Bill 1985. After a statement by the Speaker, the House refrained from determining its constitutional position and considered the message immediately. The Minister indicated that the requested amendments were not acceptable to the Government in the form that they were in but that they would be acceptable in another form, which was indicated in a schedule, if proposed in conjunction with certain other amendments. This course was followed and the Senate subsequently rescinded its requests and requested the House to amend the bill as proposed.[97]

In the case of the States Grants (Primary and Secondary Education Assistance) Bill 2000, the Senate pressed requests which the House had not made and the House again declined to make them. The Senate then further pressed its requests. When the message came before the House on 5 December 2000 the Speaker made a statement noting, inter alia, that it was only the second occasion the Senate had further pressed requests (the first being in 1906), that the House had no standing orders covering the situation of pressed requests, suggesting a belief that the House would not in the normal consideration of business require such rules, and that in 1983 the action of pressing requests had been taken to be failure to pass and included in the basis of a double dissolution. The Speaker noted the provisions of the standing orders in respect of Senate amendments, and the fact that it had been considered inappropriate to suspend standing orders to continue the process of disagreement. He also noted that the House should not be taken to have determined its privileges by considering the message, but that it should be open to the House to take whatever course it considered appropriate. The House resolved that it endorse the Speaker's statement, refrain from determining its constitutional rights, decline to consider further the requests and call on the Senate to agree to the bill without requests, amendments or delay. The Senate returned the bill with amendments which were disagreed to by the House and not insisted on by the Senate.[98]

In its 1995 report on the third paragraph of section 53 of the Constitution the Standing Committee on Legal and Constitutional Affairs stated:

> The conclusion that pressing requests is unconstitutional (and was not intended to be the practice when the Constitution was drafted) is supported by the literal meaning of the word 'request'. 'Request' can be defined as 'the act of asking for something to be given, or done, especially as a favour or courtesy'. To press and therefore insist on an amendment is to demand and this is not in keeping with the words of the fourth paragraph. The Committee suggests that the fact requests have been pressed in the past does not give the practice validity.[99]

If the House refuses to accede to a request the Senate can press its claim to finality by refusing to pass the bill.

95 VP 1987–90/1012–3 (21.12.1988); *see also* VP 1980–83/613–5 (21.10.1981).
96 E.g. VP 1990–92/921 (21.6.1991); VP 1993–96/1108–9 (27.6.1994); VP 1998–2001/1909 (28.11.2000).
97 VP 1985–87/820–1 (11.4.1986), 831–8 (14.4.1986), 856–8 (16.4.1986).
98 VP 1998–2001/1960–3 (5.12.2000), 2004–17, 2025–6 (7.12.2000).
99 PP 307 (1995) 148.

Pressed requests and s. 57 of the Constitution

The action of pressing requests has been considered to be 'failure to pass' in relation to section 57 of the Constitution.[100] In 1981 the House declined to consider messages purporting to press requests for amendments to Sales Tax Amendment Bills (Nos 1A to 9A) 1981, and the bills were discharged. The bills were subsequently reintroduced, passed by the House and then negatived in the Senate at second reading—becoming, inter alia, grounds for the 1983 double dissolution (*see* Chapter on 'Double dissolutions and joint sittings').

Division of a House bill by the Senate

In June 1995 the Senate sought to divide the Human Services and Health Legislation Amendment Bill (No. 1) 1995 and it returned the measure to the House in the form of two bills, in which it sought the concurrence of the House.[101] Consideration of the Senate message was made an order of the day for the next sitting, but the order was not called on. The Government did, however, later introduce the Human Services and Health Legislation Amendment Bill (No. 3) 1995 and the Therapeutic Goods Amendment Bill 1995, replacing the original proposals and incorporating minor amendments.[102] The bills were passed by the House, although a second reading amendment was moved which, inter alia, referred to 'the incompetent way in which the legislation was originally managed in its passage through the Parliament, so that the original bill was divided by the Senate and thus rendered inoperable'.[103] The Senate passed the Human Services and Health Legislation Amendment Bill (No. 3) on 29 November 1995. The Therapeutic Goods Amendment Bill had not been passed at the time of prorogation of the Parliament and dissolution of the House on 29 January 1996 but the measure was re-introduced and passed early in the 38th Parliament.

On 1 November 2000 a message was reported advising that the Senate had divided the Health Legislation Amendment Bill (No. 4) 1999, one part of which was returned to the House with amendments. Consideration of the message was made an order of the day for the next sitting,[104] but no further action was taken.

On 3 December 2002 a message was reported advising that the Senate had divided the Family and Community Services Legislation Amendment (Australians Working Together and Other Budget Measures) Bill (No. 2) 2002 into two bills and made amendments. The Senate had transmitted one of the proposed bills to the House, and had not completed its consideration of the second proposed bill. The Deputy Speaker made a statement noting that the position of the House was that the division of a bill in the House in which the bill did not originate was not desirable. He also said that he understood that there might be grounds for the Senate action in purporting to divide a House bill being considered to provide the first stage of a failure to pass a bill for the purposes of section 57 of the Constitution. The House endorsed the Deputy Speaker's statement, declined to consider the Senate message and requested the Senate to reconsider the bill as originally transmitted. The Senate resolved not to insist on the division of the bill, although in doing

100 *But see Odgers*, 14th edn, pp. 364, 720–1, 755.
101 J 1993–96/3424–5 (9.6.1995); VP 1993–96/2184 (19.6.1995).
102 VP 1993–96/2389–90 (20.9.1995); H.R. Deb. (28.9.1995) 1942–5.
103 VP 1993–96/2435 (28.9.1995).
104 VP 1998–2001/1843 (1.11.2000). The Senate had amended the excised part of the original bill with enacting words and provisions for titles and commencement and then postponed further consideration, J 1998–2001/3440 (31.10.2000).

so it reasserted its opinion that the division of any bill by the Senate is a form of amendment of a bill, not different in principle from any other form of amendment.[105]

It is considered that the established rules and practices of the Houses provide ample opportunity for the consideration and amendment of bills by each House and that the division of a bill in the House in which the bill did not originate is highly undesirable.

The House has divided a House bill—*see* 'Division of a bill' in the Chapter on 'Legislation'.

Proceedings in case of continued disagreement

Standing order 162 deals with subsequent proceedings in the case of continued disagreement. It provides:

(a) If the Senate returns a House bill insisting on the original Senate amendments to which the House has disagreed, the House may:
  (i) agree, with or without amendment, to the Senate amendments to which the House had previously disagreed, and make any necessary consequential amendments to the bill; or
  (ii) insist on its disagreement to the Senate amendments and make any necessary amendments relevant to the rejection of the Senate amendments.

(b) If the Senate returns a House bill disagreeing to House amendments, the House may:
  (i) withdraw its amendments and agree to the original Senate amendments;
  (ii) make further amendments to the bill consequent upon the rejection of its amendments;
  (iii) make new amendments as alternative to its amendments to which the Senate has disagreed; or
  (iv) insist on its amendments to which the Senate has disagreed.

(c) If the Senate returns a House bill with further amendments to the bill or to House amendments, the House may:
  (i) agree, with or without amendment, to the further Senate amendments, making consequential amendments to the bill, if necessary; or
  (ii) disagree to the further Senate amendments and insist on its own amendments which the Senate has amended.

There is precedent for the Senate not insisting on its amendments to which the House insisted on disagreeing, but making further amendments, consequent on the rejection of its amendments, and requesting the concurrence of the House in these amendments.[106] There is also precedent for the Senate not insisting on some rejected amendments but insisting on others, making amendments in place of some not insisted on, not agreeing to a replacement House amendment but agreeing to an alternative and making further amendments. The House agreed with these actions.[107] The Senate has not insisted on an amendment to which the House has disagreed, agreed to amendments made in place of it, agreed to further amendments made by the House, and itself made further amendments (to which the House agreed).[108]

Standing orders have been suspended to enable the immediate consideration of Senate amendments at this stage, the amendments being taken together and time limits being as specified in the motion.[109]

When the requirements of the Senate in the bill have been finally settled, the bill is returned to the Senate with a message informing the Senate accordingly.

105 H.R. Deb. (3.12.2002) 9485–7; VP 2002–04/599–600 (3.12.2002); J 2002–04/1363 (12.12.2002).
106 VP 1973–74/640–2 (12.12.1973).
107 VP 1998–2001/2028 (7.12.2000).
108 VP 2004–07/1500–02 (18.10.2006), 1516 (19.10.2006).
109 VP 2004–07/1516 (19.10.2006).

In all situations described in (a) (b) or (c) above, instead of returning the bill to the Senate (that is, if it is decided that further negotiation by message would be pointless), the House may request a conference or order the bill to be laid aside at this point.[110] In the latter case the most recent message from the Senate is ordered to be taken into consideration, usually immediately. A Minister then moves 'That the House insists on disagreeing to the amendments insisted on by the Senate', and, when this question is resolved in the affirmative, moves 'That the bill be laid aside'.[111]

Standing order 162(d) covers situations when a bill is returned to the Senate in accordance with options under (a) (b) or (c) above and the Senate then again returns the bill to the House again disagreeing with any of the requirements of the House. In such cases the standing order gives the House *only* the options of requesting a conference or of ordering the bill to be laid aside.[112] If the House instead wishes to save the bill by agreeing to Senate amendments it has previously insisted on disagreeing to (and again insisted on by the Senate), or wishes to propose alternative amendments, standing orders must be suspended to allow this action. Only positive action is appropriate at this stage—it has been considered that the suspension of standing orders to enable the House to again insist on disagreeing to the Senate amendments should not be permitted.[113]

At every stage, when the House concludes its consideration of Senate amendments to a House bill, the Clerk certifies the bill and any accompanying schedules.[114]

When negotiation by message fails, as an alternative to laying the bill aside the House may request a conference to be held between representatives of the two Houses, as described at page 464. Ultimately, when disagreement between the Houses over legislation originating in the House cannot be resolved, the deadlock may lead to the dissolution of both Houses pursuant to section 57 of the Constitution—as described in the following Chapter on 'Double dissolutions and joint sittings'.

SENATE BILLS AMENDED BY HOUSE

If the Senate returns a Senate bill which has been amended by the House with any of the amendments made by the House disagreed to, or further amendments made, together with reasons[115] the message is usually considered immediately.[116] The procedure of the House is then as follows:[117]

(a) If the Senate disagrees to House amendments to a Senate bill, the House may:
  (i) insist, or not insist, on its amendments;
  (ii) make further amendments to the bill consequent upon the rejection of its amendments;
  (iii) make new amendments alternative to the amendments to which the Senate has disagreed; or
  (iv) order the bill to be laid aside.

(b) If the Senate agrees to House amendments with amendments, the House may:
  (i) agree to the Senate's amendments, with or without amendment, making any consequential amendments to the bill;
  (ii) disagree to the Senate's amendments and insist on its own amendments; or

110 S.O. 162(d).
111 E.g. VP 1974–75/771 (3.6.1975), 827–8 (19.8.1975); VP 1996–98/2658 (4.12.1997).
112 E.g. VP 2008–10/795 (4.12.2008).
113 *See* statement by Speaker Andrew, VP 1998–2001/1961 (5.12.2000).
114 S.O. 164.
115 S.O. 168. As is the practice of the House, where a House amendment is disagreed to, but another amendment made in place thereof, no reasons are given, e.g. VP 1920–21/389 (21.10.1920); VP 1990–92/1412 (1.4.1992).
116 E.g. VP 1974–75/759–60 (2.6.1975).
117 S.O. 169.

(iii) order the bill to be laid aside.

(c) Except when a bill is laid aside, the House shall inform the Senate by message of its decision under paragraph (a) or (b). On any further return of the bill from the Senate with any of the requirements of the House still disagreed to, the House may order the bill to be laid aside.

The courses of action under (a) have not been interpreted as being mutually exclusive. For example, the House has declared that it did not insist on an amendment before going on to propose an alternative.[118] It has also stated that it insisted on an amendment but proceeded to revise its wording.[119] When a bill is returned to the Senate with any of the amendments made by the Senate on the amendments of the House disagreed to, the message returning the bill to the Senate also contains reasons for the House not agreeing to amendments made by the Senate. The reasons are presented to the House by the Member moving the motion that the amendment(s) be disagreed to.[120] The former practice of appointing a committee to draw up reasons was discontinued in 1998.[121]

If any further amendments are made by the House on the Senate's amendments on the original amendments of the House to a Senate bill, a schedule of further amendments is prepared and certified by the Clerk.[122]

The House may not amend any words of a bill which both Houses have agreed to, unless the words have been the subject of, or directly affected by, some previous amendment; or the proposed House amendment is consequent upon an amendment previously agreed to or made by the House.[123]

If the Senate makes an amendment which is not relevant to the amendments made by the House to a Senate bill, it is necessary for the House to suspend standing orders to enable the amendment to be considered. In the case of the International War Crimes Tribunal Bill 1994 the Senate agreed to all but one of the amendments made by the House, proposed another amendment in place of the one it disagreed to, and made further amendments to the bill and to a related bill. Before the House considered the Senate messages, standing and sessional orders were suspended to enable the further amendments to be considered.[124]

At every stage, when the House concludes its consideration of a Senate bill returned from the Senate after amendment by the House, the Clerk shall certify the bill and any accompanying schedules.[125]

If a Senate bill has returned to the Senate according to the processes outlined above and agreement is still not reached, Senate standing orders give the Senate the options of ordering the bill to be laid aside or of requesting a conference,[126] as described below.

CONFERENCES

The standing orders of both the House and Senate provide for the holding of conferences between the two Houses.[127] Grounds for conferences are not restricted to resolving disagreements between the Houses over legislation, but to date formal

118 VP 1920–21/139 (4.5.1920).
119 VP 1903/179 (20.10.1903).
120 S.O. 170(b), VP 1913/204 (11.12.1913).
121 VP 1996–98/3170 (30.6.1998).
122 S.O. 170(a).
123 S.O. 172.
124 VP 1993–96/1920–36 (8.3.1995).
125 S.O. 171.
126 Senate S.O. 127.
127 S.O.s 162, 262–6; Senate S.O.s 127, 156–62.

conferences of delegates or managers representing the two Houses have been used only for this purpose.[128] Only two such conferences have ever been held,[129] and it seems unlikely that a formal conference would be used to resolve disagreements between the Houses in contemporary political circumstances. Resolution of disagreements over legislation is more likely to be achieved behind the scenes by Ministers negotiating directly with parties represented in the Senate and individual Senators.

Unofficial conference

In 1921 an unofficial committee[130] of three Members of each House (also referred to as representatives of the two Houses 'in conference') considered an amendment requested by the Senate to the Appropriation Bill 1921–22. The amendment would have reduced a salary increase for the Clerk of the House so as to maintain parity with the Clerk of the Senate. The committee recommended that there should be uniformity in salaries of the chief officers in the Senate and the House of Representatives, and that in the future preparation of the estimates this uniformity should be observed. The House endorsed the recommendations and gave the necessary authority to Mr Speaker to carry them into effect. In view of this the Senate did not press its request for amendment.[131]

128 For details of proposed conferences of all members of both Houses *see* 'Joint meetings' in the Chapter on 'Order of business and the sitting day'.

129 In 1930 and 1931, requested by the House in relation to Senate amendments to House bills. The only other conference proposed on a bill was in 1950 when the Senate requested a conference on House amendments to a Senate bill, but the House did not agree to the request. A more detailed account of these conferences and the relevant standing orders can be found in the 6th edition (pp. 467–9) and earlier editions.

130 That is, appointed by and reporting to the Government rather than the Houses, *see* S. Deb. (10.12.1921) 14280–1.

131 VP 1920–21/863–4 (9.12.1921); H.R. Deb. (9.12.1921) 14256–61, 14261.

13
Double dissolutions and joint sittings

Apart from placing restrictions on the Senate's ability to initiate or amend certain types of financial legislation or to amend other legislation so as to increase a charge or burden on the people,[1] the Constitution gives the two Houses of the Commonwealth Parliament equal legislative powers. The Senate has the full power to reject any bill. In addition, where the Senate has the power to amend a bill it can insist on its amendments.[2]

There have been many instances where the Senate has rejected or made amendments regarded as unacceptable to legislation initiated in the House, some of which have related to major policy proposals. Not all disagreements between the Houses are finally resolved. In many instances the House has not proceeded with bills not passed by the Senate. In other cases the Senate has not insisted on its amendments. In such cases the political forces in each House have compromised and acted as a check on each other or other factors have been taken into account. The following text describes the processes followed and the problems which arise when no compromise can be reached between the Houses by the usual process of considering amendments or requests and communicating by message, or by conferences between the two Houses.[3] The resolution of such conflicts may be ultimately by way of the procedure specified in section 57 of the Constitution, leading to a double dissolution and an election for both Houses. The disagreement may then be resolved by the government party or coalition being re-elected with a majority in both Houses, enabling it to win a vote on the issue, by it reaching a political compromise, or by it losing office. If, following a double dissolution, the disagreement persists—that is, in cases where the Government is re-elected but continues to fail to obtain Senate agreement on the issue—the matter may be determined by a joint sitting of members of both Houses.

SECTION 57 OF THE CONSTITUTION

If a proposed law passed by the House is rejected by the Senate or passed with amendments to which the House will not agree, or the Senate fails to pass the bill, then the constitutional means for resolving the disagreement between the Houses commences, with a 'double dissolution' provided for by section 57 of the Constitution,[4] whereby both Houses are dissolved simultaneously.[5] The process for the settlement of deadlocks is only applicable to bills which have been initiated and passed by the House of

1 Described in the Chapter on 'Financial Legislation'.

2 The Senate's power to insist on requests for amendments to bills it cannot amend has never been conceded by the House (*see* Ch. on 'Senate amendments and requests'). One double dissolution has been granted on the basis, in part, of purported 'pressed requests' (*see* p. 484).

3 *See* Ch. on 'Senate amendments and requests'.

4 For examination of the operation of section 57 the following references are noted: *Report from the Joint Committee on Constitutional Review*, PP 108 (1959–60) 19–34; 'Constitutional Alteration (Avoidance of Double Dissolution Deadlocks) Bill', *Report from Senate Select Committee*, S1 (1950–51); George Howatt, *Resolving Senate–House deadlocks in Australia without endangering the smaller States*, PP 51 (1964–66); and *Odgers*.

5 The Senate can be dissolved only pursuant to this section.

Representatives.[6] There is no similar procedure in the Constitution to resolve any deadlock on legislation initiated in the Senate.

A fundamental purpose of section 57 is expressed by *Quick and Garran*, which states that in the exclusive powers of the House of Representatives with regard to the initiation and amendment of money bills there is a predominating national element; and this is still further emphasised in the 'deadlock clause', which is designed to ensure that a decisive and determined majority in the national chamber shall be able to overcome the resistance of a majority in the 'provincial chamber' (the Senate).[7]

Section 57 provides several distinct and successive stages in the procedure by which a disagreement may be determined and reads as follows:

> If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.
>
> If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.
>
> The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

As with other prerogative powers, the Governor-General dissolves both Houses on the advice of Ministers who have the confidence of the House of Representatives[8]—in practice, the Prime Minister. However, it has been recognised that the Governor-General must be satisfied personally as to the existence of the conditions of fact set out in section 57—for example, whether there was a failure to pass the proposed law.[9] The Governor-General may seek additional information from the Prime Minister. The Prime Minister's advice has been accepted in all instances to date. In 1975 Mr Whitlam, who had been Prime Minister until the day of the double dissolution, did not advise a double dissolution and the Governor-General dissolved both Houses acting on the advice of newly-commissioned Prime Minister Fraser who did not have majority support in the House.

A double dissolution cannot take place within six months before the date the House is due to expire by effluxion of time. According to *Quick and Garran* the purpose of this restriction is that the House of Representatives may not be permitted to court a deadlock and to force a dissolution of the Senate, when the House is on the point of expiry.[10]

6 *Quick and Garran*, p. 685.
7 *Quick and Garran*, p. 339.
8 *Quick and Garran*, p. 685.
9 P. H. Lane, *Lane's commentary on the Australian Constitution*, Law Book Co., 1986, pp. 291–2. *And see* comments by Chief Justice Griffith noted at p. 471.
10 *Quick and Garran*, p. 686.

In considering whether to grant a double dissolution, the Governor-General may be expected to satisfy himself or herself that there is in reality a deadlock and that the requirements of section 57 have in fact been fulfilled. In addition regard has been had to the importance of the bill or bills in question and the workability of Parliament.[11]

There must be an interval of three months between the first rejection, failure to pass or passage with unacceptable amendments by the Senate and the passage of the bill a second time by the House.[12] That interval gives time for consideration and conciliation, and permits the development and manifestation of public opinion throughout the Commonwealth. The interval may be composed of time wholly within the same session of Parliament as that in which the bill was proposed and lost, or it may be composed of time partly in that session and partly in a recess, or in the next session. The interval may be longer than three months, but it cannot extend beyond the next session of the Parliament.[13]

The bill which is again passed by the House and sent to the Senate after the three month interval must be the original bill modified only by amendments made, suggested or agreed to by the Senate.[14]

Interpretations of the phrases 'interval of three months' and 'fails to pass', contained in section 57, have been the subject of considerable examination. Interpretations of the significance and meaning of these words are dealt with in the case studies which follow.

Once the conditions set by section 57 have occurred, whether and when to advise a double dissolution is a matter for the Prime Minister. There is no constitutional necessity to do so, or to do so within any period of time. Following a double dissolution there is no constitutional necessity to reintroduce a bill that was a cause of the deadlock.

In 2003 the Prime Minister presented a discussion paper[15] on options for change in respect of the provisions concerning deadlocks. The options were to allow the Governor-General to convene a joint sitting of both Houses to consider a deadlocked bill without the need for an election, or alternatively, to allow the Governor-General to convene such a joint sitting after an ordinary general election. However, after a period of public consultation the Government later indicated that it would not put proposals for constitutional change forward.[16]

DOUBLE DISSOLUTIONS

The Governor-General has dissolved the Senate and the House of Representatives simultaneously in accordance with section 57 of the Constitution on seven occasions—in 1914, 1951, 1974, 1975, 1983, 1987, and 2016.

11 *See,* for example, *Simultaneous dissolution of the Senate and the House of Representatives 4 February 1983*, PP 129 (1984) 43–4.

12 This interpretation of section 57 was upheld by the High Court in *Victoria v. Commonwealth* (1975) 134 CLR 81 (Petroleum and Minerals Authority Case)—*see* page 492.

13 *Quick and Garran*, p. 685.

14 In 1994 the Senate made extensive amendments to the *ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994*. The Government agreed to accept 21 of the amendments, and a second version of the bill, with a new short title and incorporating the agreed Senate amendments was introduced, H.R. Deb. (28.2.1995) 1106. At the time it was considered that the changes made to the original bill did not preclude the possibility that if necessary the bill could become a bill subject to the s. 57 provisions. The Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2] was an example of a 'second' bill with less extensive amendments incorporated. For discussion of the question of the necessary identity between the two bills *see* K. Magarey, *Alcopops makes the House see double: 'the proposed law' in section 57 of the Constitution*. Parliamentary Library Research Paper, no. 32, 2008–09, May 2009.

15 *Resolving deadlocks: A discussion paper on Section 57 of the Australian Constitution,* H.R. Deb. (8.10.2003) 20852–62.

16 Consultative Group on Constitutional Change, *Resolving deadlocks: the public response*. H.R. Deb. (1.6.2004) 29656–60.

- In only one case (1951) was the deadlock resolved by the Government being returned with a majority in both Houses. The legislation was reintroduced and passed by both Houses.
- In two cases (1914 and 1983) the Government lost office. The legislation was not reintroduced.
- In two cases (1974, 1987) the Government was returned but did not gain a majority in the Senate, and the disagreement between the Houses continued. The 1974 case resulted in a joint sitting (*see* page 489) at which the bills concerned were passed. In 1987 the bill concerned was ultimately not proceeded with.
- In one case (2016) the Government was returned but did not gain a majority in the Senate. However, the disagreement between the Houses was resolved. The legislation was reintroduced and passed by both Houses after the House agreed to Senate amendments.
- Unique circumstances applied in 1975. The bills providing the technical grounds for the double dissolution were not those of the caretaker Government seeking the dissolution, but those of the Government dismissed by the Governor-General. The bills were not reintroduced.

The details of each case are outlined in the following pages.[17]

The 1914 double dissolution

Following the general election of 1913 the Cook Liberal Ministry was sworn in on 24 June 1913 with a majority in the House of Representatives of one but was in a minority in the Senate.

On 31 October 1913 the Government introduced into the House the Government Preference Prohibition Bill 1913.[18] The bill was passed by the House on 18 November 1913 after a division had been called at every stage and the closure moved to end every debate.[19] The bill was introduced into the Senate on 20 November and the second reading of the bill was negatived on 11 December.[20] Parliament was prorogued on 19 December. A motion seeking leave to reintroduce the bill was moved in the House on 6 May 1914, the bill was reintroduced on 13 May and again passed by the House on 28 May.[21] During the proceedings on the bill in the House the Speaker exercised his casting vote on six occasions.[22] The bill was again introduced into the Senate on 28 May and negatived on the first reading.[23]

On 4 June 1914 Prime Minister Cook wrote to the Governor-General (Sir Ronald Munro-Ferguson) recommending the simultaneous dissolution of both Houses, as the provisions of section 57 of the Constitution had been completely complied with in respect of the bill, and adding:

17 Accounts of the same events from the Senate perspective are given in *Odgers*, 14th edn, pp. 728–64.
18 VP 1913/132 (31.10.1913).
19 VP 1913/162–5 (18.11.1913).
20 J 1913/93 (20.11.1913), 137 (11.12.1913).
21 VP 1914/33 (6.5.1914), 61 (28.5.1914).
22 VP 1914/40, 41, 42 (13.5.1914), 48, 53 (21.5.1914), 61 (28.5.1914).
23 J 1914/53 (28.5.1914).

> The almost equal numbers of the two parties in the House of Representatives, and the small number supporting the Government in the Senate, render it impossible to manage efficiently the public business.[24]

In a lengthy background memorandum Mr Cook also told the Governor-General that the Labor majority in the Senate 'has for two successive sessions made the parliamentary machine unworkable'.[25] In conclusion Mr Cook advised the Governor-General that it:

> . . . appears that the expressed views of those who took part in the framing of the Constitution support the conclusion drawn from the language and the scheme of the Constitution itself, namely, that the discretion of the Governor-General to grant or to refuse a dissolution of both Houses, under section 57, is a discretion which can only be exercised by him in accordance with the advice of his Ministers representing a majority in the House of Representatives.[26]

The Governor-General replied on the same day:

> Referring to the Prime Minister's memorandum of this date, the Governor-General desires to inform the Prime Minister that, having considered the parliamentary situation, he has decided to accede to the Prime Minister's request, and will grant an immediate simultaneous dissolution of the Senate and the House of Representatives, on condition that he receives a definite assurance that the financial position is such that adequate provision exists for carrying on the Public Service in all its branches during the period of time covered by the elections.

Mr Cook replied to the Governor-General guaranteeing that a supply bill would be introduced and passed before an election was held.[27]

On 29 June 1914 the Governor-General prorogued Parliament[28] and on 30 July 1914 the Governor-General, on the advice of the Government, issued a proclamation referring to the provisions of section 57, citing the bill in question and dissolving both Houses simultaneously.[29]

Elections were held on 5 September 1914 and the Government of Prime Minister Cook was defeated, the Labor Party being elected to government with a majority in both Houses. The bill in question was not reintroduced.

An interesting facet of the 1914 double dissolution was that with Prime Minister Cook's consent, the Governor-General sought advice from the Chief Justice of the High Court, Sir Samuel Griffith, who held the view that:

> An occasion for the exercise of the power of double dissolution under Section 57 formally exists . . . whenever the event specified in that Section has occurred, but it does not follow that the power can be regarded as an ordinary one which may properly be exercised whenever the occasion formally exists. It should, on the contrary, be regarded as an extraordinary power, to be exercised only in cases in which the Governor-General is personally satisfied, after independent consideration of the case, either that the proposed law as to which the Houses have differed in opinion is one of such public importance that it should be referred to the electors of the Commonwealth for immediate decision by means of a complete renewal of both Houses, or that there exists such a state of practical deadlock in legislation as can only be ended in that way. As to the existence of either condition he must form his own judgment. Although he cannot act except upon the advice of his Ministers, he is not bound to follow their advice but is in the position of an independent arbiter.[30]

A formal address from the Senate to the Governor-General, seeking the reasons advanced by Mr Cook for the double dissolution, was agreed to by the Senate on 17 June 1914[31] but was rejected by the Governor-General in the following terms:

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24 *Double dissolution correspondence between the late Prime Minister (the Right Honourable Joseph Cook) and His Excellency the Governor-General*, PP 2 (1914–17) 3.
25 PP 2 (1914–17) 4.
26 PP 2 (1914–17) 8.
27 PP 2 (1914–17) 3.
28 Gazette 38 (29.6.1914) 99.
29 Gazette 48 (30.7.1914) 101.
30 'Memorandum by Sir Samuel Griffith', quoted in L. F. Crisp, *Australian national government*, 5th edn, pp. 404–5.
31 J 1914/86–8 (17.6.1914).

> I am advised by [my Advisers] that the request . . . is one the compliance with which would not only be contrary to the usual practice, but would involve a breach of the confidential relations which should always exist in this as in all other matters between the representative of the Crown and his Constitutional Ministers. I am advised further that to accede to the request . . . would imply a recognition of a right in the Senate to make the Ministers of State for the Commonwealth directly responsible to that Chamber . . . and that such a recognition would not be in accordance with the accepted principles of responsible government.[32]

The 1951 double dissolution

Following the general election on 10 December 1949 a Liberal–Country Party coalition led by Prime Minister Menzies was returned to power with a majority in the House of Representatives but it was in a minority in the Senate.

On 16 March 1950 the Commonwealth Bank Bill 1950 was introduced into the House of Representatives.[33] The bill passed the House on 4 May 1950[34] and was introduced into the Senate on 10 May.[35] On 21 June the Senate passed the bill with amendments.[36] On 22 June the House disagreed to the Senate amendments, and sent a message to the Senate asking the Senate to reconsider.[37] The Senate insisted on the amendments[38] and the House resolved that 'The House insists on disagreeing to the amendments insisted on by the Senate'.[39] The Senate received the message from the House to this effect on 23 June. On 10 October the opposition majority in the Senate took control of business in order that the message could be considered in committee of the whole. The Senate again insisted on its amendments.[40] The message was received by the House on 11 October but was not considered.[41]

On 4 October 1950 the Commonwealth Bank Bill 1950 [No. 2], identical to the earlier Commonwealth Bank Bill, was introduced into the House of Representatives. On 11 October the bill was declared an urgent bill and passed by the House.[42] The bill was introduced into the Senate on 12 October[43] and following its second reading on 14 March 1951 was referred to a select committee.[44]

On 16 March Prime Minister Menzies wrote to Governor-General McKell advising him to dissolve simultaneously both Houses and sending him supporting opinions from the Attorney-General and Solicitor-General.[45] In his letter to the Governor-General, Mr Menzies set out the stages of proceedings on the Commonwealth Bank Bill in both Houses and stated:

> . . . there is clear evidence that the design and intention of the Senate in relation to this Bill has been to seek every opportunity for delay, upon the principle that protracted postponement may be in some political circumstances almost as efficacious, though not so dangerous, as straight-out rejection. Since failure to pass is, in section 57, distinguished from rejection or unacceptable amendment, it must refer,

32 J 1914/98 (24.6.1914). Double dissolution documents presented to the House on the first day of the 6th Parliament, VP 1914–17/5 (8.10.1914).
33 VP 1950–51/34 (16.3.1950).
34 VP 1950–51/73 (4.5.1950).
35 J 1950–51/42 (10.5.1950).
36 J 1950–51/93–4 (21.6.1950).
37 VP 1950–51/170–1 (22.6.1950).
38 J 1950–51/107–8 (22.6.1950).
39 VP 1950–51/174 (22.6.1950).
40 J 1950–51/123–5 (10.10.1950). *Odgers*, 6th edn, gives a more detailed account on pp. 38–9.
41 VP 1950–51/195 (11.10.1950).
42 VP 1950–51/195–7 (11.10.1950).
43 J 1950–51/131–2 (12.10.1950).
44 J 1950–51/223–4 (14.3.1951).
45 *Simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 19 March 1951*, PP 6 (1957–58).

> among other things, to such a delay in passing the Bill or such a delaying intention as would amount to an expression of unwillingness to pass it. Clear evidence emerges from the whole of the history of the legislation in the Senate.

Mr Menzies then referred in detail to events in the Senate, analysing these events in terms of 'delay' and 'failure to pass' (*see* page 57 of the second edition).[46]

In addition to stating that grounds existed for a double dissolution in respect of the Commonwealth Bank Bill, Mr Menzies also referred to disagreements between the Houses on the Social Services Consolidation Bill, the Communist Party Dissolution Bill and the National Service Bill, none of which had gone through the constitutional requirements to be the reason for a double dissolution. Mr Menzies said that in considerations surrounding the 1914 double dissolution 'some importance appears to have been attached to the unworkable condition of the Parliament as a whole' and stated that 'the present position in the Commonwealth Parliament is such that good government, secure administration, and the reasonably speedy enactment of a legislative program are being made extremely difficult, if not actually impossible'.[47]

In his foreword to the published double dissolution documents, Mr Menzies wrote on 24 May 1956:

> In the course of our discussion, I had made it clear to His Excellency that, in my view, he was not bound to follow my advice in respect of the existence of the conditions of fact set out in section 57, but that he had to be himself satisfied that those conditions of fact were established.[48]

In the concluding paragraph of his advice tendered to the Governor-General, Mr Menzies stated:

> I am, of course, at Your Excellency's service to discuss with you the matters referred to above and also any other aspects of the problem which seem to Your Excellency to merit examination. But my advice to you is, as I have said, that you should forthwith dissolve the Senate and the House of Representatives simultaneously so that the conflicts which have arisen may be authoritatively resolved.[49]

In an opinion submitted to the Governor-General by Mr Menzies, the Solicitor-General stated that he believed that the three month interval before the second passage of the bill through the House of Representatives commenced when the Senate passed the bill with amendments to which the House would not agree.[50]

When the Senate considered the Commonwealth Bank Bill for the second time and referred it to a select committee it did not actually reject the bill. Therefore to comply with the constitutional requirements for a double dissolution it had to be established that the Senate had 'failed to pass' the bill. The Senate Opposition argued that a double dissolution was not justified on the grounds that:

- the reference of the bill to a select committee was a normal procedural form and should not be regarded as a 'failure to pass', and
- the required interval of three months had not in fact transpired.

In an opinion submitted to the Governor-General by Mr Menzies, the Attorney-General stated:

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46 PP 6 (1957–58) 10–12.
47 PP 6 (1957–58) 12.
48 PP 6 (1957–58) 4.
49 PP 6 (1957–58) 15.
50 PP 6 (1957–58) 20–1. In *Victoria v. Commonwealth* (1975) the High Court was not required to reach a conclusion on this particular aspect of s. 57, but comments were made on the point, 134 CLR 81 at 125 per Barwick CJ; 147, 149 and 151 per Gibbs J; 167 per Stephen J; and 187 per Mason J.

> The words "fail to pass" in the section are designed to preclude the Senate, upon being proffered a Bill with an opportunity to pass it with or without amendments or to reject it, from declining to take either course, and instead deciding to procrastinate.
>
> In the present circumstances the Senate has had a second opportunity of choosing whether to pass with or without amendments or to reject the proposed law. It has declined to take either course and, unquestionably, has decided to procrastinate. In my opinion, this completely satisfies the words "fail to pass" as properly understood in the section and, in my opinion, the power of the Governor-General to dissolve both Houses has arisen.[51]

The Solicitor-General made the following points in his opinion on this matter:

> The addition of the words "fail to pass" is intended to bring the section into operation if the Senate, not approving a Bill, adopts procedures designed to avert the taking of either of these definitive decisions on it. The expression "fails to pass" is clearly not the same as the neutral expression "does not pass", which would perhaps imply mere lapse of time. "Failure to pass" seems to me to involve a suggestion of some breach of duty, some degree of fault, and to import, as a minimum, that the Senate avoids a decision on the Bill.
>
> In a recent opinion, Sir Robert Garran enumerated as follows, and in terms which in general I respectfully adopt, the matters to be taken into account in ascertaining the fact of failure or non-failure to pass:
>
> "Mainly, I think, the ordinary practice and procedure of Parliament in dealing with Bills; including facts arising out of the unwritten law relating to the system of responsible government: the way in which the Government arranges the order of business and conducts the passage of Government measures through both Houses, and the various ways in which the Opposition seeks to oppose. It will be material to know what opportunities the Government has given for proceeding with the Bill, and what steps the Senate has taken to delay or defer consideration.
>
> There are many ways in which the passage of a Bill may be prevented or delayed: e.g.
>
> (i) It may be ordered to be read (say) this day six months.
>
> (ii) It may be referred to a Select Committee.
>
> (iii) The debate may be repeatedly adjourned.
>
> (iv) The Bill may be 'filibustered' by unreasonably long discussion, in the House or in Committee.
>
> The first of these would leave no room for doubt. To resolve that a Bill be read this day six months is a time-honoured way of shelving it.
>
> The second would be fair ground for suspicion. But all the circumstances would need to be looked at.
>
> The third, if it became systematically employed against the Government, would lead to a strong inference.
>
> But just at what point of time failure to pass could be established, might be hard to determine . . .
>
> In the fourth case too, the point at which reasonable discussion is exceeded, and obstruction, as differentiated from honest opposition, begins, would be very hard to determine. But sooner or later, a 'filibuster' can be distinguished from a debate . . ."
>
> Section 57 cannot of course be regarded as nullifying the express provision in section 53 that except as provided in that section the Senate should have equal power with the House of Representatives in respect to all proposed laws. But it is equally clear that on the fair construction of section 57 a disagreement between the Houses can be shown just as emphatically by failure to pass a Bill as by its rejection or amendment. Perhaps the principle involved can be expressed by saying that the adoption of Parliamentary procedures for the purpose of avoiding the formal registering of the Senate's clear disagreement with a Bill may constitute a "failure to pass" it within the meaning of the section.[52]

Mr Menzies made it clear in his memorandum to the Governor-General that he considered that the Senate had adopted parliamentary procedures for the purpose of avoiding the formal registering of the Senate's clear disagreement with the bill.

On 17 March the Governor-General wrote to Mr Menzies:

> I have given most careful consideration to the documents referred to and have decided to adopt the advice tendered in your memorandum.[53]

51 PP 6 (1957–58) 16–17.
52 PP 6 (1957–58) 21–2.
53 PP 6 (1957–58) 23.

On 19 March, on the advice of the Government, the Governor-General issued a proclamation referring to the provisions of section 57, citing the Commonwealth Bank Bill and dissolving the Senate and the House of Representatives.[54]

A general election was held on 28 April 1951 and the Menzies Government was returned with a majority in both Houses, enabling the Government to effect the passage of the Commonwealth Bank Bill which was assented to on 16 July 1951.[55]

The 1974 double dissolution

On 2 December 1972 there was a general election and the Whitlam ALP Government was elected with a majority in the House of Representatives, but in the Senate the Government held only 26 of the 60 seats. During the course of the 28th Parliament six bills were considered by the Government to have fulfilled the constitutional requirements to be treated as double dissolution bills:

- Commonwealth Electoral Bill (No. 2) 1973;
- Senate (Representation of Territories) Bill 1973;
- Representation Bill 1973;
- Health Insurance Commission Bill 1973;
- Health Insurance Bill 1973;
- Petroleum and Minerals Authority Bill 1973.

The catalyst for the 1974 double dissolution, however, was not so much the defeat in the Senate of government legislation but the Senate's threat to prevent passage of appropriation bills.[56]

On 21 March 1974 Prime Minister Whitlam announced in the House that the Government had decided to invite the Governor-General to communicate with the State Governors proposing that the next election for half the Senate should be held on 18 May 1974.[57]

On 2 April 1974 Appropriation Bills (Nos 4 and 5) 1973–74 were introduced into the House of Representatives,[58] and on 10 April passed by the House and sent to the Senate.[59] On 4 April Prime Minister Whitlam had informed the House that if the Senate rejected any 'money' bill he would advise the Governor-General to dissolve both Houses.[60] Appropriation Bill (No. 4) 1973–74 was introduced into the Senate on 10 April and debate on the second reading adjourned. A motion was then moved 'That the resumption of the debate be an order of the day for a later hour of the day', to which the Leader of the Opposition in the Senate (Senator Withers) moved an amendment to add the following words to the motion:

> . . . but not before the Government agrees to submit itself to the judgment of the people at the same time as the forthcoming Senate election . . .

The debate was interrupted to enable the Leader of the Government in the Senate (Senator Murphy) to announce that Prime Minister Whitlam had advised the Governor-General to grant a simultaneous dissolution of both Houses and that the Governor-

54 Gazette 19A (19.3.1951) 740A.
55 VP 1951–53/82 (26.9.1951).
56 For details of general Senate opposition to government activity and other political developments *see Odgers*, 6th edn, pp. 43–64.
57 VP 1974/65 (21.3.1974).
58 VP 1974/77 (2.4.1974).
59 VP 1974/102–4 (10.4.1974).
60 H.R. Deb. (4.4.1974) 1054.

General had agreed to do so on the condition that the necessary provisions were made for carrying on the Public Service. Senator Withers thereupon withdrew his amendment and Appropriation Bill (No. 4) was passed by the Senate,[61] together with Appropriation Bills (Nos 3 and 5) 1973–74, and Supply Bills (Nos 1 and 2) 1974–75 received from the House that day.

In his advice to the Governor-General, Mr Whitlam listed the progress on the six bills which he considered satisfied the requirements of section 57 of the Constitution. He also gave other examples of what he regarded as the Senate's obstruction of the government program, stating that 21 out of the 254 bills put before Parliament in the first session had been rejected, stood aside or deferred by the Senate.[62] Mr Whitlam provided the Governor-General with a joint opinion from the Attorney-General and the Solicitor-General which concluded that section 57 was applicable to more than one proposed law.[63] An opinion from the Attorney-General that the six bills had satisfied the requirements of section 57 accompanied the Prime Minister's advice to the Governor-General.[64]

In his letter to the Prime Minister, accepting his advice, the Governor-General stated:

> As it is clear to me that grounds for granting a double dissolution are provided by the Parliamentary history of the six Bills listed above, it is not necessary for me to reach any judgment on the wider case you have presented that the policies of the Government have been obstructed by the Senate. It seems to me that this is a matter for judgment by the electors.[65]

On 11 April 1974 the Governor-General, on the advice of the Government, issued a proclamation referring to the provisions of section 57, citing the six bills which satisfied its provisions and dissolving the Senate and the House of Representatives.[66] The elections were held on 18 May 1974 and the Whitlam Government was returned with a majority of five seats in the House. In the Senate, the election resulted in the Government holding 29 seats, the Liberal-Country Party coalition also holding 29, the Liberal Movement one, and one seat being held by an independent Senator.

The new Parliament met on 9 July 1974 and on 10 July the six double dissolution bills were introduced into the House and declared urgent bills.[67] The Commonwealth Electoral Bill (No. 2), the Senate (Representation of Territories) Bill and the Representation Bill were passed by the House that day.[68] The Health Insurance Commission Bill, the Health Insurance Bill and the Petroleum and Minerals Authority Bill were passed by the House on 11 July.[69] All six bills were negatived by the Senate at the second reading between 16 July and 24 July 1974.[70]

The Government considered that these six bills had then fulfilled the constitutional requirements to be submitted to a joint sitting of the Houses (for a description of further proceedings and developments *see* page 489).

61 J 1974/109–14 (10.4.1974).
62 *Simultaneous dissolution of the Senate and the House of Representatives, 11 April 1974*, PP 257 (1975) 4.
63 PP 257 (1975) 30–1.
64 PP 257 (1975) 32.
65 PP 257 (1975) 38.
66 Gazette 31B (11.4.1974).
67 VP 1974–75/17–8 (10.7.1974).
68 VP 1974–75/22–4 (10.7.1974).
69 VP 1974–75/26–8 (11.7.1974).
70 *See* Appendix 22 of the first edition.

The 1975 double dissolution

The double dissolution of 11 November 1975 differed from earlier double dissolutions. Liberal Prime Minister Fraser who advised the Governor-General to grant a double dissolution had been Prime Minister only for a matter of hours and was not supported by a majority in the House. The bills which had satisfied the requirements of section 57 and which provided the technical grounds for the double dissolution had been introduced by the ALP Government, which had been dismissed from office earlier that day.[71]

From July 1974, when the 29th Parliament commenced, to November 1975, 21 bills were regarded as fulfilling the requirements of section 57, having been twice rejected by the Senate. In addition there was Senate opposition to a considerable number of other government bills.[72]

As with the 1974 double dissolution, the critical event leading up to the double dissolution concerned the passage of bills appropriating revenue for the ordinary annual services of the Government, namely, Appropriation Bills (Nos 1 and 2) 1975–76. It was on these bills that the Houses were in actual deadlock but they were not the bills in respect of which the double dissolution was granted. The deadlock in fact was broken when the Senate finally passed the appropriation bills on 11 November prior to the announcement of the proposed double dissolution (*see* page 480). These bills had been introduced into the House on 19 August 1975[73] and passed on 8 October.[74] The bills were introduced into the Senate on 14 October.[75] On 16 October the Senate agreed to the following amendment to the motion for the second reading in respect of each of the bills:

> . . . this Bill be not further proceeded with until the Government agrees to submit itself to the judgment of the people, the Senate being of the opinion that the Prime Minister and his Government no longer have the trust and confidence of the Australian people . . .[76]

A similar resolution had been agreed to by the Senate on the Loan Bill 1975 on the previous day.[77] Meanwhile the House agreed to a motion which in part read:

> Considering that the actions of the Senate and of the Leader of the Opposition will, if pursued, have the most serious consequences for Parliamentary democracy in Australia, will seriously damage the Government's efforts to counter the effect of world-wide inflation and unemployment, and will thereby cause great hardship for the Australian people:
>
> (1) This House declares that it has full confidence in the Australian Labor Party Government;
>
> (2) This House affirms that the Constitution and the conventions of the Constitution vest in this House the control of the supply of moneys to the elected Government and that the threatened action of the Senate constitutes a gross violation of the roles of the respective Houses of the Parliament in relation to the appropriation of moneys;
>
> (3) This House asserts the basic principle that a Government that continues to have a majority in the House of Representatives has a right to expect that it will be able to govern;
>
> (4) This House condemns the threatened action of the Leader of the Opposition and of the non-government parties in the Senate as being reprehensible and as constituting a grave threat to the principles of responsible government and of Parliamentary democracy in Australia, and
>
> (5) This House calls upon the Senate to pass without delay the Loan Bill 1975, the Appropriation Bill (No. 1) 1975–76 and the Appropriation Bill (No. 2) 1975–76.[78]

71 There were many political factors which had a direct bearing on the 1975 double dissolution, e.g. the manner of filling casual vacancies in the Senate, the 'loans affair', and ministerial resignations. The intention here is to cover only the parliamentary aspects of the crisis.

72 *See* Appendixes 23 and 24 of first edition.

73 VP 1974–75/840 (19.10.1975).

74 VP 1974–75/953–6 (8.10.1975).

75 J 1974–75/952 (14.10.1975).

76 J 1974–75/962–5 (16.10.1975).

77 J 1974–75/954–6 (15.10.1975).

78 VP 1974–75/987–90 (16.10.1975).

Following the passage of this resolution on 16 October 1975, and receipt of Senate messages communicating its resolutions on the appropriation and loan bills,[79] a series of further messages concerning the bills were exchanged between the Houses:

- on 21 October the House asserted that the Senate's action on the appropriation bills was not contemplated within the terms of the Constitution and was contrary to established constitutional convention.[80] On the same day in considering the Senate's resolution in relation to the loan bill the House resolved that the action of the Senate in delaying the passage of the bill for the reasons given in the Senate's resolution was contrary to the accepted means of financing a major portion of the defence budget and requested the Senate to pass the bill without delay;[81]
- on 22 October the Senate asserted that its action in delaying the bills was a lawful and proper exercise within the terms of the Constitution and added several statements to support this view;[82]
- on 28 October the House, in dealing with the Senate's message, denounced the Senate's action as a 'blatant attempt by the Senate to violate section 28 of the Constitution for political purposes by itself endeavouring to force an early election for the House of Representatives'[83] and resolved that it would uphold the established right of the Government with a majority in the House of Representatives to be the Government of the nation;[84]
- on 5 November the Senate rejected the House's claims[85] and the House, when dealing with the Senate's reply, declared that the Constitution and its conventions vest in the House the control of the supply of moneys to the elected Government and that the action of the Senate constituted a gross violation of the roles of the respective Houses in relation to the appropriation of moneys. The House further declared its concern that the unprecedented and obstructive stand taken by the Senate in continuing to defer the passage of the bills was undermining public confidence in the parliamentary system of government.[86]

While these messages were being exchanged between the Houses, the House on 22 October introduced and passed the appropriation bills and loans bill a second time,[87] and on 29 October introduced and passed the appropriation bills a third time.[88] In response to each of these bills the Senate again resolved not to proceed until the Government had agreed to submit itself to the judgment of the people.[89]

The Government was not only faced with the problem of continuing conflict with the Senate in respect of its legislative program. By early November, the moneys provided by the supply bills to maintain the public services of the country for the first five months of the financial year, pending the passage of the main appropriation bills, were becoming

79 VP 1974–75/992–3, 997–8 (16.10.1975).
80 VP 1974–75/1004–6 (21.10.1975).
81 VP 1974–75/1007–9 (21.10.1975).
82 J 1974–75/978–80 (22.10.1975).
83 Section 28 reads 'Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General'.
84 VP 1974–75/1045–7 (28.10.1975).
85 J 1974–75/1016–8 (5.11.1975).
86 VP 1974–75/1105–7 (5.11.1975).
87 Appropriation Bill (No. 1) 1975–76 [No. 2], Appropriation Bill (No. 2) 1975–76 [No. 2] and Loans Bill 1975 [No. 2], VP 1974–75/1015–25 (22.10.1975).
88 Appropriation Bill (No. 1) 1975–76 [No. 3] and Appropriation Bill (No. 2) 1975–76 [No. 3], VP 1974–75/1067–70 (29.10.1975).
89 J 1974–75/987–8 (23.10.1975), 1019–20 (5.11.1975), 1023–4 (6.11.1975).

depleted and there were indications that there would be insufficient moneys to meet the necessary commitments of the Government at some time prior to 30 November.

A motion of want of confidence in the Government had been moved on 29 October and defeated[90] and on 6 November, four sitting days later, Leader of the Opposition Fraser gave notice of a motion of censure of the Government based on the consequences of the appropriation bills failing to pass both Houses.

The next sitting day, 11 November, produced a sudden and dramatic climax of events. The Government allowed precedence to the motion of censure to which Prime Minister Whitlam moved an amendment censuring Leader of the Opposition Fraser.[91]

During the lunch suspension Mr Whitlam went to Government House for a prearranged meeting with Governor-General Kerr. Mr Whitlam intended to advise His Excellency to approve an election for half the Senate, which was due in any case before 30 June 1976.[92] During the course of the meeting the Governor-General terminated Mr Whitlam's commission as Prime Minister. The following is the text of the letter of dismissal:[93]

Government House,
Canberra. 2600
11 November 1975

Dear Mr Whitlam,

In accordance with section 64 of the Constitution I hereby determine your appointment as my Chief Adviser and Head of the Government. It follows that I also hereby determine the appointments of all of the Ministers in your Government.

You have previously told me that you would never resign or advise an election of the House of Representatives or a double dissolution and that the only way in which such an election could be obtained would be by my dismissal of you and your ministerial colleagues. As it appeared likely that you would today persist in this attitude I decided that, if you did, I would determine your commission and state my reasons for doing so. You have persisted in your attitude and I have accordingly acted as indicated. I attach a statement of my reasons which I intend to publish immediately.

It is with a great deal of regret that I have taken this step both in respect of yourself and your colleagues.

I propose to send for the Leader of the Opposition and to commission him to form a new caretaker government until an election can be held.

Yours sincerely,
(signed John R. Kerr)

The Honourable E. G. Whitlam, Q.C., M.P.

At 2.34 that afternoon Mr Fraser announced to the House that the Governor-General had commissioned him to form a Government.[94] The Governor-General informed the Speaker by letter that he had that day determined the appointment of Mr Whitlam and had commissioned and administered the oath of office to Mr Fraser as Prime Minister. In accepting the commission Prime Minister Fraser made the following undertakings in a letter to the Governor-General:

. . . I confirm that I have given you an assurance that I shall immediately seek to secure the passage of the Appropriation Bills which are at present before the Senate, thus ensuring Supply for the carrying

90 VP 1974–75/1059–60 (29.10.1975).
91 VP 1974–75/1121–3 (11.11.1975).
92 G. Whitlam. *The truth of the matter*, Penguin, Ringwood, 1979: p. 106; J. Kerr. *Matters for judgment*, Macmillan, Melbourne, 1978: p. 355. P. Kelly and T. Bramston, *The dismissal in the Queen's name*, Penguin, Melbourne, 2015.
93 *Simultaneous dissolution of the Senate and the House of Representatives by His Excellency the Governor-General on 11 November 1975*, PP 15 (1979) 1.
94 H.R. Deb. (11.11.1975) 2928; Gazette S227 (11.11.1975).

> on of the Public Service in all its branches. I further confirm that, upon the granting of Supply, I shall immediately recommend to Your Excellency the dissolution of both Houses of this Parliament.
>
> My Government will act as a caretaker government and will make no appointments or dismissals or initiate new policies before a general election is held.[95]

A few minutes before Mr Fraser made his announcement in the House, the Senate had passed the main appropriation bills.[96] Following Mr Fraser's announcement, the House agreed to the following motion by Mr Whitlam:

> That this House expresses its want of confidence in the Prime Minister and requests Mr Speaker forthwith to advise His Excellency the Governor-General to call the honourable Member for Werriwa [Mr Whitlam] to form a Government.[97]

In speaking to his motion Mr Whitlam stated:

> There is no longer a deadlock on the Budget between the House of Representatives and the Senate. The Budget Bills have been passed. Accordingly, the Government which twice has been elected by the people is able to govern. Furthermore, as has been demonstrated this afternoon, the parties which the Prime Minister leads do not have a majority in the House of Representatives. The party I lead has a majority in the House of Representatives. It has never been defeated in the year and a half since the last election and in those circumstances it is appropriate, I believe, that you, Mr Speaker, should forthwith advise the Governor-General—waiting upon him forthwith to advise him—that the party I lead has the confidence of the House of Representatives, and you should apprise His Excellency of the view of the House that I have the confidence of the House and should be called to form His Excellency's Government.[98]

At 3.15 p.m. the Speaker suspended the sitting and sought an appointment with the Governor-General to convey to him the terms of the House's resolution. An appointment was made for the Speaker to see the Governor-General at 4.45 p.m. At 4.30 p.m. the Governor-General dissolved both Houses and at 4.45 p.m. the double dissolution proclamation, in accordance with practice, was read by the Governor-General's Official Secretary on the steps of Parliament House. The sittings of the Houses did not resume. The double dissolution proclamation was signed before the Speaker was able to see the Governor-General and present the House's resolution to him.[99]

The double dissolution proclamation referred to the provisions of section 57, cited 21 bills accepted as satisfying the provisions of section 57 and dissolved the Senate and the House of Representatives.[100] The Governor-General made public on the day of the dissolution his reasons for dismissing Prime Minister Whitlam[101]—the terms of the statement and of advice to the Governor-General by the Chief Justice of the High Court are incorporated in full at pages 58–61 of the first edition and pages 65–8 of the second edition.

On the following day Mr Scholes, as Speaker, wrote to the Queen expressing his serious concern that:[102]

> . . . the failure of the Governor-General to withdraw Mr Fraser's commission and his decision to delay seeing me as Speaker of the House of Representatives until after the dissolution of the Parliament had been proclaimed were acts contrary to the proper exercise of the Royal prerogative and constituted an act of contempt for the House of Representatives. It is improper that your representative should continue to impose a Prime Minister on Australia in whom the House of Representatives has

95 H.R. Deb. (11.11.1975) 2928.
96 J 1974–75/1031 (11.11.1975).
97 VP 1974–75/1125–7 (11.11.1975).
98 H.R. Deb. (11.11.1975) 2931.
99 An acknowledgment, dated 13 November, of receipt of the resolution of the House was received by the Speaker on 17 November.
100 Gazette S229 (11.11.1975).
101 PP 15 (1979) 2–4.
102 H.R. Deb. (17.2.1976) 5.

> expressed its lack of confidence and who has not on any substantial resolution been able to command a majority of votes on the floor of the House of Representatives.
>
> It is my belief that to maintain in office a Prime Minister imposed on the nation by Royal prerogative rather than through parliamentary endorsement constitutes a danger to our parliamentary system and will damage the standing of your representative in Australia and even yourself.
>
> I would ask that you act in order to restore Mr Whitlam to office as Prime Minister in accordance with the expressed resolution of the House of Representatives . . .

On 17 November the Queen's Private Secretary, at the command of Her Majesty, replied that:[103]

> . . . the Australian Constitution firmly places the prerogative powers of the Crown in the hands of the Governor-General as the representative of The Queen of Australia. The only person competent to commission an Australian Prime Minister is the Governor-General, and The Queen has no part in the decisions which the Governor-General must take in accordance with the Constitution. Her Majesty, as Queen of Australia, is watching events in Canberra with close interest and attention, but it would not be proper for her to intervene in person in matters which are so clearly placed within the jurisdiction of the Governor-General by the Constitution Act.

The election was held on 13 December 1975 and the Liberal–Country Party coalition gained a majority of seats in both Houses. None of the bills which formed the technical grounds for double dissolution was reintroduced by the new Government.

(A full time-table of events of the 1975 parliamentary crisis is given at pages 62–4 of the first edition.)

Significance of the constitutional crisis of 1975

> The political upheavals of 1975 add up to the most significant constitutional developments in this country since federation. They resulted in a fundamental redistribution of power between the two Houses of the national parliament and between Parliament and the executive. Owing to the result of the election [13 December 1975] the more important effects of the change are unlikely to become obvious for a while yet, but it would be unrealistic to hope that they will remain quiescent for more than a few years at most.[104]

The foregoing comment from Professor Colin Howard, Hearn Professor of Law, University of Melbourne, reflected the view of a wide spectrum of academic and political thought in Australia.

The significant departure from perceived constitutional conventions which occurred in 1975 caused some reflection on the intention of the framers of the Constitution. Quick and Garran, who were intimately involved in the development of the Constitution,[105] referred to the possible differences which could emerge over time between the Houses and commented on the way in which it was foreseen that the concept of responsible government and majority rule (as seen in the House) and State representation (as provided for in the Senate) would operate in the Federal Parliament.

First, the role of the Crown in relation to the Cabinet was set out:

> Whilst the Constitution, in sec. 61, recognizes the ancient principle of the Government of England that the Executive power is vested in the Crown, it adds as a graft to that principle the modern political institution, known as responsible government, which shortly expressed means that the discretionary powers of the Crown are exercised by the wearer of the Crown or by its Representative according to the advice of ministers, having the confidence of that branch of the legislature which immediately represents the people. The practical result is that the Executive power is placed in the hands of a Parliamentary Committee, called the Cabinet, and the real head of the Executive is not the Queen but the Chairman of the Cabinet, or in other words the Prime Minister. (Dicey, Law of the Const. p. 9.) There is therefore a great and fundamental difference between the traditional ideal of the British

103 H.R. Deb. (17.2.1976) 6.

104 Colin Howard, 'The constitutional crisis of 1975', *Australian Quarterly* 31, 1, 1976, p. 5.

105 *Quick and Garran*, p. ix.

> Constitution, as embodied in sec. 61, giving full expression to the picture of Royal authority painted by Blackstone (Comm. I. p. 249) and by Hearn (Gov. of Eng. p. 17), and the modern practice of the Constitution as crystallized in the polite language of sec. 62, "there shall be a Federal Executive Council to advise the Governor-General in the Government of the Commonwealth".[106]

Then, the reason was quoted for the establishment and maintenance of the relationship between the Crown and the Ministry, as set out with some clarity by Sir Samuel Griffith, later to be the first Chief Justice of the Australian High Court:

> There are perhaps few political or historical subjects with respect to which so much misconception has arisen in Australia as that of Responsible Government. It is, of course, an elementary principle that the person at whose volition an act is done is the proper person to be held responsible for it. So long as acts of State are done at the volition of the head of the State he alone is responsible for them. But, if he owns no superior who can call him to account, the only remedy against intolerable acts is revolution. The system called Responsible Government is based on the notion that the head of the State can himself do no wrong, that he does not do any act of State of his own motion, but follows the advice of his ministers, on whom the responsibility for acts done, in order to give effect to their volition, naturally falls. They are therefore called Responsible Ministers. If they do wrong, they can be punished or dismissed from office without effecting any change in the Headship of the State. Revolution is therefore no longer a necessary possibility; for a change of Ministers effects peacefully the desired result. The system is in practice so intimately connected with Parliamentary Government and Party Government that the terms are often used as convertible. The present form of development of Responsible Government is that, when the branch of the Legislature which more immediately represents the people disapproves of the actions of Ministers, or ceases to have confidence in them, the head of the State dismisses them, or accepts their resignation, and appoints new ones. The effect is that the actual government of the State is conducted by officers who enjoy the confidence of the people. In practice they are themselves members of the Legislature . . . The 'sanction' of this unwritten law is found in the power of the Parliament to withhold the necessary supplies for carrying on the business of the Government until the Ministers appointed by the Head of the State command their confidence. In practice, also, the Ministers work together as one body, and are appointed on the recommendation of one of them, called the Prime Minister. And, usually, an expression of want of confidence in one is accepted as a censure of all. This is not, however, the invariable rule; and it is evidently an accidental and not a fundamental feature of Responsible Government.[107]

In continuing the description of the relationship of the Crown's representative with the Cabinet, *Quick and Garran* states:

> In the formation of a Cabinet the first step is the choice and appointment of its President or spokesman, the Prime Minister; he is chosen and appointed by the Crown or by its representative. In the choice of a Prime Minister, however, the discretion of the Crown is fettered; it can only select one who can command the confidence of a majority of the popular House. The other members of the Cabinet are chosen by the Prime Minister and appointed by the Crown on his recommendation.[108]

Tensions in the system of Cabinet government in a State-represented federal system

At the time of federation Quick and Garran discerned problems in the constitutional provisions relating to the powers of the two Houses. They recorded the following difficulties foreseen by some eminent federalists:

> The Cabinet depends for its existence on its possession of the confidence of that House directly elected by the people, which has the principal control over the finances of the country. It is not so dependent on the favour and support of the second Chamber, but at the same time a Cabinet in antagonism with the second Chamber will be likely to suffer serious difficulty, if not obstruction, in the conduct of public business.
>
> This brings us to a review of some of the objections which have been raised to the application of the Cabinet system of Executive Government to a federation. These objections have been formulated with great ability and sustained with force and earnestness by several Australian federalists of eminence, among whom may be mentioned the names of Sir Samuel Griffith, Sir Richard C. Baker, Sir John

106 *Quick and Garran*, p. 703.
107 Sir Samuel Griffith, *Notes on Australian Federation, 1896*, pp. 17–18, quoted in *Quick and Garran*, pp. 703–4.
108 *Quick and Garran*, p. 705.

> Cockburn, Mr. Justice Inglis Clark, and Mr. G.W. Hackett, who have taken the view that the Cabinet system of Executive is incompatible with a true Federation. (See "The Executive in a Federation", by Sir Richard C. Baker, K.C.M.G., p. 1.)
>
> In support of this contention it is argued that, in a Federation, it is a fundamental rule that no new law shall be passed and no old law shall be altered without the consent of (1) a majority of the people speaking by their representatives in one House, and (2) a majority of the States speaking by their representatives in the other house; that the same principle of State approval as well as popular approval should apply to Executive action, as well as to legislative action; that the State should not be forced to support Executive policy and Executive acts merely because ministers enjoyed the confidence of the popular Chamber; that the State House would be justified in withdrawing its support from a ministry of whose policy and executive acts it disapproved; that the State House could, as effectually as the primary Chamber, enforce its want of confidence by refusing to provide the necessary supplies. The Senate of the French Republic, it is pointed out, has established a precedent showing how an Upper House can enforce its opinions and cause a change of ministry. On these grounds it is contended that the introduction of the Cabinet system of Responsible Government into a Federation, in which the relations of two branches of the legislature, having equal and co-ordinate authority, are quite different from those existing in a single autonomous State, is repugnant to the spirit and intention of a scheme of Federal Government. In the end it is predicted that either Responsible Government will kill the Federation and change it into a unified State, or the Federation will kill Responsible Government and substitute a new form of Executive more compatible with the Federal theory . . .
>
> . . . the system of Responsible Government as known to the British Constitution has been practically embedded in the Federal Constitution, in such a manner that it cannot be disturbed without an amendment of the instrument. There can be no doubt that it will tend in the direction of the nationalization of the people of the Commonwealth, and will promote the concentration of Executive control in the House of Representatives. At the same time it ought not to impair the equal and co-ordinate authority of the Senate in all matters of legislation, except the origination and amendment of Bills imposing taxation and Bills appropriating revenue or money for the ordinary annual services of the Government.[109]

Impact of the 'supply' provisions

The power of the Senate to reject appropriation and supply bills—that is, bills which are required by the Government to carry on its day-to-day business—is a power which remains as a potential threat to the tenure of a Government despite its retention of majority support in the House, and it may be seen to be in conflict with the concept of responsible government.

The rejection of bills other than appropriation and supply bills would seem to present no insuperable hurdle to constitutional democratic government. Certainly it may hinder a Government's legislative program. However, if such hindrance is considered unreasonable or improper this will be reflected in public opinion which will, in turn, eventually influence Senate action on the legislation. This process may take some time to work out; meanwhile the Government has the task of convincing the people of the correctness of its policies.

On the other hand a rejection of supply by the Senate resulting in the fall of a Government strikes at the root of the concept of representative government. The House of Representatives was designed and has always been recognised as the House of government—the people's House. Its method of election is broadly on the 'one vote one value' system. In theory, each vote has equal weight—in effect each enfranchised member

109 *Quick and Garran*, pp. 706–7. For further information and argument on the conflict of principles of responsible government and federalism *see* for example, Australian Constitutional Convention 1977, Standing Committee D, *Special report to Executive Committee on the Senate and supply*, 23 June 1977 (especially pp. 39–45); Sir Billy Snedden, *The Constitution, Parliament and the Westminster heritage*, 20 October 1979, House of Representatives, Canberra; *Report of the Advisory Committee on Executive Government*, Constitutional Commission, Canberra, June 1987; John Uhr, *Deliberative democracy in Australia: the changing place of Parliament*, Cambridge University Press, 1998, especially pp. 77–81; and Brian Galligan, *A Federal Republic: Australia's constitutional system of government*, Cambridge University Press, 1995.

of the community has an equal say in electing the party he or she favours to govern. Voters presumably believe that they are electing a Government to serve for a normal term and the possibility of a shorter period of government procured by the intervention of the Senate is contrary to such expectation.

One of the features of the Westminster system of government is the existence of a clear line of representation from the people through the Parliament to the Executive Government. This in turn results in a clear line of responsibility in reverse order from the Executive to the Parliament to the people. Once this clear line of responsibility is interfered with (as with the intervention of the Senate which is not an equitably representative body in the sense that the House is) the powerful concept of representative and responsible government is weakened. Since 1975 proposals have been made for constitutional change to limit the powers of the Senate in this area.[110]

The 1983 double dissolution

In the 32nd Parliament the Liberal–National Party Government led by Prime Minister Fraser did not have a majority in the Senate. During the course of the Parliament the Senate twice rejected or failed to pass 13 proposed laws in a manner which the Government considered brought them directly within the provisions of section 57.

In September 1981 the Senate requested amendments to nine sales tax amendment bills which sought to impose sales tax on certain items previously exempted and which were introduced as part of the 1981 Budget measures. The House considered the Senate requests but declined to make the amendments on 14 October 1981. The Senate resolved on 20 October 1981 to press its requests, and the House was so advised. The Government considered that this action constituted 'failure to pass' the bills.[111] The Speaker made a statement on the constitutional issues involved, noting that the right of the Senate to repeat and thereby press or insist on a request for an amendment had never been accepted by the House. The House then agreed to a resolution inter alia endorsing the statement of the Speaker in relation to the constitutional questions raised by the Senate message and declining to consider the message in so far as it purported to press amendments contained in the earlier message.[112]

On 7 May the order of the day was discharged from the Notice Paper and on 16 February 1982 the bills were again introduced in the House. They were passed by the House on 17 February and transmitted to the Senate which, on 10 March, negatived the motion for the second readings.

The Government also introduced three bills to implement decisions for the limited reintroduction of tertiary tuition fees. By May 1982 the Senate had twice rejected or failed to pass the Canberra College of Advanced Education Bill, the States Grants (Tertiary Education Assistance) Amendment Bill (No. 2) and the Australian National University Amendment Bill (No. 3).[113] A Social Services Amendment Bill (No. 3) 1981 dealing with the eligibility of spouses of persons involved in industrial action to certain benefits was also passed by the House but the motion for the second reading was later negatived

110 *See*, for example, *Report of the Advisory Committee on Executive Government*, Constitutional Commission, Canberra, June 1987 (especially pp. 20–8); Republic Advisory Committee, *An Australian republic—the options.* v. 1, pp. 114–6, PP 168 (1993).

111 Letter of 3 February 1983 from the Prime Minister to the Governor-General, PP 129 (1984) 1–15.

112 VP 1980–83/613–5 (21.10.1981).

113 Fuller details are contained in the paper *Simultaneous dissolution of the Senate and the House of Representatives, 4 February 1983*, PP 129 (1984).

by the Senate. It was again introduced in the House, passed and transmitted to the Senate, but the motion for the second reading was, on 24 March 1982, again negatived by the Senate.

On 3 February 1983 the Prime Minister advised the Governor-General that the Senate had twice rejected or failed to pass the 13 bills and recommended that the Governor-General dissolve simultaneously the Senate and the House. The advice referred to the progress of the bills, and further details were provided in an attachment. The Prime Minister stated that the bills in question were of importance to the Government's budgetary, education and welfare policies. He also said there was a second consideration which had led him to recommend a dissolution—he referred to economic problems facing the country, and said that it was of paramount importance, in facing difficult economic circumstances, for the Government to know that it had the full confidence of the people and that the people had full confidence in the Government's ability to point the way towards recovery.

On considering this advice the Governor-General sought further information from the Prime Minister. Later on 3 February the Prime Minister wrote to the Governor-General referring to his earlier letter and a telephone conversation that he had had with the Governor-General. This letter advised that the Prime Minister regarded a double dissolution as critical to the workings of the Government and the Parliament. He said that there was a need for the Government to have decisive control over both Houses, noted that some significant legislation had not been passed by the Senate, and said that some measures had not even been put to the Parliament because the Government knew that they would not achieve passage through the Senate.[114]

The Governor-General replied on the same day, stating that he had satisfied himself that there existed measures which had been twice rejected or not passed by the Senate and which otherwise met 'the description of measures such as are referred to in Section 57'. He further stated:

> Such precedents as exist, together with the writings on Section 57 of the Constitution, suggest that in circumstances such as the present, I should, in considering your advice, pay regard to the importance of the measures in question and to the workability of Parliament.
>
> I note that your letter states that the thirteen proposed Laws are 'of importance to the Government's budgetary, education and welfare policies'. I also note that in the case of each of these measures a considerable time has passed since they were rejected or not passed for a second time in the Senate. I have considered their nature . . .
>
> As to the importance of these measures, viewed in the context of the extraordinary nature of a double dissolution, I am not myself in any position, from their mere subject matter and text, to form a view about the particular importance of any of them.
>
> It was in those circumstances that I spoke with you by telephone early this afternoon about the workability of Parliament, seeking further advice from you on that score; this was a matter to which you had already referred, in a prospective sense, in your original letter.
>
> As a result of your second letter to me, in which you speak of difficulties of the immediate past and describe a double dissolution as critical to the workings of the Government and of the Parliament, I am now satisfied that in accordance with your advice I should dissolve the Senate and the House of Representatives simultaneously. I note your assurance as to the availability of funds to enable the work of the administration to be carried on through the election period.[115]

On 4 February, on the advice of the Government, the Governor-General issued a proclamation referring to the provisions of section 57, citing the 13 bills and dissolving

114 PP 129 (1984) 1–15, 41.
115 PP 129 (1984) 43–4.

the Senate and the House of Representatives.[116] A general election was held on 5 March 1983, the Government of Prime Minister Fraser was defeated and the bills in question were not reintroduced.

The 1987 double dissolution

In the 34th Parliament the ALP Government of Prime Minister Hawke did not enjoy a majority in the Senate. In November 1986 the House passed the Australia Card Bill which provided for a basic national system of personal identification. In the Senate the motion for the second reading of the bill was defeated on 10 December 1986. On 25 March 1987 the House again passed the bill, but on 2 April the motion for the second reading was again defeated in the Senate.

On 27 May the Prime Minister informed the Governor-General that all conditions justifying a double dissolution had been satisfied in respect of the bill, and he advised the Governor-General to dissolve simultaneously the Senate and the House of Representatives. The Prime Minister's letter also referred to the importance of the bill in the Government's legislative program. It alleged that the Senate had obstructed other measures, and expressed the view that the situation which had arisen was critical to the workings of the Government and Parliament.[117]

Later on the same day the Governor-General replied, confirming his acceptance of the Prime Minister's advice, saying that he was satisfied that the circumstances such as were specified in section 57 existed in relation to the bill and noting the assurance that funds would be available to ensure that the work of the administration could continue through the election period.[118] On 5 June, on the advice of the Government, the Governor-General issued a proclamation referring to the provisions of section 57, citing the Australia Card Bill and dissolving the Senate and the House of Representatives.[119] A general election was held on 11 July, and the Government of Prime Minister Hawke was returned but it still lacked a majority in the Senate.

The Australia Card Bill was again passed by the House of Representatives on 16 September. While the second reading was being debated in the Senate, however, the Opposition released details of advice it had received on the matter. The advice was that the effective operation of the bill, if passed, would be dependent upon certain action to be taken by regulation. Disallowance of the regulations by the Senate would, it was argued, make the Act wholly ineffective.[120] During debate in the Senate on the motion for the second reading and on amendments to refer the bill to a committee of inquiry, a government amendment was defeated which proposed to add, 'but the Senate affirms that it will, consequent upon the passage of the Australia Card Bill at a joint sitting of the Houses, secure the effective operation of the legislation by not disallowing regulations made pursuant to sub-section 32 (1) providing for the "first relevant day" and the "second relevant day" '.[121] The bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs on 23 September 1987.

116 PP 129 (1984) 47–8.
117 *Simultaneous dissolution of the Senate and the House of Representatives, 5 June 1987*, PP 331 (1987) 1–4.
118 PP 331 (1987) 5.
119 PP 331 (1987) 8.
120 S. Deb. (23.9.1987) 565.
121 J 1987–88/116–7 (23.9.1987).

On 8 October 1987 the Senate resolved, on the motion of the Minister with primary responsibility for the Australia Card legislation, that the committee report the bill on or before the next sitting without further considering the bill or matters referred in relation to it, and that on receipt of the report the bill be laid aside without further question being put.[122] The Government had decided not to proceed further with the bill, which was laid aside when reported by the committee on 9 October.

The 2016 double dissolution

In the 44th Parliament the Liberal–Nationals coalition led by Prime Minister Abbott, and later Prime Minister Turnbull, was elected with a majority in the House of Representatives but not in the Senate, where the balance of power was held by minor parties and independents.

When the autumn sittings of the two Houses were adjourned on 17 March 2016, there already existed a double dissolution 'trigger' in the form of the Fair Work (Registered Organisations) Amendment Bill 2014 which had been passed by the House on 15 July 2014, negatived at the second reading by the Senate on 2 March 2015, again passed by the House on 19 March 2015, and again negatived at the second reading by the Senate on 17 August 2015.[123]

There were also two other bills which the Government was keen to have passed, which had been passed by the House and rejected once by the Senate and passed again by the House with an interval of three months, and which were before the Senate. On 12 December 2013 the House had passed the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013, whose purpose was to fulfil the Government's election commitment to re-establish the Australian Building and Construction Commission (ABCC). In the Senate the second readings of the bills had been negatived on 17 August 2015. The bills had again been passed by the House on 4 February 2016, and introduced to the Senate the same day and the second reading moved. Debate had not resumed when the Senate adjourned on 17 March.

Before adjourning on 17 March the Senate agreed to a resolution requiring the concurrence of an absolute majority of Senators to enable a meeting of the Senate before its next scheduled meeting on 10 May (Budget day).[124] Because of the six-month limitation imposed by section 57, the latest date on which a double dissolution could occur in the 44th Parliament was 11 May.

On 21 March 2016 Prime Minister Turnbull advised the Governor-General to prorogue the Parliament on Friday 15 April and to summon the Parliament to sit on Monday 18 April for a new session of Parliament. The Prime Minister's advice noted that the reason for recalling the Parliament was to enable it to give full and timely consideration to two important parcels of industrial legislation (that is, the bills detailed above). The Governor-General accepted this advice, and in his speech opening the new session outlined the parliamentary history of the bills in question and stated that he had,

122 J 1987–88/152–4 (8.10.1987).

123 There was also a trigger in the Clean Energy Finance Corporation (Abolition) Bill 2013 and the [No. 2] bill of the same title. However, the Government had responded in this case by introducing a further bill which had additional provisions (Clean Energy Finance Corporation (Abolition) Bill 2014).

124 J 2013–16/4079 (17.3.2016).

on the advice of his Ministers, recalled Members and Senators so that these bills could be considered again, and their fate decided without further delay.

As the ABCC bills had lapsed in the Senate following the prorogation, on the opening of the new session on 18 April the House requested the Senate by message to resume consideration of the bills. Later that day the Senate resumed consideration of the bills and again negatived the second readings, thus fulfilling the requirements of section 57 in relation to these bills. On 19 April both Houses adjourned to 2 May. On 2 May supply bills were introduced to provide government funding for the prospective election period, passing the House the same day and the Senate on 3 May. On 3 May in the House the Budget was introduced, with the reply by the Leader of the Opposition occurring on 5 May.

On Sunday 8 May the Prime Minister advised the Governor-General to exercise his power under section 57 of the Constitution to dissolve both Houses simultaneously with effect from 9.00 a.m. on Monday 9 May to enable an election for both Houses to take place on Saturday 2 July 2016. The Prime Minister advised that all conditions for a double dissolution had been met with respect to the Building and Construction Industry (Improving Productivity) Bill 2013, the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013, and the Fair Work (Registered Organisations) Amendment Bill 2014, and referred to an accompanying letter from the Attorney-General which contained fuller details of the parliamentary history of the bills and confirmed that the constitutional requirements for a double dissolution on the basis of the bills were satisfied. The Prime Minister noted that the bills represented important elements of the Government's economic plan for jobs and growth and of its reform agenda and outlined the background and purpose of the bills. The Prime Minister's letter also advised the proposed electoral timetable and assured the Governor-General that there was sufficient supply for the ordinary services of government, following the passage of the supply bills.

The Governor-General replied later that day, confirming his acceptance of the Prime Minister's advice and stating that, in accepting the advice, he noted the Prime Minister's assurances over supply. On the same day (8 May) the Governor-General issued a proclamation referring to the provisions of section 57 of the Constitution, citing the three bills, and dissolving the House of Representatives and the Senate at 9.00 a.m. on Monday 9 May 2016.

A general election was held on 2 July 2016 and the Turnbull government was returned with a smaller majority of one seat in the House and again without a majority in the Senate, and there was an increase in the number of minor party and independent Senators. However, when the three double dissolution bills were reintroduced in the new Parliament, the Government was able to negotiate with the new Senate crossbench and achieve the passage of the bills with amendments that were accepted by the House.[125]

JOINT SITTING

After a double dissolution has been granted, elections are held for both Houses. In the new Parliament the House of Representatives may again pass the proposed law which was the subject of the double dissolution with or without any amendments which have

125 VP 2016–18/360–1 (22.11.2016), 422–3 (30.11.2016).

been made, suggested or agreed to by the Senate. If the Senate rejects the proposed law, passes it with amendments to which the House will not agree or fails to pass it, the Governor-General may convene a joint sitting of members of the House of Representatives and the Senate.[126]

When a joint sitting is held Members and Senators deliberate and vote together on the proposed law in the form it was last proposed by the House of Representatives. Any amendments which have been made by one House and not agreed to by the other are considered and, if affirmed by an absolute majority of the total members of both Houses, are taken to have been carried.[127] The proposed law as a whole is voted on by all members of both Houses and if it is affirmed by an absolute majority then it shall be taken to have been duly passed by both Houses of Parliament and is presented to the Governor-General for assent.[128]

The 1974 joint sitting

Only one such joint sitting has been held and this followed the 1974 double dissolution. When the 29th Parliament sat, following the double dissolution and election of 1974, the six proposed laws which were the subject of the double dissolution were again passed by the House of Representatives and again rejected by the Senate.[129]

Following the Senate rejection, the Governor-General, on the advice of the Government, issued a proclamation on 30 July 1974 which referred to the double dissolution, listed the six proposed laws in question and stated that, since the dissolution and election, the conditions upon which the Governor-General was empowered to convene a joint sitting had been fulfilled in respect of each of the proposed laws. The Governor-General by the proclamation convened a joint sitting commencing in the House of Representatives Chamber at 10.30 a.m. on 6 August 1974. The proclamation provided that Members 'may deliberate and shall vote together upon each of the said proposed laws as last proposed by the House of Representatives' and that all Members of the Senate and the House were 'required to give their attendance accordingly'.[130]

The Constitution provides for each House to make rules for the order and conduct of business either separately or jointly with the other House.[131] At the time[132] the standing orders of the Houses contained two standing orders applying to a joint sitting, namely:

> II. The Members present at the joint sitting, under section 57 of the Constitution, shall appoint by ballot a Member to preside, and until such appointment the Clerk of the Senate shall act as chairman.
>
> III. The Member chosen to preside shall present to the Governor-General for the Royal Assent any proposed law duly passed at such joint sitting.

However, it was considered necessary that more detailed special rules for the joint sitting be drawn up. Following discussions between the leaders and staff of the two Houses rules were adopted by both Houses on 1 August 1974.[133] In addition certain

126 Constitution, s. 57.
127 In respect of the 1974 joint sitting, bills were not amended by either House prior to the joint sitting.
128 Constitution, s. 57.
129 *See* Appendix 22 of the first edition.
130 Gazette S62B (30.7.1974).
131 Constitution, s. 50.
132 There were formerly three joint standing orders (standing orders applicable to both Houses) which were discarded by the Senate in 1989 and by the House in 2004 (Joint Standing Order I covered the treatment of copies of Acts assented to).
133 VP 1974–75/118–21 (1.8.1974); J 1974–75/117–20 (1.8.1974). *See* Rules for joint sittings (following Appendix 25).

legislation touching on proceedings in Parliament was amended to cover the joint sitting.[134]

On 31 July the House resolved:

> . . . that it be a rule and order of the House of Representatives that, at a joint sitting with the Senate, the proceedings are proceedings in Parliament, and that the powers, privileges and immunities of Members of this House shall, *mutatis mutandis*, be those relating to a sitting of this House.[135]

This resolution is considered to have continuing effect in respect of future joint sittings as far as the House of Representatives is concerned.

The joint sitting commenced at 10.30 a.m. on 6 August 1974 in the House of Representatives Chamber.[136] The Governor-General's proclamation convening the joint sitting was read by the Clerk of the Senate (Mr J. R. Odgers). The Clerk of the Senate then proceeded to conduct proceedings for the appointment of Chairman. The Speaker of the House (Mr J. F. Cope) being the only Member proposed, was accordingly declared appointed as Chairman and was conducted to the Chair by the Leader of the House (Mr F. M. Daly) and the Manager of Government Business in the Senate (Senator D. McClelland).

The Chairman read prayers and, after making a statement on the constitutional significance of the joint sitting, called on the first proposed law. The question put to the joint sitting was 'That the proposed law be affirmed'. The Commonwealth Electoral Act (No. 2), Senate (Representation of Territories) Act and the Representation Act were affirmed by an absolute majority on 6 August 1974 and received assent on 7 August. The Health Insurance Commission Act, Health Insurance Act and Petroleum and Minerals Authority Act were affirmed by an absolute majority on 7 August and received assent on 8 August.

All Members of both Houses attended the sitting on each day, a total of 66 members participating in the debates. Each of the proposed laws was affirmed by an absolute majority, as is required by the Constitution.

On 7 August, before consideration commenced on the sixth proposed law, the Member for Mackellar (Mr Wentworth) moved that so much of the standing orders be suspended as would prevent him moving forthwith:

> That this joint sitting of the Houses should not be finally adjourned until either it has adequately discussed the present economic and industrial situation in Australia, or else the Government has indicated that both Houses will meet next week to discuss these matters.

The Chairman ruled that:

> The Proclamation by the Governor-General on 30 July 1974 convened a joint sitting of the Members of the Senate and of the House of Representatives for the purpose of deliberating and voting upon each of 6 proposed laws and, in his [that is the Chairman's] opinion, neither section 57 of the Constitution nor the Proclamation authorised the consideration of any other matters by the joint sitting—

and ruled the motion out of order. Mr Wentworth moved dissent from the Chairman's ruling, the motion being negatived on the voices after the closure of the debate was agreed to.

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134 The three amending Acts concerned were assented to on 1 August 1974, VP 1974–75/121 (1.8.1974). Details of the amendments to the Evidence Act, Parliamentary Papers Act and Parliamentary Proceedings Broadcasting Act, and related determinations, are set out at pages 473–4 of the fifth edition.

135 VP 1974–75/106 (31.7.1974). The Senate passed a similar resolution, J 1974–75/117 (1.8.1974).

136 The record of the joint sitting can be found in the following parliamentary records: (a) *Joint Sitting of Senate and House of Representatives: minutes of proceedings and certain related documents*, 6–7 August 1974, and (b) H.R. Deb. (6 and 7.8.1974) 1–175.

Later, Mr McMahon, Member for Lowe, raised a point of order 'referring to the judgment of the Chief Justice on the challenge to the joint sitting'. He was immediately ruled out of order by the Chairman who stated that a point of order could relate only to the standing orders and the rules the Houses had adopted governing the joint sitting. Mr McMahon claimed that action was being taken on proclamations the Chief Justice had said were improper, but the Chair called on the next item of business and the matter was not pursued.

During the joint sitting Members of the House of Representatives were called by electoral division and name, Senators by name, Ministers by portfolio and name, and Leaders of the Opposition by office and name.

High Court cases relating to the joint sitting

The validity of the joint sitting and the validity of certain laws passed by the joint sitting were the subject of a number of cases brought before the High Court.[137]

The Governor-General's proclamation of Tuesday, 30 July 1974, convened the joint sitting for 10.30 a.m. the following Tuesday, 6 August. On Thursday, 1 August, a writ was filed in the High Court by two opposition Senators, Senator the Hon. Sir Magnus Cormack and Senator James Webster, challenging the legality of the joint sitting and seeking an interlocutory injunction to prevent it being held.[138]

On 2 August writs were served on the Speaker (Mr J. F. Cope), the President of the Senate (Senator J. O'Byrne), the Prime Minister (Mr E. G. Whitlam), the Clerk of the House (Mr N. J. Parkes), the Attorney-General (Senator L. Murphy), the Governor-General (Sir John Kerr) and the Clerk of the Senate (Mr J. R. Odgers) to appear before the High Court of Australia. On 2 August the Speaker informed the House that writs had been served on the Clerk and himself and presented certain documents.[139] The High Court considered the matter on Friday, 2 August, and Monday, 5 August, but refused to grant the interlocutory injunction sought to prevent the joint sitting being held.

The suit principally sought to have the High Court:

- invalidate the proclamation for the joint sitting;
- declare that the joint sitting was not empowered to vote on all the proposed laws referred to in the proclamation;
- declare that the joint sitting could only vote on one proposed law; and
- declare that the Petroleum and Minerals Authority Bill did not fulfil the requirements of section 57 and could not be voted upon at the joint sitting.

The case was heard before Chief Justice Barwick and Justices McTiernan, Menzies, Gibbs, Stephen and Mason. The Court ruled that more than one proposed law could be dealt with in a double dissolution and at a joint sitting. In his judgment the Chief Justice stated that there was nothing in the section, or in the evident reasons for its enactment, which required that only one proposed law should be so discussed and voted upon.

On the question that the listing of the six bills in the joint sitting proclamation went beyond what was required by the Constitution, the Chief Justice stated that it was no part of the Governor-General's function to determine what should occur at a joint sitting or to direct what proposals might be discussed or not discussed at such a sitting or what was

137 Many aspects of the wording of section 57 were discussed.
138 *Cormack v. Cope* (1974) 131 CLR 432.
139 VP 1974–75/127 (2.8.1974).

the purpose of the joint sitting; that was determined by the Constitution in the third paragraph of section 57.

Menzies J stated that the power given to the Governor-General was simply to convene a joint sitting and it was not for the Governor-General to prescribe what may occur at such sitting.

McTiernan J was of the opinion that neither proclamation (that is, double dissolution and joint sitting) upon its proper construction contravened section 57. He saw no reason for declaring either of the proclamations to be invalid.

Gibbs J stated that, in his opinion, the Governor-General had no power to direct the members present at the joint sitting upon what proposed laws they may deliberate and should vote, but that the inclusion of a direction of that kind did not affect the validity of the proclamation assuming it to be otherwise valid.

Stephen J stated that the section itself prescribed what was to be the business of the joint sitting and the terms of the proclamation could not affect this one way or another.

Mason J stated that, if the proclamation was effective to convene a joint sitting, 'as I happen to think it is', so long as there was at least one proposed law which answered the description contained in section 57, it did not follow that it had conclusive effect so far as its recitals asserted that, in relation to each of the six bills, the provisions of the section had been satisfied.

In view of the doubt as to whether or not the proposed law(s) should be listed in the proclamation, should any future proclamation convening a joint sitting not list the proposed laws to be considered, it may be necessary to devise a procedure to initiate the consideration of the proposed laws. This could be done by motion by a Minister, and for this purpose some suitable provision may be necessary in the rules.

On the question of whether the Petroleum and Minerals Authority Bill had fulfilled the requirements of section 57, the Court ruled that a declaration should not be made in the interlocutory proceedings but that once the proposed law had been affirmed at a joint sitting it would then be appropriate for the Court to pronounce on its validity.

The validity of some of the bills passed at the joint sitting was in fact later challenged by several of the State Governments. In one judgment the High Court ruled by a majority decision that the Petroleum and Minerals Authority Bill was not one within the meaning and scope of section 57 of the Constitution upon which the joint sitting could properly deliberate and vote, and that it was not a valid law of the Commonwealth. The Court held that the interval of three months had to be computed from the date of rejection of or failure to pass the bill by the Senate and not from the date of the passing of the bill by the House. The Court also held that the Senate had not 'failed to pass' the bill on 13 December 1973.[140]

In a separate judgment the High Court ruled by a majority decision that the *Commonwealth Electoral Act (No. 2) 1973*, the *Senate (Representation of Territories) Act 1973* and the *Representation Act 1973* were Acts duly passed by both Houses of the Parliament within the meaning of section 57 of the Constitution and that the *Senate (Representation of Territories) Act 1973* was not invalid, in whole or in part, as being beyond the legislative powers of the Commonwealth Parliament.[141]

140 *Victoria v. Commonwealth* (1975) 134 CLR 81 (Petroleum and Minerals Authority Case).

141 *Western Australia v. Commonwealth* (1975) 134 CLR 201 (Territories Representation Case); *see also Queensland v. Commonwealth* (1977) 139 CLR 585.

14
Control and conduct of debate

The term 'debate' is a technical one meaning the argument for and against a question. In practice, the proceedings between a Member moving a motion (including the moving of the motion)[1] and the ascertainment by the Chair of the decision of the House constitute a debate. A decision may be reached without debate. In addition, many speeches by Members which are part of the normal routine of the House are excluded from the definition of debate, because there is no motion before the House. These include the asking and answering of questions, ministerial statements, matters of public importance, Members' statements and personal explanations. However, the word 'debate' is often used more loosely, to cover all words spoken by Members during House proceedings.

It is by debate that the House performs one of its more important roles, as emphasised by Redlich:

> Without speech the various forms and institutions of parliamentary machinery are destitute of importance and meaning. Speech unites them into an organic whole and gives to parliamentary action self-consciousness and purpose. By speech and reply expression and reality are given to all the individualities and political forces brought by popular election into the representative assembly. Speaking alone can interpret and bring out the constitutional aims for which the activity of parliament is set in motion, whether they are those of the Government or those which are formed in the midst of the representative assembly. It is in the clash of speech upon speech that national aspirations and public opinion influence these aims, reinforce or counteract their strength. Whatever may be the constitutional and political powers of a parliament, government by means of a parliament is bound to trust to speech for its driving power, to use it as the main form of its action.[2]

The effectiveness of the debating process in Parliament has been seen as very much dependent on the principle of freedom of speech. Freedom of speech in the Parliament is guaranteed by the Constitution,[3] and derives ultimately from the United Kingdom Bill of Rights of 1688.[4] The privilege of freedom of speech was won by the British Parliament only after a long struggle to gain freedom of action from all influence of the Crown, courts of law and Government. As Redlich said:

> . . . it was never a fight for an absolute right to unbridled oratory . . . From the earliest days there was always strict domestic discipline in the House and strict rules as to speaking were always enforced . . . the principle of parliamentary freedom of speech is far from being a claim of irresponsibility for members; it asserts a responsibility exclusively to the House where a member sits, and implies that this responsibility is really brought home by the House which is charged with enforcing it.[5]

The Speaker plays an important role in the control and conduct of debate through the power and responsibilities vested in the Chair by the House in its rules and practice. The difficulties of maintaining control of debate, and reconciling the need for order with the rights of Members, 'requires a conduct, on the part of the Speaker, full of resolution, yet of delicacy . . .'.[6]

1 That is, when the standing orders set a time for a whole debate the duration is measured from the time the mover of the motion starts speaking.
2 Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, pp. 42–3.
3 Constitution, s. 49, (that is, unless Parliament 'otherwise provides').
4 For further discussion of the privilege of freedom of speech *see* Ch. on 'Parliamentary privilege'.
5 Redlich, vol. III, p. 49.
6 John Hatsell, *Precedents of proceedings in the House of Commons*, 4th edn, London, 1818, vol. II, p. 232. (Reprinted, Irish University Press, Shannon, Ireland, 1971.)

MANNER AND RIGHT OF SPEECH

When Members may speak

A Member may speak to any question before the Chair which is open to debate, when moving a motion which will be open to debate, and when moving an amendment.

A Member may speak during a discussion of a matter of public importance; he or she may make a statement to the House on the presentation of a committee or delegation report, and during the periods for Members' 90 second statements and three minute constituency statements.

A Member may also speak when asking or answering a question, when raising a point of order or on a matter of privilege, to explain matters of a personal nature, to explain some material part of his or her speech which has been misquoted or misunderstood, when granted leave of the House to make a statement, and by indulgence of the Chair.

Matters not open to debate

Pursuant to standing order 78, the following questions and motions are not open to debate, must be moved without comment and must be put immediately and resolved without amendment:

- motion that a Member's time be extended (S.O. 1);
- motion that the business of the day be called on (S.O. 46(e));
- motion that a Member be heard now (S.O. 65(c));
- motion that a Member be further heard (S.O. 75(b));
- motion that debate be adjourned (S.O. 79);
- motion that a Member be no longer heard (S.O. 80);
- motion that the question be now put (S.O. 81);
- question that the bill or motion be considered urgent, following a declaration of urgency (S.O.s 82–83);
- motion that a Member be suspended (S.O. 94);
- question that amendments made by the Federation Chamber be agreed to (S.O. 153);
- question that a bill reported from the Federation Chamber be agreed to (S.O. 153);
- motion that further proceedings on a bill be conducted in the House (S.O. 197); and
- question in the Federation Chamber that a bill be reported to the House (S.O. 198).

In addition:

- if required by a Minister, the question for the adjournment of the House under the automatic adjournment provisions must be put immediately and without debate (S.O. 31(c)); and
- if required by a Member, the question for the adjournment of the Federation Chamber must be put immediately and without debate (S.O. 191(b)).

General rule—a Member may speak once to each question

Generally, each Member is entitled to speak once to each question before the House. However a Member is permitted to speak a second or further time:

- during consideration in detail of a bill;
- during consideration of amendments to a bill made or requested by the Senate;

- having moved a substantive motion or the second or third reading of a bill, the Member is allowed a reply confined to matters raised during the debate;
- having moved and spoken to the second reading of a private Member's bill, the Member may speak for 5 minutes in continuation on the resumption of debate;
- during an adjournment debate, if no other Member rises; or
- to explain some material part of his or her speech which has been misquoted or misunderstood. In making this explanation the Member may not interrupt another Member addressing the House, debate the matter, or introduce any new matter.[7]

Members may speak for an unlimited number of periods during consideration in detail of a bill or consideration of Senate amendments and requests.[8] In special circumstances, a Member may speak again by leave—*see* 'Leave to speak again' at page 496.

Moving and seconding motions

The moving of a motion is regarded as speaking to the question (that is about to be proposed). Consequently, having moved a motion which is open to debate, a Member may speak to the motion but loses the right to speak to it, except in reply, if he or she does not speak immediately.

A Member who seconds a motion (or amendment) before the House may speak to it immediately or at a later period during the debate.[9] It is common practice for seconders not wishing to speak immediately to state that they reserve the right to speak later. However, such action does not ensure that a Member will be able to speak later in the debate (if, for example, the debate is limited by time, or curtailed by the closure).

Moving and speaking to amendments

The general rule that each Member may speak only once to each question places the following restrictions on Members moving and speaking to amendments (other than during consideration in detail or consideration of Senate amendments and requests):

- A Member who moves an amendment must speak to it immediately, if wishing to speak to it at all.
- A Member who speaks to a question and then sits without moving an amendment that he or she intended to propose cannot subsequently move the amendment, having already spoken to the question before the House.
- If a Member has already spoken to a question, or has moved an amendment to it, the Member may not be called to move a further amendment or the adjournment of the debate, but may speak to any further amendment which is proposed by another Member.
- A Member who moves or seconds an amendment cannot speak again on the original question after the amendment has been disposed of, because he or she has already spoken while the original question was before the Chair and before the question on the amendment has been proposed.
- When an amendment has been moved, and the question on the amendment proposed by the Chair, any Member speaking subsequently is considered to be speaking to both the original question and the amendment and cannot speak again to the original question after the amendment has been disposed of.

7 S.O. 69.
8 S.O. 1.
9 S.O. 70.

- A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment, but the remarks must be confined to the amendment.[10]
- A Member who has spoken to neither the motion nor the amendment may speak to the original question after the amendment has been disposed of.
- A Member who has spoken to the original question and the amendment may speak to the question on a further amendment, but must confine any remarks to the further amendment.[11]

Leave to speak again

In special circumstances, a Member may be granted leave to speak again.[12] This most frequently occurs in a situation where a Member has moved but not spoken to a motion, but wishes to speak at a later time without closing the debate.[13] A similar situation sometimes occurs when a Member's earlier speech has been interrupted and he or she has not been present to continue the speech when the debate has been resumed. Leave to speak again in such cases in effect restores a lost opportunity rather than provides an additional one.[14] The granting of leave to speak again in other circumstances is highly unusual. (*See also* 'Leave to continue remarks' at page 531.)

Speaking in reply

The mover of a substantive motion or the second or third reading of a bill may speak on a second occasion in reply, but must confine any remarks to matters raised during the debate.[15] The mover of an amendment has no right of reply as an amendment is not a substantive motion. The reply of the mover of the original question closes the debate. However, the mover of the original question may speak to any amendment without closing the debate, but these remarks must be confined to the amendment.[16] A Member closing the debate by reply cannot propose an amendment.[17] An amendment should be moved before the mover of the motion replies.[18] The right of reply of the mover has been exercised even though the original question has been rendered meaningless by the omission of words and the rejection of proposed insertions.[19] The Chair has ruled that a reply is permitted to the mover of a motion of dissent from a ruling of the Chair.[20]

The mover of a motion is not entitled to the call to close the debate while any other Member is seeking the call.[21] When a mover received the call and stated that he was not speaking to an amendment before the House but to the motion generally and wished to close debate, he was directed by the Chair to speak to the amendment only, in order that the rights of others to be heard were not interfered with.[22] In the absence of such

10 E.g. H.R. Deb. (6.5.1920) 1881; H.R. Deb. (22.6.2009) 6696.
11 H.R. Deb. (13.7.1922) 443–4.
12 E.g. VP 1974–75/874 (27.8.1975); VP 1993–96/2668 (29.11.1995); VP 1996–98/281 (20.6.1996) (Main Committee); VP 2002–04/213 (29.5.2002) (Main Committee).
13 E.g. H.R. Deb. (3.12.2003) 23732; H.R. Deb. (24.6.2009) 7111.
14 Leave has been given for a third opportunity to speak when the second opportunity has also been interrupted. The clock is set so that the total time for the interrupted speeches equals the normal limit for a single speech.
15 S.O. 69(c).
16 H.R. Deb. (11.11.1920) 6418.
17 H.R. Deb. (19.10.1905) 3813.
18 H.R. Deb. (19.11.1914) 841.
19 VP 1908/54 (21.10.1908); H.R. Deb. (21.10.1908) 1402.
20 H.R. Deb. (14.3.1950) 685.
21 H.R. Deb. (21.8.1923) 3133; H.R. Deb. (19.9.1924) 4569.
22 H.R. Deb. (28.5.1914) 1637

circumstances a Minister speaking after an amendment has been proposed closes the debate.[23]

The speech of a Minister acting on behalf of the mover of the original motion does not close the debate.[24] The mover of a motion may speak a second time but avoid closing the debate by seeking 'leave to speak again without closing the debate'[25] (*see above* 'Leave to speak again'). Such action is most appropriate in relation to a motion to take note of a document, which is moved as a vehicle to enable debate rather than with the intention of putting a matter to the House for decision.

Misrepresentation of a speech

A Member may speak again to explain some material part of his or her speech which has been misquoted or misunderstood. In making this explanation the Member may not interrupt another Member addressing the House, debate the matter, or introduce any new matter.[26] No debate may arise following such an explanation. The correct procedure to be followed by a Member is to rise after the Member speaking has concluded and to inform the Chair that he or she has been misrepresented. The Chair will then permit the Member to proceed with the explanation. It helps in the conduct of the proceedings if Members notify the Chair in advance that they intend to rise to make an explanation. The Chair will seek to ensure that the Member confines himself or herself to correcting any misrepresentation and will not allow wider matters to be canvassed.

Personal explanations

Pursuant to standing order 68, a Member may explain how he or she has been misrepresented or explain another matter of a personal nature whether or not there is a question before the House. The Member seeking to make an explanation must rise and seek permission from the Speaker, must not interrupt another Member who is addressing the House, and the matter must not be debated

Although in practice the Speaker's permission is freely given, Members have no right to expect it to be granted automatically.[27] It is the practice of the House that any Member wishing to make a personal explanation should inform the Speaker beforehand.[28] The Speaker has refused to allow a Member to make a personal explanation when prior notice has not been given.[29]

Personal explanations may be made at any time with the permission of the Chair, provided that no other Member is addressing the House.[30] However, recent practice has been for them to be made soon after Question Time.[31] Personal explanations claiming misrepresentation may arise from reports in the media, Senate debates, the preceding Question Time, and so on.[32] A Minister has presented a list correcting statements made about him in the Senate, rather than go through all the details orally.[33] One of the reasons for personal explanations being sought soon after Question Time is that, when a personal

23 H.R. Deb. (8.10.2003) 20791–2; H.R. Deb. (24.6.2004) 31605, 11.
24 H.R. Deb. (3.12.1947) 3118.
25 E.g. H.R. Deb. (3.12.2003) 23732.
26 S.O. 69(e).
27 H.R. Deb. (5.5.1992) 2355–8.
28 H.R. Deb. (10.11.1976) 2521–2.
29 H.R. Deb. (3.5.1978) 1699.
30 H.R. Deb. (20.11.1979) 3176; H.R. Deb. (22.8.1996) 3523.
31 H.R. Deb. (13.4.2000) 15963.
32 H.R. Deb. (10.10.1947) 633; H.R. Deb. (11.9.1973) 743; H.R. Deb. (19.9.1996) 4452–3.
33 H.R. Deb. (4.3.2004) 26037.

explanation is made in rebuttal of a statement made in a question or answer, the question and answer are excluded from any rebroadcast of Question Time.[34]

The fact that a Member has made a personal explanation about a matter has not in the past prevented another Member from referring to the matter even if, for example, the Member had refuted views attributed to him or her.[35] However, standing order 68 now provides that if a Member has given a personal explanation to correct a misrepresentation and another Member subsequently repeats the matter complained of, the Speaker may intervene.[36]

In making a personal explanation, a Member must not debate the matter, and may not deal with matters affecting his or her party or, in the case of a Minister, the affairs of the Minister's department—the explanation must be confined to matters affecting the Member personally.[37] A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.[38]

A personal explanation may be made in the Federation Chamber,[39] or it may be made in the House regarding events in the Federation Chamber. In making such an explanation the Member may not reflect on the Chair.[40] The indulgence granted by the Chair for a personal explanation may be withdrawn if the Member uses that indulgence to enter into a general debate.[41] A Member has been permitted to make a personal explanation on behalf of a Member who was absent (being overseas).[42]

A personal explanation is not restricted to matters of misrepresentation. For example, Members have been permitted to use the procedure to explain an action or remark, apologise to the House, clarify a possible misunderstanding, state why they had voted in a particular way, and correct a statement made in debate.[43]

If the Speaker refuses permission to a Member to make a personal explanation, or directs a Member to resume his or her seat during the course of an explanation, a motion 'That the Member be heard now' is not in order, nor may the Member move a motion of dissent from the Speaker's 'ruling' as there is no ruling.[44]

Other matters by indulgence of the Chair

Although the standing orders make provision for Members to speak with permission of the Chair only in respect of a matter of a personal nature (*see above*), the practice of the House is that, from time to time, the Speaker or Chair grants indulgence for Members to deal with a variety of other matters. The term 'indulgence', used to cover the concept of permission or leave from the Chair as distinct from leave of the House,[45] is a reminder that its exercise is completely at the Chair's discretion. It is, as the term suggests, a special concession. Indulgence has been granted, for example, to permit:

34 This exclusion is subject to the discretion the Speaker has to refer a particular case to the Joint Committee on the Broadcasting of Parliamentary Proceedings for decision—*see* 'Radio broadcasts' in Ch. on 'Parliament House and access to proceedings'.
35 E.g. H.R. Deb. (2.6.2004) 29889; *and see* H.R. Deb. (14.9.2005) 87–9.
36 Since 13.11.2013; Speaker's statement on the application of the new provision, H.R. Deb. (4.6.2014) 5526–8.
37 H.R. Deb. (18.10.1983) 1821; H.R. Deb. (22.9.1922) 2621; H.R. Deb. (19.3.1974) 533.
38 H.R. Deb. (30.10.1913) 2716–17.
39 E.g. H.R. Deb. (28.5.2003) 15334 (Main Committee); H.R. Deb. (5.12.2017) 12731.
40 By extension of ruling relating to former committee of the whole. H.R. Deb. (11.11.1904) 6883–4.
41 H.R. Deb. (12.9.1979) 996.
42 H.R. Deb. (19.10.1983) 1924.
43 This list is not exhaustive.
44 H.R. Deb. (1.6.1977) 2280–1.
45 The unqualified use of the term 'leave' may at times lead to confusion—e.g. H.R. Deb. (17.2.1988) 119–33.

- a Minister to correct[46] or add to[47] an earlier answer to a question without notice;
- the Prime Minister to add to an answer given by another Minister to a question without notice;[48]
- the Prime Minister or another Minister to answer a question without notice ruled out of order;[49]
- Members to put their views on a ruling by the Speaker relating to the sub judice convention;[50]
- Members to comment on a privilege matter;[51]
- a Member to seek information on a matter not raised in a second reading speech;[52]
- Members to speak to a document presented by the Speaker;[53]
- a Minister to correct a figure given in an earlier speech;[54]
- a Minister or other Member to comment on or raise a matter concerning the conduct of proceedings or related matters, such as the sitting arrangements;[55]
- the Prime Minister and Leader of the Opposition to congratulate athletes representing Australia;[56]
- the Prime Minister and Leader of the Opposition to welcome visiting foreign dignitaries present in the gallery;[57]
- the Prime Minister and Leader of the Opposition to pay tribute to a retiring Governor-General;[58]
- Members to extend good wishes to persons present in the gallery;[59]
- questions to[60] and statements by[61] the Leader of the House relating to the order of business, the Government's legislative program, etc;
- a Member to ask a question of the Speaker or raise a matter for the Speaker's consideration;[62]
- Members to comment in the House on the operations of the Main Committee (Federation Chamber);[63]
- Members to extend good wishes to a Member about to retire,[64] or to comment on significant achievements by colleagues;[65]
- the Prime Minister and Leader of the Opposition to make valedictory remarks;[66] and

46 E.g. H.R. Deb. (19.9.1979) 1266.
47 E.g. H.R. Deb. (8.6.1994) 1672–3; H.R. Deb. (19.6.1996) 2273–4; H.R. Deb. (2.6.1999) 5814.
48 E.g. H.R. Deb. (20.9.1979) 1359; H.R. Deb. (25.6.1992) 3948; H.R. Deb. (7.2.1994) 420–1.
49 E.g. H.R. Deb. (6.3.1980) 731.
50 H.R. Deb. (13.11.1979) 2883, 2917, 2926–32.
51 H.R. Deb. (13.9.1979) 1129; H.R. Deb. (23.11.1993) 3401–2; H.R. Deb. (4.4.2000) 15149; H.R. Deb. (2.6.2010) 4995–7.
52 H.R. Deb. (26.11.1980) 85.
53 H.R. Deb. (15.4.1980) 1711.
54 H.R. Deb. (12.9.1979) 995.
55 E.g. H.R. Deb. (10.3.1981) 562; H.R. Deb. (9.5.1985) 1951; H.R. Deb. (20.2.1986) 1009; H.R. Deb. (11.4.1986) 2129; H.R. Deb. (31.1.1995) 1; H.R. Deb. (7.12.1998) 1502; H.R. Deb. (4.12.2008) 12589.
56 H.R. Deb. (18.8.1992) 1.
57 H.R. Deb. (4.5.1992) 2258.
58 H.R. Deb. (28.6.2001) 28868–9; VP 1998–2001/2422 (28.6.2001).
59 H.R. Deb. (24.3.1992) 984.
60 H.R. Deb. (8.5.1991) 3246–8; H.R. Deb. (25.2.1992) 30.
61 H.R. Deb. (17.12.1993) 4335–7; H.R. Deb. (9.12.1999) 13288–9.
62 H.R. Deb. (25.11.1993) 3626–7.
63 H.R. Deb. (30.6.1994) 2429–30; H.R. Deb. (13.10.1994) 2022–3.
64 H.R. Deb. (25.6.1998) 5435–6.
65 H.R. Deb. (29.3.1999) 4571.
66 H.R. Deb. (9.12.1999) 13298, 13301.

- the Prime Minister and Leader of the Opposition to make statements in relation to natural[67] or other[68] disasters, in tribute to deceased persons,[69] or to speak on matters of significance.[70]

When the Prime Minister makes a statement by indulgence on an issue, the Leader of the Opposition is commonly also granted indulgence to speak on the same matter. On occasion, indulgence may be extended to a series of Members—for example, after a Member has made a statement to the House announcing his intention to resign, other Members have spoken to pay tribute to the Member or offer their best wishes for the future.[71]

STATEMENTS BY INDULGENCE REFERRED TO FEDERATION CHAMBER

After statements by indulgence have been made and it is recognised that other Members desire to speak on the same matter, the Leader of the House may move 'That further statements on . . . be referred to the Federation Chamber'.[72]

STATEMENTS BY INDULGENCE—SPEECH TIME LIMITS

The length of time a Member may speak on a statement by indulgence is at the Speaker's discretion. If further statements are referred to the Federation Chamber a speech time limit of 10 minutes applies.[73]

Statements by leave

A frequently used practice is to seek the leave of the House—that is, permission without objection from any Member present[74]—to make a statement when there is no question before the House. The standing orders provide occasions for Members to make statements on the presentation of a committee or delegation report (during the periods set aside for that purpose on Mondays[75]), during the periods for Members' 90 second statements and three minute constituency statements, and when introducing a private Member's bill. Leave is required for a Member to make a statement at other times.

Members seeking leave to make statements must indicate the subject matter in order that the House can make a judgment as to whether or not to grant leave. When a Member has digressed from the subject for which leave was granted, the Chair has:

- directed the Member to confine himself to the subject for which leave was granted;[76]
- directed the Member to resume his or her seat;[77] and
- expressed the opinion that a Member should not take advantage of leave granted to make a statement (in response to another) to raise matters that had no direct relationship to that statement.[78]

67 For example, flood or cyclone damage, H.R. Deb. (25.6.1998) 5422; H.R. Deb. (24.3.1999) 4222.
68 For example, deaths and injuries to naval personnel in a shipboard explosion, H.R. Deb. (12.5.1998) 2973–5, VP 1996–98/2975 (12.5.1998).
69 E.g. H.R. Deb. (15.2.2005) 1.
70 E.g. H.R. Deb. (22.11.1999) 12257.
71 E.g. H.R. Deb. (10.2.1994) 770–82; H.R. Deb. (11.2.2016) 1404–23.
72 E.g. VP 2008–10/592–3 (13.10.2008); NP 50 (14.10.2008) 27 (Main Committee). This practice became established in the 42nd Parliament. Previously, a motion to take note of statements had been referred, e.g. VP 2004–07/1401, 1406 (12.9.2006). Initially such further statements were listed as items of business on the Notice Paper but this practice was discontinued in 2013.
73 S.O. 1.
74 S.O. 63.
75 Leave is required for a Member to make a statement when presenting a committee or delegation report outside these periods, S.O. 39(c).
76 H.R. Deb. (21.11.1934) 412.
77 VP 1970–72/514 (7.4.1971); H.R. Deb. (7.4.1971) 1558; H.R. Deb. (16.10.1995) 2110; H.R. Deb. (18.10.1995) 2347.
78 H.R. Deb. (20.10.1949) 1748–9.

If a Member does not indicate the subject matter of a proposed statement when responding to a statement just made, difficulties may arise for the Chair. Greater control over relevancy can be preserved if, when Members rise to seek leave to make further statements, the Chair asks 'Is the honourable Member seeking leave to make a statement on the same matter?'.

A request for leave cannot be debated, nor can leave be granted conditionally, for example, on the condition that another Member is allowed to make a statement on the same subject.

If leave is not granted, a Minister or Member, on receiving the call, may move 'That so much of the standing (and sessional) orders be suspended as would prevent the Minister for . . . [the Member for . . .] making a statement'. This motion must be agreed to by an absolute majority of Members. Alternatively, in the case of a Minister, the printed statement may be presented.

The fact that leave is granted or standing orders are suspended to enable a Member to make a statement only affords the Member an opportunity to do that which would not be ordinarily permissible under the standing orders—that is, make a statement without leave. The normal rules of debate, and the provisions of the standing orders generally, still apply so that if, for example, the automatic adjournment interrupts the Member's speech, the speech is then terminated unless the adjournment proposal is negatived.

A Member cannot be given leave to make a statement on the next day of sitting in reply to a statement just made, but must ask for such leave on the next day of sitting.[79] It is not in order for a motion to be moved that a Member 'have leave to make a statement'[80] or, when leave to make a statement is refused, to move that the Member 'be heard now',[81] as the latter motion can only be moved to challenge the call of the Chair during debate.[82] When a statement is made by leave, there is no time limit on the speech,[83] but a motion may be made at any time that the Member speaking 'be no longer heard'.[84] Once granted, leave cannot be withdrawn.[85]

MINISTERIAL STATEMENTS

The statement by leave procedure is used, in the main, for ministerial statements, that is, for statements to the House by Ministers announcing or reporting on domestic and foreign policies and other actions or decisions of the Government. A period is provided in the order of business for ministerial statements each sitting day (following Question Time on Mondays, and following the discussion of a matter of public importance on other days).[86] However, Ministers may make statements at other times as well[87]—in all cases leave is required (*see below*). In appropriate circumstances a ministerial statement has been made by a Parliamentary Secretary.[88]

In the case of a ministerial statement, it is accepted practice for a copy of the proposed statement to be supplied to the Leader of the Opposition or the appropriate shadow minister some minimum time before the statement is made. At the conclusion of the

79 H.R. Deb. (22.2.1917) 10574–5.
80 VP 1970–72/21 (5.3.1970); H.R. Deb. (5.3.1970) 99–100.
81 H.R. Deb. (12.10.1971) 2154.
82 S.O. 65(c).
83 S.O. 1.
84 S.O. 80; e.g. VP 1968–69/592 (25.9.1969); VP 2002–04/1102 (20.8.2003).
85 H.R. Deb. (13.3.1953) 1044.
86 S.O. 34 (figure 2).
87 E.g. H.R. Deb. (11.3.2008) 1298.
88 VP 1998–2001/1159 (9.12.1999), H.R. Deb. (9.12.1999) 13323–5 (statement on a session of the UNESCO General Conference; the Parliamentary Secretary had been the leader of the Australian delegation to the conference).

Minister's speech the Leader of the Opposition or Member representing (i.e. the shadow minister) has the opportunity to speak in response to the statement for an equivalent period of time.[89]

LEAVE REQUIREMENT FOR MINISTERIAL STATEMENTS

The House has always required Ministers to seek leave to make ministerial statements. In 1902 Prime Minister Barton claimed that it was the inherent right of a leader of a Government to make a statement on any public subject without leave of the House. The Speaker ruled however that no Minister had such a right under the standing orders of the House of Representatives.[90]

The requirement for leave has the practical effect noted above, that traditionally an advance copy of a proposed ministerial statement is supplied to the Opposition, allowing its spokesperson time to prepare a considered response. Leave has been denied when this courtesy has not been complied with.[91]

Statements on a topic following suspension of standing orders

On occasion standing orders have been suspended to provide for a structured period for Members to make statements on a particular topic in the House and/or the Federation Chamber.[92]

Allocation of the call

The Member who moved the motion for the adjournment of a debate is entitled to speak first on the resumption of the debate.[93] If the Member does not take up that entitlement on the resumption of the debate, this does not impair his or her right to speak later in the debate.[94] However, when a Member is granted leave to continue his or her remarks and the debate is then adjourned, the Member must take the entitlement to pre-audience on the resumption of the debate, otherwise he or she loses the right to continue.

Although the Chair is not obliged to call any particular Member, except for a Member entitled to the first call as indicated above, it is the practice for the Chair, as a matter of courtesy, to give priority to:

- the Prime Minister or a Minister over other government Members[95] but not if he or she proposes to speak in reply;[96] and
- the leader or deputy leader of opposition parties over other non-government Members.[97]

A Minister (or Assistant Minister/Parliamentary Secretary) in charge of business during the consideration in detail of a bill or consideration of Senate amendments (when any Member may speak as many times as he or she wishes) would usually receive priority over other government Members whenever wishing to speak.[98] This enables the

89 S.O. 63A—the granting of leave to the Minister is deemed to grant leave to the opposition speaker. Before this standing order was introduced in 2015, a motion to suspend standing orders was moved on each occasion to permit and allocate time for the opposition response.

90 H.R. Deb. (14.1.1902) 8738–9; H.R. Deb. (16.1.1902) 8859–60. In the UK House of Commons leave is not required to make a ministerial statement.

91 E.g. H.R. Deb. (27.3.2007) 19, 65–6. Leave has also been denied when the Opposition has been unhappy about statements in the copy provided to them, H.R. Deb. (22.6.2010) 6110.

92 E.g. VP 2010–13/735 (5.7.2011) (5 minute statements on Members' consultations with constituents on views relating to equal treatment for same sex couples); VP 2010–13/960 (11.10.2011) (10 and 5 minute statements on tax reform).

93 S.O. 79(b).

94 H.R. Deb. (19.8.1954) 446.

95 H.R. Deb. (26.2.1953) 415.

96 H.R. Deb. (21.8.1923) 3133.

97 H.R. Deb. (8.3.1932) 775–6.

98 VP 1951–53/703 (6.10.1953); H.R. Deb. (6.10.1953) 1031; H.R. Deb. (25.11.1953) 500–1; H.R. Deb. (22.9.1955) 883.

Minister to explain or comment upon details of the legislation as they arise from time to time in the debate. Speakers have also taken the view that in respect of business such as consideration of Senate messages, the call should, in the first instance, be given to the Minister expected to have responsibility for the matter.[99]

If two or more Members rise to speak, the Speaker calls on the Member who, in the Speaker's opinion, rose first.[100] The Chair's selection may be challenged by a motion that a Member who was not called 'be heard now', and the question must be put immediately and resolved without amendment or debate.[101] A Member may move this motion in respect of himself or herself.[102] It is not in order to challenge the Chair's decision by way of moving that the Member who received the call 'be no longer heard'.[103] A motion of dissent from the Chair's allocation of the call should not be accepted, as the Chair is exercising a discretion, not making a ruling.

Standing order 78 provides, among other things, that if a motion that a Member be heard now is negatived, no similar proposal shall be received if the Chair is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.[104]

Although the allocation of the call is a matter for the discretion of the Chair, it is usual, as a principle, to call Members from each side of the House, government and non-government, alternately. Within this principle minor parties and any independents are given reasonable opportunities to express their views.[105] Because of coalition arrangements between the Liberal and National Parties, the allocation of the call between them has varied—for example, in the 30th Parliament, with the respective party numbers 68 and 23, the call was allocated on the basis of a 3:1 ratio; in the 38th Parliament, with the party numbers 76 and 18, the ratio was 4:1; and in the 41st Parliament, with the party numbers 75 and 12, the ratio was 6:1. Independent Members have been called with regard to their numbers as a proportion of the House. The call is alternated to each side of the Chamber even when government and opposition Members are not on opposing sides of a debate, for example, in cases of a free vote.

When Members are permitted to speak more than once during a debate, the Chair generally gives priority to those who have not yet spoken over those who have already spoken.

List of speakers

Throughout the history of the House of Representatives a list of intending speakers has been maintained to assist the Chair in allocating the call. As early as 1901 the Speaker noted that, although it was not the practice for Members to send names to him and to be called in the order in which they supplied them, on several occasions when a group of Members had risen together and had then informed the Chair that they wished to speak in a certain order, they had been called in that order so that they might know when they were likely to be called on.[106]

99 Including cases when the Government indicates (for example, by a Minister seeking the call) that it wishes to take a private Senator's bill as government business, e.g. H.R. Deb. (15.3.2000) 14781.

100 The Speaker calls Members by the name of their electoral division or office, i.e. 'the Member (Minister) for . . .'.

101 S.O. 65(c).

102 VP 1959–60/138 (14.5.1959); VP 1996–98/410 (9.9.1996), 419 (10.9.1996), 461 (12.9.1996).

103 H.R. Deb. (25.11.1953) 500–1.

104 VP 1996–98/462–3 (12.9.1996), the Chair having ruled that a further motion under then S.O. 61 [now 65(c)] was out of order as an abuse of the forms of the House, a motion of dissent was moved. *And see* H.R. Deb. (12.9.1996) 3995–9.

105 H.R. Deb. (17.6.1931) 2744; H.R. Deb. (19.5.1933) 1598–9; H.R. Deb. (18.10.1977) 2103.

106 H.R. Deb. (12.9.1901) 4860.

By the 1950s the Chair was allocating the call with the assistance of a list of speakers provided by the party whips. Speaker Cameron saw this as a perfectly logical and very convenient method of conducting debates. He added that, if they were not adhered to or Members objected to the practice, the House would revert to a system under which there was no list whatsoever and the Chair would call the Member he thought had first risen in his place. He saw this procedure as awkward as some Members were more alert than others and for that reason he thought it better that the Chair be made aware of the intentions of the parties, each party having some idea of their Members best able to deal with particular subjects.[107] Although he welcomed lists provided by the whips as useful guides, he stressed that he was not bound by them and indicated that, if it came to his knowledge that certain Members were being precluded from speaking, he would exercise the rights he possessed as Speaker.[108] In essence this continues to be the practice followed by the Chair.

As well as assisting the Chair, speakers lists assist Members in managing their various commitments in the House, Federation Chamber and committees. It is the responsibility of Members listed to speak to follow proceedings in order to ensure that they will be available at the appropriate time. It is discourteous to the Member speaking, and to the Chair and other participants in the debate, for the next speaker to leave his or her entry to the Chamber to the last minute. If no Member rises to speak there can be no pause in proceedings, and the Chair is obliged to put the question before the House to a vote. In practice, the whips or the duty Minister or shadow minister at the Table assume responsibility for following up errant speakers from their respective parties,[109] and alert the Chair to any changes to the list.

Manner of speech

Remarks to be addressed to Chair

A Member wishing to speak rises and, when recognised by the Speaker, addresses the Speaker.[110] If a Member is unable to rise, he or she is permitted to speak while seated.[111]

As remarks must be addressed to the Chair, Members refer to each other in their speeches in the third person—that is, use 'he', 'she', and 'they', rather than 'you'. It is regarded as disorderly for a Member to address the House in the second person and Members have often been admonished when they have lapsed into this form of address.[112] (*See also* 'References to Members' at page 514.)

It is not in order for a Member to turn his or her back to the Chair and address party colleagues.[113] A Member should not address the listening public while the proceedings of the House are being broadcast.[114]

Place of speaking

Standing order 65(c) provides that when two or more Members rise to speak the Speaker shall call upon the Member who, in the Speaker's opinion, rose first, and

107 H.R. Deb. (15.5.1952) 410.
108 H.R. Deb. (6.3.1953) 684, 686.
109 Often using the whips' phones (one on each side of the Chamber) which have a direct line to the whips' offices.
110 S.O. 65(a). At the election of a Speaker Members address themselves to the Clerk who acts as Chair.
111 S.O. 65(a), e.g. VP 1912/32 (9.7.1912). A Member confined to a wheel chair has addressed the House from the despatch box, e.g. H.R. Deb. (29.11.2006) 64.
112 E.g. H.R. Deb. (18.10.1995) 2407, 2430; H.R. Deb. (19.10.1995) 2473; H.R. Deb. (9.9.1996) 3683; H.R. Deb. (12.4.2000) 15880.
113 H.R. Deb. (5.6.1956) 2773–4.
114 H.R. Deb. (7.5.1952) 108.

standing order 62(a) requires every Member, when in the Chamber, to 'take his or her seat'. The implication is that Members should address the House from their own places. Ministers and shadow ministers speak from the Table. Assistant Ministers and Parliamentary Secretaries are allowed to speak from the Table when in charge of the business before the House but at other times should speak from their allocated places, although there has been a trend for them to speak from the Table on a wider range of matters. The same practice applies in respect of shadow parliamentary secretaries.[115] An opposition Member who is not a member of the opposition shadow ministry but who is leading for the Opposition in a particular debate, is permitted to speak either from his or her allotted seat or from the Table.[116]

Reading of speeches

There is no longer a prohibition on Members reading their speeches. Until 1965 the standing orders provided that 'A Member shall not read his speech'. In 1964, the Standing Orders Committee recommended that:

> As Parliamentary practice recognizes and accepts that, whenever there is reason for precision of statement such as on the second reading of a bill, particularly those of a complex or technical nature, or in ministerial or other statements, it is reasonable to allow the reading of speeches and, as the difficulty of applying the rule against the reading of speeches is obvious, e.g. "reference to copious notes", it is proposed to omit the standing order.[117]

The recommendation of the committee was subsequently adopted by the House.[118]

Language of debate

Although there is no specific rule set down by standing order, the House follows the practice of requiring Members' speeches to be in English. Other Members and those listening to proceedings are entitled to be able to follow the course of a debate, and it is unlikely that the Chair would know whether a speech was in order unless it was delivered in English. It is in order, however, for a Member to use or quote phrases or words in another language during the course of a speech. When a part of a speech has been delivered in another language, Members have also given an English translation.[119]

In 2003 a meeting of the two Houses in the House of Representatives Chamber was addressed by the President of China in Chinese. Members and Senators used headphones to hear the simultaneous translation into English.[120] On a similar occasion in 2007 the Prime Minister of Canada spoke in French during some parts of his address.[121]

There is no requirement that documents tabled in the House be in English.

Incorporation of unread material into Hansard

In one form or another the House has always had procedures for the incorporation of unread material into Hansard but there were, until recent years, considerable variations in practice and the Chair from time to time expressed unease at the fact that the practice was allowed and in respect of some of the purposes for which it was used.

115 H.R. Deb. (10.5.1990) 267.

116 H.R. Deb. (18.10.1979) 2273.

117 Standing Orders Committee, *Report*, PP 129 (1964–66) 6.

118 VP 1964–66/266 (31.3.1965). In 1986 the Procedure Committee recommended that the prohibition on the reading of speeches be reintroduced, with certain exceptions: Standing Committee on Procedure, *Days and hours of sitting and the effective use of the time of the House*, PP 108 (1986) 34. The House did not accept the recommendation.

119 E.g. H.R. Deb. (12.2.2015) 796 (Bahasa Indonesia); H.R. Deb. (24.11.2015) 13578 (Pitjantjatjara); H.R. Deb. (31.8.2016) 163 (Wiradjuri).

120 H.R. Deb. (24.10.2003) 21697–701.

121 H.R. Deb. (11.9.2007) 3–6.

Answers to questions in writing are required to be printed in Hansard[122] and Budget tables were in the past permitted to be included unread in Hansard.[123] The terms of petitions have been incorporated since 1972,[124] and the terms of notices not given orally in the House were included from 1978; in later years all notices were included. The terms of amendments moved are also printed in Hansard, despite the common practice being for Members moving them to refer to previously circulated texts of proposed amendments rather than to read them out in full.

The modern practice of the House on the incorporation of other material, defined by successive Speakers in statements on the practice, is based on the premise that Hansard, as an accurate as possible a record of what is said in the House, should not incorporate unspoken material other than items such as tables which need to be available in visual form for comprehension.[125] It is not in order for Members to hand in their speeches as is done in the Congress of the United States of America,[126] even when they have been prevented from speaking on a question before the House,[127] nor can they have the balance of an unfinished speech incorporated.[128] Ministerial statements may not be incorporated,[129] nor may Ministers' second reading speeches[130] or explanatory memoranda to bills.[131] Matter irrelevant to the question before the House is not permitted to be incorporated.[132]

Underlying the attitude of the Chair and the House over the years has been the consistent aim of keeping the Hansard record as a true record of what is said in the House. Early occupants of the Chair saw the practice of including unread matter in Hansard as fraught with danger[133] and later Speakers have voiced more specific objections.[134] For example, a 'speech' may be lengthened beyond a Member's entitlement under the standing orders, or the incorporated material may contain irrelevant or defamatory matter or unparliamentary language; other Members will not be aware of the contents of the material until production of the daily Hansard next morning when a speech may be discovered to have matter not answered in debate and so appear more authoritative. Similarly, a succeeding Member's speech may appear to be less relevant and informed than it would have been if he or she had known of the unspoken material before speaking.[135] In a more recent statement the Speaker noted that the incorporation of unread speeches would not be consistent with the aims of ensuring

122 S.O. 105(a). This has been a requirement since 1931. The question must also be included with the reply, VP 1929–31/693 (26.6.1931).

123 H.R. Deb. (13.6.1924) 1292–3. The practice was discontinued in 1987 for reasons of economy.

124 Also ministerial responses to petitions since 1992.

125 Speaker Snedden, H.R. Deb. (21.10.1982) 2339–40; Speaker Jenkins, H.R. Deb. (10.5.1983) 341–2.

126 H.R. Deb. (1.3.1917) 10826. This practice has been advocated on at least one occasion, H.R. Deb. (9.9.1909) 3263.

127 H.R. Deb. (8.3.1929) 929. On one occasion, Hansard staff having been discharged from further attendance following a very long sitting, Members handed precis of speeches made in the House to reporters for subsequent inclusion, H.R. Deb. (6–8.12.1933) 5898. A tribute from an absent Member was permitted to be incorporated during a condolence debate, H.R. Deb. (8.4.1986) 1786. Exceptionally, after the second reading debate on a bill had been curtailed, 8 members were given leave to incorporate unread speeches, H.R. Deb. (10.11.2005) 9–37.

128 H.R. Deb. (20.6.1906) 452. Leave granted for Leader of the Opposition to incorporate remainder of statement, H.R. Deb. (19.9.1979) 1294. Leave granted for Minister to incorporate balance of a lengthy answer to question without notice, H.R. Deb. (26.8.1982) 959. Leave granted for incorporation of remainder of Member's valedictory speech, H.R. Deb. (20.9.2007) 64.

129 On one occasion Minister granted leave to incorporate a statement, VP 1951–53/405 (5.9.1952); H.R. Deb. (5.9.1952) 1051–2.

130 For details of cases *see* footnote under 'Moving and second reading speech' in Chapter on 'Legislation'.

131 Prior to the Standing Orders Committee opposing such action, PP 114 (1970) 9, leave was occasionally granted for the incorporation of explanatory memorandums, VP 1967–68/199 (20.9.1967).

132 H.R. Deb. (3.5.1938) 725.

133 H.R. Deb. (9.8.1910) 1256; H.R. Deb. (4.12.1911) 3638.

134 H.R. Deb. (5.8.1931) 4976–7; H.R. Deb. (15.9.1932) 556.

135 H.R. Deb. (10.5.1983) 341–2.

engagement and exchange in debate, and would totally disadvantage Members who speak from notes or without notes.[136]

Apart from offending against the principle that Hansard is a report of the spoken word, items may also be excluded on technical grounds. Thus, for example, photographs, drawings, tabulated material of excessive length and other documents of a nature or quality not acceptable for printing or which would present technical problems and unduly delay the production of the daily Hansard are not able to be incorporated. In cases where permission has been granted for such an item to be incorporated (usually with the proviso from the Chair that the incorporation would occur only if technically possible), it has been the practice for a note to appear in the Hansard text explaining that the proposed incorporation was omitted for technical reasons. However, in recent years developments in printing technology have made possible the incorporation of a wider range of material—for example, graphs, charts and maps—than was previously the case.

A Minister or Member seeking leave to incorporate material should first show the matter to the Member leading for the Opposition or to the Minister or Parliamentary Secretary at the Table, as the case may be,[137] and leave may be refused if this courtesy is not complied with.[138] Members must provide a copy of the material they propose to include at the time leave is sought,[139] and copies of non-read material intended for incorporation must be lodged with Hansard as early as possible.[140]

The general rule is not interpreted inflexibly by the Chair. For example, exceptions have been made to enable schedules showing the progress on government responses to committee reports to be incorporated.[141] Although other exceptions may be made from time to time, this is not a frequent occurrence and it is common practice of the Chair in such circumstances to remark on, and justify, the departure from the general rule, or to stress that the action should not be regarded as a precedent. The main category of such exceptions in recent years has been in relation to documents whose incorporation has provided information from the Government to the House.[142] Other exceptions have been made to facilitate business of the House,[143] or to allow the incorporation of material which in other circumstances could have been incorporated as a matter of routine.[144] The contents of a letter stick from Aboriginal peoples of the Northern Territory have been incorporated.[145]

The House has ordered that matter be incorporated.[146] Matter has been authorised to be incorporated by a motion moved pursuant to contingent notice, after leave for

136 H.R. Deb. (11.2.2010) 1218–9.

137 PP 129 (1964–66) 3.

138 H.R. Deb. (24.8.1984) 368.

139 H.R. Deb. (9.5.1973) 1860–1.

140 VP 1974–75/157 (17.9.1974).

141 H.R. Deb. (9.5.1996) 763–7.

142 E.g. government guidelines for official witnesses before parliamentary committees, H.R. Deb. (23.8.1984) 290–6; Prime Minister's comments in response to a royal commission report, H.R. Deb. (6.12.1983) 3251–70; the terms of reference of a royal commission, H.R. Deb. (17.5.1983) 598.

143 E.g. lists of names of members of parliamentary committees, H.R. Deb. (8.10.1987) 995–6; H.R. Deb. (29.5.1996) 1767–8.

144 Proposed opposition amendments to a bill which were not moved because bill was under guillotine which had expired, e.g. H.R. Deb. (11.4.1986) 2129; H.R. Deb. (15.5.1997) 3737–42; H.R. Deb. (5.6.1997) 5123. Answers to questions in writing which had been withdrawn from the Notice Paper, H.R. Deb. (15.4.1986) 2319–20. Proposed amendment to motion (amendment could not be moved because another had been moved and the question stated in the form 'That the words stand'), H.R. Deb. (8.10.2003) 20792.

145 H.R. Deb. (28.10.1996) 5908.

146 Record of proceedings of the presentation of a resolution of thanks of the House to representatives of the Armed Forces, VP 1920–21/184 (20.5.1920). Report of the proceedings on the occasion of the presentation of the Speaker's Chair, VP 1926–28/343 (24.3.1927).

incorporation had been refused.[147] A motion to allow incorporation has also been moved and agreed to following suspension of standing orders.[148]

On two occasions in 1979 standing orders were suspended to enable certain documents to be incorporated in Hansard, after leave had been refused.[149] This action was procedurally defective. The incorporation of unspoken matter in Hansard is, by practice, authorised by the House by its unanimous consent. The unanimous consent is obtained by asking for leave of the House. If leave is refused the authority of the House can only be obtained by moving a positive motion. In order to move a motion without leave it is necessary to suspend the standing orders. The suspension of standing orders opens the way to move a motion for incorporation; it does not of itself allow incorporation, as there is no standing order relating to incorporation of matter in Hansard.

The fact that the House authorises the incorporation of unread matter does not affect the rule that the final decision rests with the Speaker.

Display of articles to illustrate speeches

Members have been permitted to display articles to illustrate speeches. The Chair has been of the opinion that unless the matter in question had some relation to disloyalty or was against the standing orders the Chair was not in a position to act but hoped that Members would use some judgment and responsibility in their actions.[150] However, the general attitude from the Chair has been that visual props are 'tolerated but not encouraged'.[151] An important distinction is made between Members displaying articles to illustrate a point being made in a speech and the display of articles or signs by Members who do not have the call.[152] The former is often acceptable to the Chair; the latter is not.

The wide range of items which have been allowed to be displayed to illustrate a speech has included items as diverse as a flag,[153] photographs and journals,[154] plants,[155] a gold nugget,[156] a bionic ear,[157] a silicon chip,[158] a flashing marker for air/sea rescue,[159] a synthetic quartz crystal,[160] superconducting ceramic,[161] hemp fibres,[162] a heroin 'cap',[163] a gynaecological instrument,[164] a sporting trophy,[165] ugh boots,[166] mouse pads,[167] a lump of coal and a solar panel.[168]

147 H.R. Deb. (28.9.1988) 1011.
148 H.R. Deb. (21.9.1977) 1418–19. However, because of technical difficulties the matter was not in fact incorporated.
149 VP 1978–80/875–6 (6.6.1979); H.R. Deb. (6.6.1979) 2972–7; VP 1978–80/986–7 (13.9.1979); H.R. Deb. (13.9.1979) 1080–4.
150 H.R. Deb. (25.9.1970) 1698.
151 E.g. H.R. Deb. (20.6.2002) 4065. *And see* H.R. Deb. (28.5.2009) 4755–6.
152 E.g. H.R. Deb. (31.10.2006) 20–21.
153 H.R. Deb. (25.9.1970) 1697. The flag was exhibited in support of the allegation that the staff was for use as a weapon.
154 H.R. Deb. (17.9.1964) 1283–5.
155 H.R. Deb. (25.11.1965) 3168; H.R. Deb. (16.9.1981) 1437; H.R. Deb. (1.5.1986) 2949–50.
156 H.R. Deb. (20.10.1981) 2250.
157 H.R. Deb. (25.5.1983) 934.
158 H.R. Deb. (2.11.1983) 2195.
159 H.R. Deb. (19.8.1982) 687–8.
160 H.R. Deb. (1.12.1983) 3166.
161 H.R. Deb. (8.10.1987) 985.
162 H.R. Deb. (19.6.1995) 1771–2.
163 H.R. Deb. (2.6.1997) 4577.
164 H.R. Deb. (8.12.1999) 13148.
165 H.R. Deb. (14.10.2003) 21389–90.
166 H.R. Deb. (12.8.2004) 32977–8.
167 H.R. Deb. (19.2.2008) 674–5.
168 H.R. Deb. (9.2.2017) 536 and H.R. Deb. (13.2.2017) 729, after these incidents the Speaker warned against the display of undesirable props.

Although newspaper headlines have been displayed for the purpose of illustrating a speech (but not if they contain unparliamentary language),[169] more recent practice has been not to permit this, and Members, although having the call, have been ordered to put down items they have displayed.[170] The Speaker has ordered a Member to remove two petrol cans he had brought into the Chamber for the purpose of illustrating his speech.[171] It is not in order to display a weapon[172] or play a tape recorder.[173] A Minister answering a question has been cautioned 'on the overuse of props' (a series of photos).[174] The Speaker has ruled the action of a Member asking a question in seeking to display a multi-page chart, which needed the assistance of other Members to hold up, to be out of order, but permitted the Member to display pages of the chart individually.[175]

In 1980 the Chair ruled that the display of a handwritten sign containing an unparliamentary word by a seated Member was not permitted.[176] Since then the Chair has more than once ruled that the displaying of signs was not permitted.[177] A Member has been named when he interjected after having displayed a sign and having been ordered to leave the House.[178] In response to the coordinated holding up of placards by Members the Speaker has warned that action would be taken against offending Members without further warning.[179] In similar circumstances Speakers have instructed attendants to collect items that were being displayed.[180] Scorecards held up following a Member's speech have been ordered to be removed.[181] Other items ordered to be removed which have been displayed by Members not having the call have included a toy chicken[182] and a life-size cardboard cut-out of the Prime Minister.[183] Disorder has been associated with the use of such items.

In 2015 a Member who had displayed bottles of bunker fuel in the Federation Chamber, and spilled the oil onto the desk and floor, was called on to apologise to the House for his reckless and highly disorderly actions, and after he had done so, was named and suspended.[184]

The Procedure Committee has distinguished between legitimate visual aids and 'stunts':

> Members may have cause to use 'legitimate' visual aids during speeches to provide audiences with a greater understanding of the message being conveyed. Legitimate visual aids are usually referred to incidentally in a Member's speech.
>
> . . . In other cases, articles are displayed by Members in a way that could reasonably be interpreted as being for dramatic effect or to make a political point. In contrast to legitimate visual aids, 'stunts' have a tendency to disrupt proceedings and may have a negative impact on the public's perception of the House.

169 H.R. Deb. (20.2.1986) 996–7, 1009. For later practice *see* H.R. Deb. (18.6.1996) 2061; (19.6.1996) 2243.
170 E.g. H.R. Deb. (13.3.2008) 1750.
171 H.R. Deb. (16.5.1985) 2547.
172 Private ruling by Speaker Halverson. However, deactivated land mines have been displayed, H.R. Deb. (25.11.1998) 653. *See also May*, 24th edn, p. 448.
173 H.R. Deb. (13.11.1974) 3503.
174 H.R. Deb. (25.5.2009) 4073.
175 H.R. Deb. (28.5.2009) 4761.
176 H.R. Deb. (21.8.1980) 582.
177 E.g. H.R. Deb. (6.9.1983) 435; H.R. Deb. (19.3.1985) 466; H.R. Deb. (26.8.2008) 6187.
178 H.R. Deb. (18.6.2009) 6582.
179 H.R. Deb. (31.10.2006) 20–21.
180 E.g. H.R. Deb. (29.10.2014), VP 2013–16/ 945 (29.10.2014)—Members resisting the instruction were directed to leave the Chamber under S.O. 94(a) for disorderly conduct; H.R. Deb. (2.2.2016) 44–5.
181 H.R. Deb. (13.11.1986) 3036–7.
182 H.R. Deb. (9.8.2006) 69–70.
183 H.R. Deb. (22.2.2008) 1282.
184 H.R. Deb. (24.3.2015) 3328; H.R. Deb. (25.3.2015) 3429.

> . . . There is no precise demarcation between legitimate visual aids and stunts. What might be considered perfectly legitimate in one context could be inflammatory in another.[185]

Citation of documents not before the House

If a Minister quotes from a document relating to public affairs, a Member may ask for it to be presented to the House. The document must be presented unless the Minister states that it is of a confidential nature.[186] This rule does not apply to private Members.

A Member may quote from documents not before the House, but the quotation must be relevant to the question before the Chair.[187] It is not in order to quote words debarred by the rules of the House.[188] It is not necessary for a Member to vouch for the accuracy of a statement in a document quoted from or referred to,[189] but a Member quoting certain unestablished facts concerning another Member contained in a report has been ordered not to put those findings in terms of irrefutable facts.[190] It is not necessary for a Member to disclose the source of a quotation[191] or the name of the author of a letter from which he or she has quoted.[192] The Chair has always maintained that Members themselves must accept responsibility for material they use in debate, and there is no need for them to vouch for its authenticity. Whether the material is true or false will be judged according to events and if a Member uses material, the origin of which he or she is unsure, the responsibility rests with the Member.[193]

Subject to the rules applying to relevance and unparliamentary expressions, it is not within the province of the Chair to judge whether a document declared to be confidential should be restricted in its use in the House. As the matter is not governed by standing orders, it must be left to the good sense and discretion of a Member to determine whether to use material in his or her possession.[194] However, the Chair has ruled that confidential documents submitted to Cabinet in a previous Government must, in the public interest, remain entirely confidential.[195]

RULES GOVERNING CONTENT OF SPEECHES

Relevancy in debate

General principles and exceptions

Of fundamental importance to the conduct of debate in the House is the rule that a Member should speak only on the subject matter of a question under discussion.[196] At the same time the standing orders and practice of the House make provision for some major exceptions to this principle when debates of a general nature may take place. These exceptions are:

185 Standing Committee on Procedure, *The display of articles: an examination of the practice of the House of Representatives*, PP 201 (2009) 3, 5, 6.
186 S.O. 201—for more detail *see* Ch. on 'Documents'.
187 H.R. Deb. (29.5.1931) 2446.
188 H.R. Deb. (20.9.1922) 2488; H.R. Deb. (10.9.1925) 2415.
189 H.R. Deb. (17.11.1920) 6584.
190 H.R. Deb. (27.9.1979) 1635.
191 H.R. Deb. (12.5.1932) 671.
192 H.R. Deb. (28.5.1931) 2399.
193 H.R. Deb. (25.11.1953) 472–3; H.R. Deb. (26.9.1979) 1550–1.
194 H.R. Deb. (2.5.1957) 1000–1; VP 1964–66/597 (11.5.1966); H.R. Deb. (10.5.1966) 1601; H.R. Deb. (11.5.1966) 1673.
195 H.R. Deb. (20.5.1942) 1440–1; *see also* H.R. Deb. (28.3.1973) 767–8, H.R. Deb. (9.5.1973) 1854–5, NP 80 (13.12.1973) 3480, *and* VP 1973–74/365–6 (20.9.1973) for other references relating to this question.
196 S.O. 76. *See also* Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, v. III, p. 56.

- on the question for the adjournment of the House to end the sitting, or for the adjournment of the Federation Chamber;[197]
- on the debate of the address in reply to the Governor-General's speech;[198]
- on the motion for the second reading of the main appropriation bill, and appropriation or supply bills for the ordinary annual services of government, when public affairs may be debated;[199] and
- on the question that grievances be noted, a wide debate is permitted.[200]

The scope of a debate may also be widened by means of an amendment. There may also be a digression from the rule of relevancy during a cognate debate, when two or more items are debated together even though technically only one of the items is the subject of the question before the House.

Cognate debate

When two or more orders of the day are related,[201] it frequently meets the convenience of the House to debate them together. A cognate debate is an informal practice, not covered by the standing orders, which is arranged behind the scenes by a process of which the Chair has no official knowledge. Cognate debates are usually agreed to by the Government and the Opposition as part of the programming process and the orders of the day then linked accordingly on the Daily Program. The Chair formally seeks the agreement of the House to the proposal when the first of the orders so linked is called on for debate.[202] If there is no objection the Chair then allows the debate of the first of the orders to refer to the other related orders—thus in effect enabling a single debate. Upon the conclusion of the debate separate questions are then put as required on each of the orders of the day as they are called on.

Almost all cognate debates occur on bills—for further discussion of cognate debate in relation to bills *see* Chapter on 'Legislation'. However, motions are on occasion debated cognately. A bill has been debated cognately with a motion to take note of documents on a related subject.[203] A cognate debate has taken place on three committee reports on unrelated subjects (by the same committee).[204]

The purpose of a cognate debate is to save the time of the House, but technically Members may still speak to the questions proposed when the other orders of the day encompassed in the cognate debate are called on.[205] However, this action is contrary to the spirit of a cognate debate and is an undesirable practice except in special circumstances, for example, when a Member desires to move an amendment to one of the later cognate orders.

197 S.O. 76. *See* Ch. on 'Non-government business'.

198 S.O. 76. *See* Ch. on 'The parliamentary calendar'.

199 S.O. 76. *See* Ch. on 'Financial legislation'.

200 S.O. 192B. *See* Ch. on 'Non-government business'.

201 All of the matters to be debated together may not appear on the Notice Paper. A cognate debate has taken place on an order of the day and on a motion to take note of a document which had been moved that day, H.R. Deb. (10.4.1978) 1306–7. A cognate debate has also taken place on a notice of motion and an order of the day, H.R. Deb. (10.3.1981) 575.

202 This procedure has not always been followed. For example, before the cognate debate procedure became established the House ordered that debate on certain orders of the day proceed concurrently, VP 1920–21/705 (5.10.1921); and suspended standing orders to allow discussion of certain tariff proposals during debate on a motion to print an associated report, VP 1932–34/101 (8.3.1932). Standing orders have been suspended to enable the scope of the debate on a private Members' business notice to be extended to cover the subject matter of a government business order of the day, VP 1980–83/174 (2.4.1981).

203 Parliamentary Commission of Inquiry (Repeal) Bill 1986 and motion to take note of Parliamentary Commission of Inquiry Special Report and associated documents, H.R. Deb. (20.8.1986) 291.

204 H.R. Deb. (8.12.1994) 4580. *See also* VP 2002–04/1455 (19.2.2004), H.R. Deb. (19.2.2004) 25340–49—in effect a cognate debate (despite no statement by Chair) on two committee reports by same committee which had been presented at the same time but were separate orders of the day, VP 2002–04/1431 (16.2.2004).

205 H.R. Deb. (26.11.1953) 576–7; H.R. Deb. (10.4.1978) 1314.

Persistent irrelevance or tedious repetition

Pursuant to standing order 75, the Speaker, after having called attention to the conduct of a Member who has persisted in irrelevance or tedious repetition, either of his or her own arguments or of the arguments used by other Members in debate, may direct the Member to discontinue his or her speech. The Speaker's action may be challenged by the Member concerned who has the right to ask the Speaker to put the question that he or she be further heard. This question must be put immediately and resolved without debate. The action of the Chair in requiring a Member to discontinue a speech cannot be challenged by a motion of dissent from a ruling, as the Chair has not given a ruling but a direction under the standing orders.[206] The Chair is the judge of the relevancy or otherwise of remarks and it is the duty of the Chair to require Members to keep their remarks relevant.[207] Only the Member who has been directed to discontinue a speech has the right to move that he or she be further heard and must do so before the call is given to another Member.[208]

On only two occasions has a Member been directed to discontinue a speech specifically on the ground of tedious repetition[209] but on a number of occasions on the ground of persistent irrelevance.[210] A Member has been directed to discontinue his speech following persistent irrelevance while moving a motion;[211] in the former committee of the whole (although later the Member took his second turn, under the then prevailing standing orders, to speak to the question);[212] and in the Main Committee (Federation Chamber).[213] On two occasions the direction of the Chair has been successfully challenged by a motion that the Member be further heard.[214]

This standing order has not been regarded as applying to a statement being made by leave,[215] or to answers during Question Time.[216]

Anticipation

The principle behind the anticipation rule is the orderly management of House business. Its intention is to protect matters which are on the agenda for imminent deliberative consideration and decision from being pre-empted by unscheduled debate.

Standing order 77 provides that 'During a debate, a Member may not anticipate the discussion of a subject listed on the Notice Paper and expected to be debated on the same or next sitting day. In determining whether a discussion is out of order the Speaker should not prevent incidental reference to a subject.'

The rule applies only 'during a debate'—that is, when there is a question before the House. It does not apply to questions and answers, to Members' statements or discussions of matters of public importance. The words 'a subject listed on the Notice Paper' are taken as applying only to the business section of the Notice Paper and not to matters listed elsewhere—for example, under questions in writing or as subjects of committee inquiry.

206 H.R. Deb. (9.11.1904) 6753; H.R. Deb. (6.10.1953) 1051; H.R. Deb. (4.5.1960) 1382.
207 H.R. Deb. (20.11.1935) 1838.
208 H.R. Deb. (6.10.1953) 1051–2.
209 VP 1904/298 (11.11.1904); H.R. Deb. (12.10.1978) 1822.
210 E.g. H.R. Deb. (27.2.2012) 1777; H.R. Deb. (19.3.2012) 3264.
211 H.R. Deb. (2.6.1955) 1360.
212 H.R. Deb. (9.3.1951) 275–7.
213 H.R. Deb. (13.2.2003) 11900.
214 VP 1937–40/413 (8.6.1939), 418 (9.6.1939).
215 H.R. Deb. (31.3.1987) 1765.
216 H.R. Deb. (13.6.2006) 28; H.R. Deb. (18.6.2009) 6570. However, an answer is required to be directly relevant to the question by S.O. 104(a).

The current wording of standing order 77 was recommended by the Procedure Committee in 2005.[217] The anticipation rule was previously more restrictive.[218]

Allusion to previous debate or proceedings

Unless the reference is relevant to the discussion, a Member must not refer to debates or proceedings of the current session of the House.[219] This rule is not extended to the different stages of a bill. In practice, mere allusion to another debate is rarely objected to. However, debate on a matter already decided by the House should not be reopened. The Chair has stated that the basis of the rule is that, when a subject has been debated and a determination made upon it, it must not be discussed by any means at a later stage.[220] The relevant standing order was far more strict in the past, the relevancy proviso being included when permanent standing orders were adopted in 1950. A previous restriction on allusions to speeches made in committee was omitted in 1963 on the recommendation of the Standing Orders Committee 'as it appeared to be out of date and unnecessarily restrictive'.[221]

The application of this standing order most often arises when the question before the House is 'That the House do now adjourn' or 'That grievances be noted'. The scope of debate on these questions is very wide ranging and in some instances allusion to previous debate has been allowed,[222] although the Chair has sometimes intervened to prevent it.[223] Members may be able to overcome the restriction by referring to a subject or issue of concern without alluding to any debate which may have taken place on it. The problem of enforcing the standing order is accentuated by the fact that a session may extend over a three year period.

References to committee proceedings

Members may not disclose in debate evidence taken by any committee of the House or the proceedings and reports of those committees which have not been reported to the House, unless disclosure or publication has been authorised by the House or by the committee or subcommittee.[224] Members have thus been prevented from referring to evidence not disclosed to the House or basing statements on matters disclosed to the committee.[225] However, committee chairs and deputy chairs have regular opportunities to make statements to inform the House of matters relating to inquiries,[226] and Members have, from time to time, made statements on the activities of a committee by leave of the House.[227] The Chair has permitted reference in debate to committee proceedings which (although unreported) had been relayed throughout Parliament House on the monitoring system.[228]

217 Standing Committee on Procedure, *The anticipation rule*, PP 82 (2005). Sessional orders 17.3.2005, adopted permanently 29.11.2006.
218 Discussed in earlier editions.
219 S.O. 73.
220 H.R. Deb. (27.3.1942) 558.
221 H of R 1(1962–63) 19.
222 *See* Ch. on 'Non-government business'.
223 E.g. H.R. Deb. (26.5.1987) 3365.
224 S.O. 242. *See also* Ch. on 'Committee inquiries'.
225 H.R. Deb. (10.6.1955) 1656.
226 S.O. 39(a).
227 E.g. VP 1977/112 (5.5.1977), 358 (26.10.1977).
228 H.R. Deb. (16.12.1993) 4226.

References to Members

In the Chamber and the Federation Chamber a Member must not be referred to by name, but only by the name of the Member's electoral division (that is, as 'the Member for . . .' or 'the honourable Member for . . .'), or by the title of his or her parliamentary or ministerial office.[229] This restriction has also been extended to the terms of motions, amendments and matters of public importance.[230] The purpose of this rule, in conjunction with the requirement to address the Chair (*see* page 504), is to make debate less personal and avoid the direct confrontation of Members addressing one another as 'you'.[231] A degree of formality helps the House remain more dignified and tolerant when political views clash and passions may be inflamed. However, it is the practice of the House that, when appointments to committees or organisations are announced by the Speaker or a Minister, the name of a Member is used.

Offensive or disorderly words

> Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a Member is canvassing the opinions and conduct of his opponents in debate.[232]

The standing orders contain prohibitions against the use of words which are considered to be offensive (the two Houses of the Parliament, Members and Senators and members of the judiciary being specifically protected—*see below*).[233] The determination as to whether words used in the House are offensive or disorderly rests with the Chair, and the Chair's judgment depends on the nature of the word and the context in which it is used.

A Member is not allowed to use unparliamentary words by the device of putting them in somebody else's mouth,[234] or in the course of a quotation.[235]

It is the duty of the Chair to intervene when offensive or disorderly words are used either by the Member addressing the House or any Member present. When attention is drawn to a Member's conduct (including his or her use of words), the Chair determines whether or not it is offensive or disorderly.[236]

Once the Chair determines that offensive or disorderly words have been used, the Chair asks that the words be withdrawn. It has been considered that a withdrawal implies an apology[237] and need not be followed by an apology unless specifically demanded by the Chair.[238] The Chair may ask the Member concerned to explain the sense in which the words were used and upon such explanation the offensive nature of the words may be removed. If there is some uncertainty as to the words complained of, for the sake of clarity, the Chair may ask exactly what words are being questioned. This action avoids confusion and puts the matter clearly before the Chair and Members involved. On other

229 S.O. 64. The question of using the name of a Member in the House instead of the electorate name was considered by the Standing Orders Committee in its 1972 report. The committee recommended no change to the existing practice. Standing Orders Committee, *Report*, PP 20 (1972).

230 *And see* letter presented by Speaker, VP 2004–07/1648 (7.12.2006).

231 *And see May*, 24th edn, p. 444 ('to guard against all appearance of personality in debate').

232 *May*, 24th edn, p. 444.

233 S.O.s 89, 90.

234 *And see May*, 24th edn, p. 445.

235 H.R. Deb. (5.5.1978) 1894–5.

236 S.O. 92. This provision was introduced (then referring to words rather than conduct) on the recommendation of the Standing Orders Committee, following conflicting rulings on whether remarks regarded as offensive by any Member had to be withdrawn. H of R 1 (1962–63) 20; VP 1962–63/455 (1.5.1963). *See also* statement by Speaker Jenkins, H.R. Deb. (7.5.1984) 1907.

237 H.R. Deb. (22.10.1913) 2377.

238 H.R. Deb. (1.11.1951) 1498.

occasions, although not having heard words objected to, the Speaker has called for their withdrawal.[239]

It always assists the House if a Member withdraws words objected to without waiting for the Speaker's determination, when the Speaker may not have heard words objected to and thus may not be able to make a determination,[240] or when the Chair indicates that it 'would assist the House' if the Member did so.[241]

The Chair has ruled that any request for the withdrawal of a remark or an allusion considered offensive must come from the Member reflected upon, if present[242] and that any request for a withdrawal must be made at the time the remark was made. This latter practice was endorsed by the House in 1974 when it negatived a motion of dissent from a ruling that a request for the withdrawal of a remark should be made at the time the remark was made.[243] However, the Speaker has later drawn attention to remarks made and called on a Member to apologise, or to apologise and withdraw.[244] Having been asked to withdraw a remark a Member may not do so 'in deference to the Chair', must not leave the Chamber[245] and must withdraw the remark immediately,[246] in a respectful manner,[247] unreservedly[248] and without conditions[249] or qualifications.[250] Traditionally Members have been expected to rise in their places to withdraw a remark.[251] If a Member refuses to withdraw or prevaricates, the offence is compounded and the Chair may name the Member for disregarding the authority of the Chair.[252] The Speaker has also directed, in special circumstances, that offensive words be omitted from the Hansard record.[253]

The use of offensive gestures has been deprecated by the Speaker. It would be open to the Speaker to direct a Member to leave the Chamber or to name a Member for such behaviour.[254]

Reflections on Members

Offensive words may not be used against any Member[255] and all imputations of improper motives to a Member and all personal reflections on other Members are considered to be highly disorderly.[256] The practice of the House, based on that of the UK House of Commons,[257] is that Members can only direct a charge against other Members or reflect upon their character or conduct upon a substantive motion which admits of a distinct vote of the House.[258] Although a charge or reflection upon the character or conduct of a Member may be made by substantive motion, in expressing that charge or

239 E.g. H.R. Deb. (4.12.2008) 12600.
240 H.R. Deb. (20.10.2010) 949; H R Deb (25.11.2010) 3831.
241 H.R. Deb. (29.9.2010) 205.
242 H.R. Deb. (30.11.1950) 3427.
243 VP 1974/41–2 (12.3.1974).
244 H.R. Deb. (21.4.1955) 70; H.R. Deb. (25.8.1955) 73.
245 H.R. Deb. (22.11.1912) 5883.
246 H.R. Deb. (3.12.1918) 8639.
247 H.R. Deb. (7.12.1911) 3996.
248 H.R. Deb. (15.8.1923) 2776.
249 H.R. Deb. (27.11.1914) 1180.
250 H.R. Deb. (30.11.1950) 3427.
251 H.R. Deb. (26.9.1979) 1569.
252 E.g. VP 2004–07/1163 (31.5.2006); H.R. Deb. (17.8.2005) 101–2 (allegation against group directed to be withdrawn).
253 *See* 'Hansard' in Ch. on 'Documents'.
254 H.R. Deb. (20.6.2002) 4076, 4080–1. *And see* statement by President of the Senate, S. Deb, (11.8.2005) 78.
255 S.O. 89.
256 S.O. 90.
257 S.O. 100(c), *and see May*, 24th edn, pp. 396, 443–4.
258 H.R. Deb. (16.10.1957) 1416; H.R. Deb. (2.3.1972) 478.

reflection a Member may not use unparliamentary words.[259] This practice does not necessarily preclude the House from discussing the activities of any of its Members.[260] It is not in order to use offensive words against, make imputations against, or reflect on another Member by means of a quotation or by putting words in someone else's mouth.

In judging offensive words the following explanation given by Senator Wood as Acting Deputy President of the Senate in 1955 is useful:

> . . . in my interpretation of standing order 418 [similar to House of Representatives standing order 90 in relation to Members], offensive words must be offensive in the true meaning of that word. When a man is in political life it is not offensive that things are said about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of "improper motives" and "personal reflections" as used in the standing order. Here again, when a man is in public life and a member of this Parliament, he takes upon himself the risk of being criticised in a political way.[261]

It has been regarded as disorderly to refer to the lack of sobriety of a Member,[262] to imitate the voice or manner of a Member[263] and to make certain remarks in regard to a Member's stature[264] or physical attributes.[265] Although former Members are not protected by the standing orders,[266] the Chair has required a statement relating to a former Member to be withdrawn[267] and on another occasion has regarded it as most unfair to import into debate certain actions of a Member then deceased.[268]

May classifies examples of expressions which are unparliamentary and call for prompt interference as:

- the imputation of false or unavowed motives;
- the misrepresentation of the language of another and the accusation of misrepresentation;
- charges of uttering a deliberate falsehood; and
- abusive and insulting language of a nature likely to create disorder.[269]

Australian Speakers have followed a similar approach. An accusation that a Member has lied or deliberately misled is clearly an imputation of an improper motive. Such words are ruled out of order and Members making them ordered to withdraw their remarks. The deliberate misleading of the House is a serious matter which could be dealt with as a contempt, and a charge that a Member has done so should only be made by way of a substantive motion.[270]

In accordance with House of Commons practice, for many years it was ruled that remarks which would be held to be offensive, and so required to be withdrawn, when applied to an identifiable Member, did not have to be withdrawn when applied to a group where individual Members could not be identified. This rule was upheld by distinct votes of the House.[271] This did not mean, however, that there were no limits to remarks which could be made reflecting on unidentified Members. For example, a statement that it

259 H.R. Deb. (25.6.1996) 2641, 2654–5.
260 H.R. Deb. (25.10.1950) 1395.
261 S. Deb. (2.6.1955) 629; *Odgers*, 6th edn, p. 213. *But see* H.R. Deb. (4.9.2006) 44–5 (quotation no longer relied on in the Senate).
262 H.R. Deb. (2.11.1977) 2736.
263 H.R. Deb. (25.9.1908) 403. On another occasion a Member apologised after having imitated another Member's accent, although the Chair had not intervened. H.R. Deb. (11.10.1985) 1907, 1929.
264 H.R. Deb. (9.9.1904) 4508.
265 H.R. Deb. (28.8.1979) 669.
266 H.R. Deb. (5.11.1987) 2093.
267 H.R. Deb. (1.4.1930) 724–5.
268 H.R. Deb. (26.5.1955) 1204.
269 *May*, 24th edn, p. 445.
270 H.R. Deb (19.6.2003) 17045–6.
271 VP 1968–69/413 (23.4.1969), 499 (13.8.1969); VP 1970–72/43–5 (17.3.1970).

would be unwise to entrust certain unnamed Members with classified information was required to be withdrawn,[272] and Speaker Aston stated that exception would be taken to certain charges, the more obvious of which were those of sedition, treason, corruption or deliberate dishonesty.[273] Speaker Snedden supported this practice when he required the withdrawal of the term 'a bunch of traitors'[274] and later extended it:

> The consequence is that I have ruled that even though such a remark may not be about any specified person the nature of the language [the Government telling lies] is unparliamentary and should not be used at all.[275]
>
> In the past there has been a ruling that it was not unparliamentary to make an accusation against a group as distinct from an individual. That is not a ruling which I will continue. I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from the accusation . . . I ask all honourable members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.[276]

This practice has been followed by succeeding Speakers. Remarks that merely offend political sensitivities are not normally required to be withdrawn. However, comments that a group of Members are, for example, traitors, racist or corrupt are treated more seriously.[277]

Reflections on the House and votes of the House

The standing orders provide that offensive words may not be used against the House of Representatives.[278] It has been considered unbecoming to permit offensive expressions against the character and conduct of the House to be used by a Member without rebuke, as such expressions may serve to degrade the legislature in the eyes of the people. Thus, the use of offensive words against the institution by one of its Members should not be overlooked by the Chair.

A Member must not reflect adversely on a vote of the House, except on a motion that it be rescinded.[279] Under this rule a proposed motion of privilege, in relation to the suspension of two Members from the House in one motion, was ruled out of order as the vote could not be reflected upon except for the purpose of moving a rescission motion.[280] A Member, speaking to the question that a bill be read a third time, has been ordered not to reflect on votes already taken during consideration of the bill,[281] and a Member has been ordered not to canvass decisions of the House of the same session.[282] This rule is not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.

272 H.R. Deb. (4.5.1967) 1793–7.
273 PP 153 (1970) 43–8.
274 H.R. Deb. (27.2.1980) 431.
275 H.R. Deb. (10.9.1980) 1076.
276 H.R. Deb. (12.3.1981) 709.
277 E.g. Member named for refusing to withdraw allegations of bribery applied collectively to members of a political party, H.R. Deb. (17.8.2005) 101–2. *See also* letter presented by the Speaker, VP 2004–07/1648 (7.12.2006).
278 S.O. 89; H.R. Deb. (21.8.1973) 23.
279 S.O. 74.
280 VP 1946–48/43 (29.11.1946).
281 H.R. Deb. (13.12.1934) 1217.
282 H.R. Deb. (24.2.1972) 235.

References to the Senate and Senators

A member of the Senate should be referred to as "Senator . . ." or by the title of his or her office.[283] Offensive words cannot be used against either the Senate or Senators.[284] It is important that the use of offensive words should be immediately reproved in order to avoid complaints and dissension between the two Houses. Leave has been granted to a Member to make a statement in reply to allegations made in the Senate,[285] and to make a personal explanation after having been ruled out of order in replying in debate to remarks made about him in the Senate.[286]

The former restriction on allusion in debate to proceedings of the Senate[287] was omitted from the revised standing orders in 2004. The Senate had not had an equivalent standing order for many years.[288] As the House Standing Orders Committee observed in 1970, it was probable that the principal reason for the rule was the understanding that the debates of the one House were not known to the other and could therefore not be noticed, but that the daily publication of debates had changed the situation.[289]

References to the Queen, the Governor-General and State Governors

A Member must not refer disrespectfully to the Queen, the Governor-General, or a State Governor, in debate or for the purpose of influencing the House in its deliberations.[290] According to *May* the reasons for the rule are:

> The irregular use of the Queen's name to influence a decision of the House is unconstitutional in principle and inconsistent with the independence of Parliament. Where the Crown has a distinct interest in a measure, there is an authorized mode of communicating Her Majesty's recommendation or consent, through one of her Ministers; but Her Majesty cannot be supposed to have a private opinion, apart from that of her responsible advisers; and any attempt to use her name in debate to influence the judgment of Parliament is immediately checked and censured. This rule extends also to other members of the royal family, but it is not strictly applied in cases where one of its members has made a public statement on a matter of current interest so long as comment is made in appropriate terms.[291]

Members have been prevented from introducing the name of the sovereign to influence debate,[292] canvassing what the sovereign may think of legislation introduced in the Parliament[293] and referring to the sovereign in a way intended to influence the reply to a question.[294] The rule does not exclude a statement of facts by a Minister concerning the sovereign,[295] or debate on the constitutional position of the Crown.

In 1976 Speaker Snedden prohibited in debate any reference casting a reflection upon the Governor-General, unless discussion was based upon a substantive motion drawn in proper terms. He made the following statement to the House based on an assessment of previous rulings:

> Some past rulings have been very narrow. It has, for instance, been ruled that the Governor-General must not be either praised or blamed in this chamber and, indeed, that the name of the Governor-

283 E.g. H.R. Deb. (9.3.2010) 2007.
284 S.O. 89.
285 VP 1961/184 (30.8/1961); H.R. Deb. (30.8.1961) 661–3. In this case further statements were made in the House, VP 1961/186 (31.8.1961), 196 (12.9.1961).
286 H.R. Deb. (19.3.1959) 885–7; *see also* VP 1978–80/848, 850 (31.5.1979), when a copy of a personal explanation was sent to the President by the Acting Speaker.
287 Former S.O. 72.
288 Former Senate S.O. 416. *Odgers*, 6th edn, p. 357.
289 *Report from the Standing Orders Committee, together with recommendations,* PP 114 (1970) 2.
290 S.O. 88.
291 *May*, 24th edn, p. 440.
292 H.R. Deb. (24.4.1918) 4120.
293 H.R. Deb. (20.6.1951) 142.
294 H.R. Deb. (24.11.1936) 2170.
295 E.g. VP 1934–37/805–6 (11.12.1936).

> General must not be brought into debate at all. I feel such a view is too restrictive. I think honourable members should have reasonable freedom in their remarks. I believe that the forms of the House will be maintained if the Chair permits words of praise or criticism provided such remarks are free of any words which reflect personally on His Excellency or which impute improper motives to him. For instance, to say that in the member's opinion the Governor-General was right or wrong and give reasons in a dispassionate way for so thinking would in my view be in order. To attribute motive to the Governor-General's actions would not be in order.[296]

Some previous rulings have been:

- it is acceptable for a Minister to be questioned regarding matters relating to the public duties for which the Governor-General is responsible, without being critical or reflecting on his conduct;[297]
- restrictions applying to statements disrespectful to or critical of the conduct of the Governor-General apply equally to the Governor-General designate;[298]
- reflections must not be cast on past occupants of the position or the office as such;[299]
- the Governor-General's name should not be introduced in debate in a manner implying threats;[300]
- statements critical of and reflecting on the Governor-General's role in the selection of a Ministry are out of order;[301] and
- it is considered as undesirable to introduce into debate the names of the Governor-General's household.[302]

Petitions have been presented praying for the House to call on the Governor-General to resign,[303] and remarks critical of a Governor-General made in respect of responsibilities he had held before assuming the office, and matters arising from such responsibilities, have been raised.[304] The Chair has withdrawn the call from a Member who had referred to the Governor-General disrespectfully.[305]

References to other governments and their representatives

Although there is no provision in the standing orders prohibiting opprobrious references to countries with which Australia is in a state of amity or to their leaders, governments or their representatives in Australia, the Chair has intervened to prevent such references being made, on the basis that the House was guided by UK House of Commons usage[306] on the matter.[307] However, from time to time, much latitude has been shown by the Chair and on the one occasion when the House has voted on the matter it rejected the proposed inclusion of this rule into the standing orders.[308]

In more recent years the Chair has declined to interfere with the terms of a notice of motion asking the House to censure an ambassador to Australia 'for his arrogant and

296 H.R. Deb. (19.2.1976) 131.
297 H.R. Deb. (25.2.1969) 5–6, 12–13.
298 H.R. Deb. (26.2.1969) 207. But the rule has been held not to apply to a State Governor-designate, H.R. Deb. (19.8.2003) 18828.
299 H.R. Deb. (1.4.1930) 705–6.
300 H.R. Deb. (10.6.1914) 1982.
301 H.R. Deb. (15.1.1918) 2971, 2992; H.R. Deb. (18.1.1918) 3218; H.R. Deb. (9.7.1919) 10517.
302 H.R. Deb. (14.8.1907) 1870.
303 E.g. VP 1976–77/577 (15.2.1977); *and see* 'Petitions' in Ch. on 'Documents'.
304 E.g. H.R. Deb. (14.5.2003) 14487–9 (adjournment debate); H.R. Deb. (13.5.2003) 13961–74 (questions without notice).
305 H.R. Deb. (22.11.2011) 13429–30.
306 *May*, 22nd edn, p. 385. The reference was not repeated in the 23rd edn (2004).
307 E.g. VP 1951–53/117 (10.10.1951), 327 (27.5.1952).
308 Standing Orders Committee recommendation, H of R 1 (1962–63) 32; rejected by House, VP 1962–63/455 (1.5.1963); H.R. Deb. (1.5.1963) 896. For later comment *see* H.R. Deb. (19.8.1976) 368.

contemptuous attitude towards Australia and . . . his provocative public statements'.[309] A notice of motion asking the House to condemn a diplomatic representative for 'lying to the Australian public' has also been allowed to appear on the Notice Paper.[310]

In 1986 the Procedure Committee recommended that restrictions relating to reflections in debate on governments or heads of governments, other than the Queen or her representatives in Australia, be discontinued.[311] In practice, the latitude referred to earlier has continued to be evident. Even though the Procedure Committee recommendation has not been acted upon formally, the attitude of successive Speakers indicates acceptance of its views.

The standing orders and practice of the House do not prevent a Member from reflecting on a State Government or Member of a State Parliament, no matter how much such a reference may be deprecated by the Chair.[312]

Reflections on members of the judiciary

Both standing orders and the practice of the House place certain constraints upon references in debate to members of the judiciary. Under the standing orders a Member may not use offensive words against a member of the judiciary.[313] This provision was not included in the standing orders until 1950 but prior to then the practice, based on that of the UK House of Commons, was that, unless discussion was based upon a substantive motion, reflections could not be cast in debate upon the conduct, including a charge of a personal character, of a member of the judiciary. This practice still continues. Decisions as to whether words are offensive or cast a reflection rest with the Chair.

Rulings of the Chair have been wide ranging on the matter, perhaps the most representative being one given in 1937 that 'From time immemorial, the practice has been not to allow criticism of the judiciary; the honourable member may discuss the judgments of the court, but not the judges'.[314] In defining members of the judiciary, the Chair has included the following:

- a Public Service Arbitrator;[315]
- an Australian judge who had been appointed to the international judiciary;[316]
- a Conciliation and Arbitration Commissioner;[317] and
- magistrates.

The Chair has also ruled that an electoral distribution commission is not a judicial body and that a judge acting as a commissioner is not acting in a judicial capacity.[318] When judges lead royal commissions or special commissions, they are exercising executive power, not judicial power, and therefore do not attract the protection of standing order 89.[319] The rule has not prevented criticism of the conduct of a person before becoming a judge.[320]

309 NP 148 (28.2.1980) 8700; H.R. Deb. (4.3.1980) 580.
310 NP 168 (30.4.1980) 10257.
311 Standing Committee on Procedure, *The standing orders and practices which govern the conduct of Question Time*, PP 354 (1986) 32.
312 H.R. Deb. (21.8.1980) 590–1; H.R. Deb. (30.6.1931) 3169; H.R. Deb. (25.9.1918) 6368.
313 S.O. 89.
314 H.R. Deb. (28–9.6.1937) 577; *see also* H.R. Deb. (18.3.1980) 836.
315 H.R. Deb. (7.12.1921) 13924.
316 H.R. Deb. (2.10.1957) 1005.
317 H.R. Deb. (4.6.1952) 1399.
318 H.R. Deb. (24.5.1965) 2076.
319 H.R. Deb. (3.2.2016) 216.
320 E.g. H.R. Deb. (12.4.2000) 15883.

Judges are expected, by convention, to refrain from politically partisan activities and to be careful not to take sides in matters of political controversy. If a judge breaks this convention, a Member may feel under no obligation to remain mute on the matter in the House.[321]

Sub judice convention

Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House imposes a restriction on itself in the case of matters awaiting or under adjudication in a court of law. This is known as the sub judice convention. The convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions. Having no standing order relating specifically to sub judice matters the House has been guided by its own practice. Regard has also been had to that of the UK House of Commons as declared by resolutions of that House in 1963, 1972 and 2001.[322]

The origin of the convention appears to have been the desire of Parliament to prevent comment and debate from exerting an influence on juries and from prejudicing the position of parties and witnesses in court proceedings.[323] It is by this self-imposed restriction that the House not only prevents its own deliberations from prejudicing the course of justice but prevents reports of its proceedings from being used to do so.

The basic features of the practice of the House of Representatives are as follows:

- The application of the sub judice convention is subject to the discretion of the Chair at all times. The Chair should always have regard to the basic rights and interests of Members in being able to raise and discuss matters of concern in the House. Regard needs to be had to the interests of persons who may be involved in court proceedings and to the separation of responsibilities between the Parliament and the judiciary.
- As a general rule, matters before the criminal courts should not be referred to from the time a person is charged until a sentence, if any, has been announced; and the restrictions should again apply if an appeal is lodged and remain until the appeal is decided.
- As a general rule, matters before civil courts should not be referred to from the time they are set down for trial or otherwise brought before the court and, similarly, the restriction should again be applied from the time an appeal is lodged until the appeal is decided.
- In making decisions as to whether the convention should be invoked in particular cases, the Chair should have regard to the likelihood of prejudice to proceedings being caused as a result of references in the House.[324]

The convention has also been applied, in some instances, in respect of royal commissions. The key feature is that decisions are made on a case by case basis, in light of the circumstances applying.[325] For further discussion of sub judice in relation to royal commissions and similar bodies *see* page 524.

321 H.R. Deb. (28.11.1995) 3964.
322 *See May*, 24th edn, pp. 441–3.
323 House of Commons Select Committee on Procedure, *4th report*, HC 298 (1971–72) vii–viii.
324 H.R. Deb. (27.6.1994) 1978–9 (statement by Speaker Martin).
325 H.R. Deb. (18.9.1995) 1049–51.

The sub judice convention can also be invoked in respect of committee inquiries, where sub judice considerations may influence a committee's approach to seeking particular evidence or persuade it to take evidence in private—*see* 'Sub judice convention' in the Chapter on 'Committee inquiries'.

Right to legislate and discuss matters

The right of the House to debate and legislate on matters without outside interference or hindrance is self-evident. Circumstances could be such, for example, that the Parliament decides to consider a change to the law to remedy a situation which is before a court or subject to court action.

Discretion of the Chair

The discretion exercised by the Chair must be considered against the background of the inherent right and duty of the House to debate matters considered to be in the public interest. Freedom of speech is regarded as a fundamental right without which Members would not be able to carry out their duties. Imposed on this freedom is the voluntary restraint of the sub judice convention, which recognises that the courts are the proper place to judge alleged breaches of the law. It is a restraint born out of respect by Parliament for the judicial arm of government, a democratic respect for the rule of law and the proper upholding of the law by fair trial proceedings. Speaker Snedden stated in 1977:

> The question of the *sub judice* rule is difficult. Essentially it remains in the discretion of the presiding officer. Last year I made a statement in which I expanded on the interpretation of the *sub judice* rule which I would adopt. I was determined that this national Parliament would not silence itself on issues which would be quite competent for people to speak about outside the Parliament. On the other hand, I was anxious that there should be no prejudice whatever to persons faced with criminal action. Prejudice can also occur in cases of civil action. But I was not prepared to allow the mere issue of a writ to stop discussion by the national Parliament of any issues. Therefore I adopted a practice that it would not be until a matter was set down for trial that I would regard the *sub judice* rule as having arisen and necessarily stifle speeches in this Parliament. There is a stricter application in the matter of criminal proceedings.[326]

The major area for the exercise of the Chair's discretion lies in the Chair's assessment of the likelihood of prejudice to proceedings.

The Select Committee on Procedure of the UK House of Commons put the following view as to what is implied by the word 'prejudice':

> In using the word "prejudice" Your Committee intend the word to cover possible effect on the members of the Court, the jury, the witnesses and the parties to any action. The minds of magistrates, assessors, members of a jury and of witnesses might be influenced by reading in the newspapers comment made in the House, prejudicial to the accused in a criminal case or to any of the parties involved in a civil action.[327]

It is significant that this view did not include judges but referred only to magistrates, as it could be less likely that a judge would be influenced by anything said in the House. In 1976 Speaker Snedden commented:

> . . . I am concerned to see that the parties to the court proceedings are not prejudiced in the hearing before the court. That is the whole essence of the *sub judice* rule; that we not permit anything to occur in this House which will be to the prejudice of litigants before a court. For that reason my attitude towards the *sub judice* rule is not to interpret the *sub judice* rule in such a way as to stifle discussion in the national Parliament on issues of national importance. I have so ruled on earlier occasions. That is only the opposite side of the coin to what is involved here. If I believed that in any way the discussion of this motion or the passage of the motion would prejudice the parties before the court, then I would rule the matter *sub judice* and refuse to allow the motion to go on; but there is a

326 H.R. Deb. (24.3.1977) 558.

327 House of Commons Select Committee on Procedure, *1st report,* HC 156 (1962–63) v.

> long line of authority from the courts which indicates that the courts and judges of the courts do not regard themselves as such delicate flowers that they are likely to be prejudiced in their decisions by a debate that goes on in this House. I am quite sure that is true, especially in the case of a court of appeal or, if the matter were to go beyond that, the High Court. I do not think those justices would regard themselves as having been influenced by the debate that may occur here.[328]

The Chair has permitted comments to be made pertaining to a matter subject to an appeal to the High Court, a decision perhaps reflecting the view that High Court judges would be unlikely to be influenced by references in the House.[329]

The Speaker has allowed a matter of public importance critical of the Government's handling of an extradition process to be discussed, despite objection from the Attorney-General on sub judice grounds, on the basis that Members refrain from any comment as to the guilt or innocence of the person named in the proposed matter.[330]

A matter before the courts has been brought before the House as an item of private Members' business, the Speaker having concluded that the sub judice rule should not be invoked so as to restrict debate.[331] It was noted that the matter was a civil one and that a jury was not involved.

Debate relating to the subject matter of a royal commission has been permitted on the grounds that the commissioner would not be in the least influenced by such remarks[332] (*and see* page 524).

Civil or criminal matter

A factor which the Chair must take into account in making a judgment on the application of the sub judice convention is whether the matter is of a criminal or a civil nature. The practice of the House provides for greater caution in the case of criminal matters. First, there is an earlier time for exercising restraint in debate in the House, namely, 'from the moment a charge is made' as against 'from the time the case is set down for trial or otherwise brought before the court' in the case of a civil matter. In the case of a civil matter it is a sensible provision that the rule should not apply 'from the time a writ is issued' as many months can intervene between the issue of a writ and the actual court proceedings. The House should not allow its willingness to curtail debate so as to avoid prejudice to be convoluted into a curtailment of debate by the issue of a 'stop writ', namely, a writ the purpose of which is not to bring the matter to trial but to limit discussion of the issue, a step sometimes taken in defamation and other cases. Secondly, there is the greater weight which should be given to criminal rather than civil proceedings. The use of juries in criminal cases and not in civil matters and the possibility of members of a jury being influenced by House debate is also relevant to the differing attitudes taken as between civil and criminal matters.

Chair's knowledge of the case

A significant practical difficulty which sometimes faces the Chair when application of the sub judice convention is suggested is a lack of knowledge of the particular court proceeding or at least details of its state of progress. If present in the Chamber, the Attorney-General can sometimes help, but often it is a matter of the Chair using his or

328 H.R. Deb. (4.6.1976) 3048; *see also* Sir Billy Snedden, 'Sub judice rule', *Report of 6th Conference of Commonwealth Speakers and Presiding Officers*, 1981, Ottawa.
329 H.R. Deb. (25.11.1986) 3618.
330 H.R. Deb. (19.11.1997) 10788–9.
331 H.R. Deb. (22.11.1999) 12277.
332 H.R. Deb. (22.9.1987) 501–2.

her judgment on the reliability of the information given; for example, the Chair has accepted a Minister's assurance that a matter was not before a court.[333]

Matters before royal commissions and other bodies

Although it is clear that royal commissions do not exercise judicial authority, and that persons involved in royal commissions are not on trial in a legal sense, the proceedings have a quasi-judicial character. The findings of a royal commission can have very great significance for individuals, and the view has been taken that in some circumstances the sub judice convention should be applied to royal commissions.

The principal distinctions that have been recognised have been that:

- Matters before royal commissions or other similar bodies which are concerned with the conduct of particular persons should not be referred to in proceedings if, in the opinion of the Chair, there is a likelihood of prejudice being caused as a result of the references in the House.
- Matters before royal commissions or similar bodies dealing with broader issues of national importance should be able to be referred to in proceedings unless, in the opinion of the Chair, there are circumstances which would justify the convention being invoked to restrict reference in the House.[334]

In 1954 Speaker Cameron took the view that he would be failing in his duty if he allowed any discussion of matters which had been deliberately handed to a royal commission for investigation.[335] The contemporary view is that a general prohibition of discussion of the proceedings of a royal commission is too broad and restricts the House unduly. It is necessary for the Chair to consider the nature of the inquiry. Where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons the House should be restrained in its references.[336] Where, however, the proceedings before a royal commission are intended to produce advice as to future policy or legislation they assume a national interest and importance, and restraint of comment in the House cannot be justified. Speaker Smith noted in relation to comment on a royal commission:

> . . . it would be a ridiculous restriction of debate if matters that have been raised in public and reported in the media could not be aired in the national parliament.[337]

However, in 1978 Speaker Snedden drew a Member's attention to the need for restraint in his remarks about the evidence before a royal commission. Debate was centred on a royal commission appointed by the Government to inquire into a sensitive matter relating to an electoral re-distribution in Queensland involving questions of fact and the propriety of actions of Cabinet Ministers and others.[338] The Speaker said:

> I interrupt the honourable gentleman to say that a Royal Commission is in course. The sub judice rules adopted by the Parliament and by myself are such that I do not believe that the national Parliament should be deprived of the opportunity of debating any major national matter. However, before the honourable gentleman proceeds further with what he proposes to say I indicate to him that in my view if he wishes to say that evidence ABC has been given he is free to do so. The Royal Commissioner would listen to the evidence and make his judgment on the evidence and not on what the honourable gentleman says the evidence was. But I regard it as going beyond the bounds of our sub judice rules if the honourable gentleman puts any construction on the matter for the simple

333 E.g. H.R. Deb. (19.9.1985) 1320.
334 H.R. Deb. (27.6.1994) 1979.
335 H.R. Deb. (12.8.1954) 222.
336 The same rule has been held to apply to judicial inquiries into the actions of specific persons, H.R. Deb. (5.3.1984) 511. *See also* H.R. Deb. (1.12.1988) 3649–50 where the question arose in connection with a State commission of inquiry.
337 H.R. Deb. (13.8.2015) 8322.
338 *See* Ch. on 'Elections and the electoral system'.

> reason that if the Royal Commissioner in fact concluded in a way which was consistent with the honourable gentleman's construction it may appear that the Commissioner was influenced, whereas in fact he would not have been. So I ask the honourable gentleman not to put constructions on the matter.[339]

The question as to whether the proceedings before a royal commission are sub judice is therefore treated with some flexibility to allow for variations in the subject matter, the varying degree of national interest and the degree to which proceedings might be or appear to be prejudiced.

The application of the convention became an issue in 1995 in connection with a royal commission appointed by the Government of Western Australia. In this case, although the terms of reference did not identify persons, the Royal Commissioner subsequently outlined issues which included references to the propriety of the actions of a Minister at the time she had been Premier of Western Australia. In allowing Members to continue to refer to the commission's proceedings, the Speaker noted that the terms of reference did not require the royal commission to inquire into whether there had been any breach of a law of the Commonwealth, that the issues had a highly political element, the publicity already given to the matter and the purpose of the convention. Nevertheless the Speaker rejected the view that the convention should not continue to be applied to royal commissions, and stated that each case should be judged on its merits.[340]

When other bodies have a judicial or quasi-judicial function in relation to specific persons the House needs to be conscious of the possibility of prejudicing, or appearing to prejudice, their case. When the judicial function is wider than this—for example, a matter for arbitration or determination by the Industrial Relations Commission—there would generally be no reason for restraint of comment in the House. Not to allow debate on such issues would be contrary to one of the most important functions of the House, and the view is held that anything said in the House would be unlikely to influence the commissioners, who make their determinations on the facts as placed before them.

The discretion of the Chair, and the need to recognise the competing considerations, is always at the core of these matters.

INTERRUPTIONS TO MEMBERS SPEAKING

A Member may only interrupt another Member to:

- call attention to a point of order;
- call attention to a matter of privilege suddenly arising;
- call attention to the lack of a quorum;
- call attention to the unwanted presence of visitors;
- move that the Member be no longer heard;
- move that the question be now put;
- move that the business of the day be called on; or
- make an intervention as provided in the standing orders.[341]

Also if the Speaker stands during a debate, any Member then speaking or seeking the call shall sit down and the House shall be silent, so the Speaker may be heard without interruption.[342] A Member has been directed to leave the Chamber for an hour for having

339 H.R. Deb. (30.5.1978) 2780.
340 H.R. Deb. (18.9.1995) 1049–52.
341 S.O. 66.
342 S.O. 61(a).

interjected a second time after having been reminded that the Speaker had risen.[343] Members may also be interrupted by the Chair on matters of order and at the expiration of time allotted to debate. The Chair may withdraw the call as an action in response to disorder.[344] It is not in order to interrupt another Member to move a motion, except as outlined above.[345]

Interventions

Historically, it was not the practice of the House for Members to 'give way' in debate to allow another Member to intervene.[346] However, following a Procedure Committee recommendation,[347] in September 2002 the House agreed to a trial of a new procedure which permitted Members to intervene in debate in the Main Committee (Federation Chamber) to ask brief questions of the Member speaking.[348] The standing order, later adopted permanently and in 2013 extended to the House, now provides as follows:

> **66A** During consideration of any order of the day a Member may rise and, if given the call, ask the Speaker whether the Member speaking is willing to give way. The Member speaking will either indicate his or her:
>
> (a) refusal and continue speaking, or
>
> (b) acceptance and allow the other Member to ask a short question or make a brief response immediately relevant to the Member's speech, for a period not exceeding 30 seconds—
>
> Provided that, if, in the opinion of the Speaker, it is an abuse of the orders or forms of the House, the intervention may be denied or curtailed.

The intervention must be immediately relevant to the speech being made. Interventions are not appropriate during Ministers' second reading speeches, because of their significance in terms of statutory interpretation, but could be appropriate during a Minister's summing up.[349] The Deputy Speaker has refused to allow interventions during the budget estimates debates,[350] which already provide question and answer opportunities. Similar considerations could be seen as applying to all consideration in detail proceedings, where multiple speaking opportunities allow Members to respond to each other's speeches.

Interjections

When a Member is speaking, no Member may converse aloud or make any noise or disturbance to interrupt the Member.[351] Should Members wish to refute statements made in debate they have the opportunity to do so when they themselves address the House on the question or, in certain circumstances, by informing the Chair that they have been misrepresented (*see* page 497).

In order to facilitate debate the Chair may regard it as wise not to take note of interjections.[352] Deputy Speaker Chanter commented in 1920:

> I call attention to a rule which is one of the most stringent that we have for the guidance of business [now S.O. 66]. I may say that an ordinary interjection here and there is not usually taken notice of by the Chair, but a constant stream of interjections is decidedly disorderly.[353]

343 H.R. Deb. (16.3.2000) 14910 (the Member was then named on further interjecting).
344 E.g. H.R. Deb. (22.11.2011) 13429–30.
345 VP 1974–75/338 (21.11.1974).
346 H.R. Deb. (7.10.1908) 861.
347 Standing Committee on Procedure, *The Second Chamber: enhancing the Main Committee,* PP 158 (2000) 36–8.
348 Sessional order 84A, VP 2002–04/350–1 (22.8.2002). Statement by Deputy Speaker, H.R. Deb. (17.9.2002) 6471. First interventions, H.R. Deb. (17.9.2002) 6475, 6478, 6481.
349 H.R. Deb. (14.5.2003) 14495–6.
350 The detail stage of the main appropriation bill, H.R. Deb. (17.6.2008) 5121.
351 S.O. 65(b).
352 H.R. Deb. (14.8.1903) 3664; H.R. Deb. (16.6.1915) 4014; H.R. Deb. (18.6.1915) 4229–30.
353 H.R. Deb. (14.7.1920) 2707.

The Chair, although recognising all interjections as disorderly, has also been of the opinion that it should not interfere as long as they were short and did not interrupt the thread of the speech being delivered.[354] The fact that an interjection has been directly invited by the remarks of the Member speaking in no way justifies the interruption of a speech,[355] and the Chair has suggested that Members refrain from adopting an interrogatory method of speaking which provokes interjections.[356] It is not uncommon for the Chair, when ordering interjectors to desist, to urge the Member speaking to address his or her remarks through the Chair and not to invite or respond to interjections.[357] Interjections which are not replied to by the Member with the call or which do not lead to any action or warning by the Chair are not recorded in Hansard.

It may be accepted that, as the House is a place of thrust and parry, the Chair need not necessarily intervene in the ordinary course of debate when an interjection is made. Intervention would be necessary if interjections were, in the opinion of the Chair, too frequent or such as to interrupt the flow of a Member's speech or were obviously upsetting the Member who had the call. The Chair has a duty to rebuke the person who interjects rather than chastise the Member speaking for replying to an interjection.

CURTAILMENT OF SPEECHES AND DEBATE

Curtailment of speeches

A speech is terminated when a Member resumes his or her seat at the conclusion of his or her remarks, when the time allowed for a speech under the standing orders expires, or when the House agrees to the question 'That the Member be no longer heard'. Speeches may also be terminated when the time allotted to a particular debate expires, when the House agrees to the question 'That the question be now put', or when the House agrees to a motion 'That the business of the day be called on' during discussion of a matter of public importance.

Time limits for speeches

Time limits for speeches in the House were first adopted in 1912.[358] Following a recommendation from the Standing Orders Committee that the House adopt a specific standing order limiting the time of speeches,[359] the House agreed to a motion that 'in order to secure the despatch of business and the good government of the Commonwealth' the standing orders be immediately amended in the direction of placing a time limit on the speeches delivered in the House and in committee.[360] The standing order, as amended, is now standing order 1 and, unless the House otherwise orders, time limits now apply to all speeches with the exceptions of the main appropriation bill for the year, where there is no time limit for the mover of the second reading and for the Leader of the Opposition or one Member deputed by the Leader of the Opposition when speaking to the second reading.

354 H.R. Deb. (12.9.1901) 4810.

355 H.R. Deb. (28.9.1905) 2986; H.R. Deb. (1.5.1996) 107.

356 H.R. Deb. (1.5.1914) 539.

357 E.g. H.R. Deb. (5.5.1983) 250; H.R. Deb. (10.11.1983) 2630–1; H.R. Deb. (1.5.1996) 107; H.R. Deb. (8.12.1998) 1589.

358 The provisional standing orders adopted on 6 June 1901 only contained time limits for speeches on the motion that later developed into the matter of public importance discussion. The limitations were 30 minutes for the mover and 15 minutes for any other Member speaking.

359 H of R 1 (1912).

360 VP 1912/38 (16.7.1912), 42–5 (17.7.1912). The motion was originally moved by a private Member from the Opposition and it was agreed to by the House with amendments.

The House may agree to vary, for a specific purpose, time limits provided by standing order 1.[361] Time limits have also been varied for debate on a motion to suspend standing orders and other debates.[362]

In relation to committee and private Members' business on Mondays the Selection Committee may allot lesser speaking times than provided by the standing order (*see* Chapter on 'Non-government business'). Time limits do not apply when statements are made by leave of the House.[363] Time limits do not apply during debate on motions of condolence or thanks[364] and, by convention, on valedictory speeches made at the end of a period of sittings and on some other special occasions.[365] The length of other speeches made by indulgence of the Speaker is at the Speaker's discretion; however, a limit of 10 minutes applies if further statements are referred to the Federation Chamber.

The timing clocks are set according to the times prescribed in the standing orders or other orders of the House, even in cases, not uncommon, where informal agreements have been reached between the parties for shorter speaking times for a particular item.[366]

The period of time allotted for a Member's speech is calculated from the moment the Member is given the call[367] (unless the call is disputed by a motion under standing order 65(c)[368]) and includes time taken up by interruptions such as divisions[369] (but not suspensions of Federation Chamber proceedings caused by divisions in the House), quorum calls,[370] points of order[371] (except during Question Time[372]), motions of dissent from rulings of the Chair,[373] and proceedings on the naming and suspension of a Member.[374] The time allotted is not affected by a suspension of the sitting and the clocks are stopped for the duration of the suspension.

Extension of time

It is not unusual before or during important debates for the standing orders to be suspended to grant extended or unlimited time to Ministers and leading Members of the Opposition.[375] Sometimes in such circumstances a simple motion for extension of time may be more suitable.

After the maximum period allowed for a Member's speech has expired the standing order provides that, on motion determined without debate, the Member may be allowed to continue a speech for one period not exceeding 10 minutes, provided that the extension shall not exceed half of the original period allotted.[376] The motion that a Member's time be extended may be moved without notice by the Member concerned or

361 As examples of variations in time limits for speeches on bills *see* Appropriation Bill (No. 1) 1978–79, VP 1978–80/370 (24.8.1978); and a package of bills considered together in 1998 to provide for new taxation arrangements, VP 1998–2001/207 (9.12.1998).

362 E.g. VP 1998–2001/1347 (4.4.2000); VP 2002–04/1549 (30.3.2004).

363 H.R. Deb. (28.11.1947) 2918; S.O. 1.

364 S.O. 1.

365 During the 44th Parliament (2013–2016) S.O. 1 imposed a limit of 20 minutes on valedictories, but this was not enforced.

366 The Chair has no official knowledge of and cannot enforce such arrangements. However, the Speaker has on occasion directed the Clerks to set the clocks for a shorter time than provided by S.O. 1, assuming this met the convenience of the House, e.g. H.R. Deb. (17.9.2001) 30745–6.

367 H.R. Deb. (14.11.1979) 2970.

368 H.R. Deb. (9.9.1996) 3735.

369 H.R. Deb. (17.11.1920) 6587. This normally includes divisions on motions for the closure of the Member speaking, e.g. H.R. Deb. (18.6.2003) 16799–16802. However, the Speaker has ruled that the clock should be paused if the motion is moved during a question or answer, H.R. Deb. (17.8.2017) 8900.

370 VP 1912/226 (13.11.1912).

371 H.R. Deb. (10.5.1945) 1571.

372 The clock is paused during a point of order made during a question or answer, H.R. Deb. (29.9.2010) 131.

373 H.R. Deb. (1.10.1953) 885. In this case the Member who received the call did not get to speak.

374 H.R. Deb. (8.7.1931) 3561.

375 E.g. VP 1978–80/1602 (28.8.1980), 1690 (18.9.1980); VP 1993–96/2686 (30.11.1995).

376 S.O. 1.

by another Member, and must be put immediately and resolved without amendment.[377] An extension of time for a specified period, less than the time provided by the standing order, has been granted on a motion moved by leave.[378] It has been held that the granting of a second extension requires the suspension of the standing order,[379] but Members have been granted leave to continue a speech in this circumstance.[380] The Federation Chamber cannot suspend standing orders but may grant leave for the length of a speech to be extended.[381] A Member cannot be granted an extension on the question for the adjournment of the House.[382] If there is a division on the question that a Member's time be extended, the extension of time is calculated from the time the Member is called by the Chair.[383] Where a Member's time expires during the counting of a quorum, after a quorum has been formed a motion may be moved to grant the Member an extension of time.[384] Where a Member's time has expired during more protracted proceedings, standing orders have been suspended, by leave, to grant additional time.[385]

Despite Selection Committee determinations in relation to private Members' business, Members have spoken again, by leave,[386] or spoken by leave after the time allocated for the debate had expired.[387] Similarly, despite Selection Committee determinations on times for the consideration of committee and delegation business, extensions of time have been granted to Members speaking on these items[388] and Members have also been given leave to speak again.

Closure of Member

With the exceptions stated below, any Member may move at any time that a Member who is speaking 'be no longer heard' and the question must be put immediately and resolved without amendment or debate.[389] The standing order was introduced at a time when there were no time limits on speeches and, in moving for its adoption, Prime Minister Deakin said:

> The . . . new standing order need rarely, if ever, be used for party purposes, and never, I trust, will its application be dictated by partisan motives.[390]

The motion cannot be moved when a Member is moving the terms of a motion,[391] or when the House has agreed to an extension of time for a speech. If negatived, the same motion cannot be moved again if the Chair is of the opinion that the further motion is an abuse of the orders or forms of the House, or is moved for the purpose of obstructing business.[392] A successive closure has also been ruled out of order under the same question rule, the Speaker ruling that by negating the motion when first moved the House had resolved that the Member had the right to be heard.[393]

377 S.O. 78(a).
378 VP 1976–77/26 (19.2.1976).
379 VP 1970–72/242 (19.8.1970).
380 VP 1970–72/634 (17.8.1971).
381 E.g. H.R. Deb. (21.3.2017) 2659.
382 S.O. 1.
383 H.R. Deb. (9.11.1933) 4356.
384 VP 1985–87/1726 (3.6.1987), H.R. Deb. (3.6.1987) 3909.
385 VP 1993–96/2347 (30.8.1995).
386 E.g. VP 1993–96/1258 (29.8.1994).
387 E.g. VP 1993–96/1617 (5.12.1994).
388 E.g. VP 1993–96/1343 (10.10.1994).
389 S.O. 80. The standing order was first adopted in 1905, VP 1905/181–3 (24.11.1905).
390 H.R. Deb. (24.11.1905) 5762.
391 This provision was included in 1963 following the recommendation of the Standing Orders Committee, H of R 1 (1962–63) 25; VP 1962–63/201 (28.8.1962), 455 (1.5.1963).
392 S.O. 78; e.g. H.R. Deb. (19.10.1977) 2171, VP 2008–10/192 (19.3.2008).
393 H.R. Deb. (26.8.2002) 5654–6.

The motion is not necessarily accepted by the Chair when a Member is speaking with the Chair's indulgence; or when a Member is taking or speaking to a point of order or making a personal explanation, as these matters are within the control of the Chair. In respect of a point of order the matter awaits the Chair's adjudication, and in respect of a personal explanation the Member is speaking with the permission of the Chair under standing order 68. Thus, in both cases the discretion of the Chair may be exercised.[394] The Speaker has declined to accept the motion while a Member who had moved a motion of dissent from the Chair's ruling was speaking, as he desired to hear the basis of the motion of dissent.[395] The Chair is not bound to put the question on the motion if the Member speaking resumes his or her seat having completed the speech, the question having been effectively resolved by that action.[396] A closure of Member motion may be withdrawn, by leave.[397] Where offensive words have been incorporated in such a motion but then accepted by the Chair as having been withdrawn the motion has been regarded as in order.[398] The motion has been moved in respect of a Member making a statement by leave,[399] and in respect of Ministers answering questions.[400]

When the motion has been agreed to, the closured Member has again spoken, by leave.[401] The standing order has been interpreted as applying to the speech currently in progress—a closured Member has not been prevented from speaking again on the same question where the standing orders allow this (for example, during the detail stage of a bill).[402] Notice has been given of a motion to suspend the operation of the standing order for a period except when the motion was moved by a Minister.[403]

Adjournment and curtailment of debate

Motion for adjournment of debate

Only a Member who has not spoken to the question or who has the right of reply may move the adjournment of a debate. The question must be put immediately and resolved without amendment or debate.[404] The motion cannot be moved while another Member is speaking. It can only be moved by a Member who is called by the Speaker in the course of the debate. There is no restriction on the number of times an individual Member may move the motion in the same debate. A motion for the adjournment of the debate on the question 'That the House do now adjourn' is not in order.

Unless a Member requests that separate questions be put, the time for the resumption of the debate may be included in the adjournment question,[405] and when a Member moves the motion 'That the debate be now adjourned' the Chair puts the question in the form 'That the debate be now adjourned and the resumption of the debate be made an order of the day for . . .'. The time fixed for the resumption of debate is 'the next day of sitting', 'a later hour this day', or a specific day. It is only when there is opposition to the adjournment of the debate or to the time for its resumption that the two questions are put

394 Private ruling by Speaker Snedden (17.2.1978).
395 VP 1978–80/572 (21.11.1978); *but see* VP 2002–04/969–70 (18.6.2003).
396 VP 1929–31/484 (5.3.1931), 492 (17.3.1931); VP 1970–72/1060–1 (16.5.1972).
397 VP 1998–2001/1311 (15.3.2000).
398 H.R. Deb. (25.5.2006) 49–58.
399 VP 2002–04/1102 (20.8.2003).
400 *See* 'Length of answers' in Ch. on 'Questions'.
401 H.R. Deb. (4.12.1947) 3213–14, 3264.
402 H.R. Deb. (29.10.1996) 6013–4.
403 E.g. NP (7.12.2000) 8998; NP (19.6.2003) 3846; NP (11.8.2009) 4.
404 S.O. 79(a). A Member who moved a motion to take note of a paper and moved that the debate be adjourned was not regarded as having closed the debate, H.R. Deb. (11.8.2005) 114–6.
405 S.O. 79(a).

separately. When the question to fix a time for the resumption of the debate is put separately, the question is open to amendment and debate. Both debate and any amendment are restricted, by the rule of relevancy, to the question of the time or date when the debate will be resumed. For example, an amendment must be in the form to omit 'the next sitting' in order to substitute a specific day.[406]

If the motion for the adjournment of debate is agreed to, the mover is entitled to speak first when the debate is resumed[407] (*see* page 502). If the motion is negatived, the mover may speak at a later time during the debate[408]—this provision has been interpreted as allowing the Member to speak immediately after a division on the motion for the adjournment.[409] If the motion is negatived, no similar proposal may be received by the Chair if the Chair is of the opinion that it is an abuse of the orders or forms of the House or is moved for the purpose of obstructing business.[410]

If the Selection Committee has determined that consideration of an item of private Members' business should continue on a future day, at the time set for interruption of the item of business or if debate concludes earlier, the Speaker interrupts proceedings and the matter is listed on the Notice Paper for the next sitting.[411] The Chair will also do this even if the time available has not expired but where there are no other Members wishing to speak.[412]

Standing order 39 allows a Member who has presented a committee or delegation report (after any statements allowed have been made), to move a specific motion in relation to the report. Debate on the question must then be adjourned until a future day.[413]

In the Federation Chamber, if no Member is able to move adjournment of debate, the Chair can announce the adjournment when there is no further debate on a matter, or at the time set for the adjournment of the Federation Chamber.[414] In the House, if there is no Member available qualified to move the motion—that is, when all Members present have already spoken in the debate—the Chair may also, without the motion being moved, simply declare that the debate has been adjourned and that the resumption of the debate will be made an order of the day for the next sitting.[415]

Leave to continue remarks

If a Member speaking to a question asks leave of the House to continue his or her remarks when the debate is resumed, this request is taken to be an indication that the Member wishes the debate to be adjourned.[416] If leave is granted, the Chair proposes the question that the debate be adjourned and the resumption of the debate be made an order of the day for an indicated time.[417] If leave is refused, the Member may continue speaking until the expiration of the time allowed.[418] However, refusal is unlikely, as the

406 VP 1978–80/1473 (13.5.1980).
407 S.O. 79(b).
408 S.O. 79(c).
409 H.R. Deb. (4.9.2000) 20047.
410 S.O. 78(e). When an opposition Member was prevented from moving the adjournment of the debate a second time, the Chair immediately accepted a motion moved by a Minister which the House agreed to, H.R. Deb. (30.6.1949) 1892–3.
411 S.O. 41(a). E.g. VP 1993–96/2080 (29.5.1995); VP 2008–10/1119 (15.6.2009).
412 VP 1993–96/1972 (27.3.1995).
413 VP 1993–96/2107 (5.6.1995); VP 2008–10/1118 (15.6.2009).
414 S.O. 194.
415 This practice is not recognised by the standing orders, but is a pragmatic development (supported by a Speaker's private ruling) which is recorded as occurring by leave. It is likely to occur towards the end of a lengthy debate, such as the budget debate.
416 As she or he has spoken to the question, the Member is prevented by S.O. 79(a) from moving that the debate be adjourned.
417 VP 1978–80/1663 (16.9.1980); VP 1998–2001/1418 (13.4.2000); VP 2010–13/200 (17.11.2010).
418 VP 1976–77/173 (6.5.1976).

Member's request for leave is generally made to suit the convenience of the House in concluding proceedings on an item of business at a prearranged time.

When a Member's speech is interrupted by the operation of a standing order providing for the interruption of business at a fixed time,[419] leave of the House for the Member to continue the speech when the debate is resumed is implied and automatic. This is so whether or not an announcement noting the leave to continue is made by the Chair.

Leave is necessary because the Member interrupted would otherwise be speaking twice to the same question, in contravention of standing order 69. A Member granted leave to continue his or her remarks is entitled to the first call when the debate is resumed, and may then speak for the remainder of his or her allotted time. If the Member does not speak first when the debate is resumed the entitlement to continue is lost.[420]

Closure of question

After a question has been proposed from the Chair (that is, only after the motion concerned has been moved and, if necessary, seconded) a Member may move 'That the question be now put'. This motion must be moved without comment, be put immediately and resolved without amendment or debate.[421] No notice is required of the motion and it may be moved irrespective of whether or not another Member is addressing the Chair. When the closure is moved, it applies only to the immediate question before the House.

The requirement for the closure motion to be put immediately and resolved without amendment or debate means that, until the question on this motion has been decided, there is no opportunity for a point of order to be raised or a dissent motion to be moved in respect of the putting of the motion. The closure thus takes precedence over other opportunities or rights allowed by the standing orders.[422]

The provision for the closure of a question, commonly known as 'the gag', was incorporated in the standing orders in 1905[423] but was not used until 1909.[424] Since then it has been utilised more frequently.[425] The closure has been moved as many as 41 times in one sitting[426] and 29 times on one bill.[427]

If a motion for the closure is negatived, the Chair shall not receive the same proposal again if of the opinion that it is an abuse of the orders or forms of the House or moved for the purpose of obstructing business.[428] The closure of a question cannot be moved in respect of any proceedings for which time has been allotted under the guillotine procedure.[429] This restriction has been held not to apply to a motion, moved after the second reading of a bill, to refer the bill to a select committee when that proposal had not

419 Or equivalent situation, for example a speech in the Main Committee (Federation Chamber) interrupted by a division in the House causing the premature adjournment of the Committee, VP 2008–10/1241 (17.8.2009), H.R. Deb. (17.8.2009) 8110. In special circumstances a Member has been granted leave to recommence an interrupted speech from the beginning, H.R. Deb. (5.12.2017) 12539.

420 E.g. VP 1998–2001/1219 (17.2.2000), 1236 (7.3.2000). If the Member wishes to speak later leave is required, e.g. VP 2004–07/677 (12.10.2005)—*see* 'Leave to speak again' at page 496.

421 S.O. 81.

422 H.R. Deb. (15.3.2000) 14781–9; H.R. Deb. (3.4.2000) 15093.

423 The debate lasted over a week and amendments proposing to give the Chair a discretion not to accept the motion were defeated, VP 1905/167–70 (16.11.1905), 171–2 (21.11.1905), 173–4 (22.11.1905), 175–8 (23.11.1905).

424 VP 1909/105 (7.9.1909).

425 *See* Appendix 20.

426 VP 1934–37/211–38 (9.4.1935).

427 VP 1923–24/25–48 (27.6.1923).

428 S.O. 78(g); e.g. H.R. Deb. (13.5.1980) 2657.

429 S.O. 85(c).

been included in the allotment of time for the various stages of the bill.[430] The closure cannot be moved on a motion in relation to which the House has adopted the Selection Committee's determination that debate may continue on a future day,[431] as such matters cannot be brought to a vote without the suspension of standing orders.[432] The Chair has declined to accept the closure on a motion of dissent from the Chair's ruling.[433]

If a division on the closure motion is in progress or just completed when the time for the automatic adjournment is reached, and the motion is agreed to, a decision is then taken on the main question(s) before the House before the automatic adjournment procedure is invoked.[434]

When the closure is agreed to, the question is then put on the immediate question by the Chair. If the immediate question is an amendment to the original question, debate may then continue on the original question, or the original question as amended.[435] From time to time interruptions have occurred between the agreement to the closure and the putting of the question to which the closure related.[436]

If the closure is moved and agreed to while a Member is moving or seconding (where necessary) an amendment—that is, before the question on the amendment is proposed from the Chair—the amendment is superseded, and the question on the original question is put immediately.[437] However, the Chair has declined to accept the closure at the point when a Member was formally seconding an amendment, and then proceeded to propose the question on the amendment.[438] Similarly, a motion to suspend standing orders moved during debate of another item of business is superseded by a closure moved before the question on the suspension motion is proposed from the Chair, as the closure applies to the question currently before the House.[439]

Only a Minister may move the closure of the question 'That the House do now adjourn'.[440] Any Member may move the closure of any other question in possession of the House, including a Member who has already spoken to the question.[441] It may be moved by a Member during, or at the conclusion of, his or her speech, but no reasons may be given for so moving,[442] nor may a Member take advantage of the rules for personal explanations to give reasons.[443] If the seconder of a motion has reserved the right to speak, the closure overrides this right.[444]

Notice has been given of a motion to suspend the operation of the standing order for a period except when the motion was moved by a Minister.[445]

430 VP 1934–37/483 (4.12.1935).
431 H.R. Deb. (9.3.1998) 780–81.
432 VP 1996–98/495 (16.9.1996).
433 H.R. Deb. (16.11.1978) 2893.
434 E.g. H.R. Deb. (4.4.1973) 1102–3; H.R. Deb. (13.10.2005) 96.
435 E.g. VP 1956–57/42 (8.3.1956).
436 A Member has been named and suspended, VP 1954–55/123–4 (27.10.1954); a request has been made for leave to make a statement, VP 1932–34/114 (11.3.1932); the sitting has been suspended for a meal break and on resumption the Speaker has made a statement, VP 1951–53/609 (13.3.1953).
437 E.g. VP 1920–21/260 (19.8.1920); VP 1956–57/74 (12.4.1956); VP 1998–2001/1300 (15.3.2000); H.R. Deb. (21.8.2003) 19205–7; H.R. Deb. (13.10.2005) 93–4.
438 H.R. Deb. (15.5.1980) 2814.
439 H.R. Deb. (12.8.2004) 32954.
440 S.O. 31(c) (since September 2016).
441 VP 1943–44/57 (17.2.1944); H.R. Deb. (17.2.1944) 279, 284; H.R. Deb. (31.3.2004) 27730.
442 H.R. Deb. (20.3.1947) 926–8; H.R. Deb. (27.3.1947) 1229.
443 H.R. Deb. (21.2.1947) 123.
444 H.R. Deb. (26.7.1946) 3203.
445 NP (7.12.2000) 8998; NP (19.6.2003) 3846.

Guillotine

From time to time the Government may limit debate on a bill, motion, or a proposed resolution for customs or excise tariff by use of the guillotine.[446] This procedure is described in the Chapter on 'Legislation'.

Other provisions for the interruption and conclusion of debates

The standing orders provide for the period of certain debates to be limited in time or to be concluded by procedures not yet dealt with in this chapter. Time limits[447] apply to debates on:

- the question 'That the House do now adjourn' (S.O. 31);
- the question 'That grievances be noted' (S.O. 192B);
- a motion for the suspension of standing orders when moved without notice under standing order 47 (S.O. 1);
- a motion for the suspension of standing or other orders on notice relating to the programming of government business under standing order 47 (S.O. 1);
- a motion for allotment of time under the guillotine procedures (S.O. 84);
- proceedings on committee and delegation business and private Members' business on Mondays (S.O.s 34, 192); and
- matters of public importance (S.O. 46).

A debate (or discussion) may also be concluded:

- at the expiration of the time allotted under the guillotine procedure (S.O. 85(b));
- on withdrawal of a motion relating to a matter of special interest (S.O. 50);
- at the end of the time determined by the Selection Committee (S.O. 222(c));
- by the closure motion 'That the question be now put' (S.O. 81);
- by the motion 'That the business of the day be called on' in respect of a matter of public importance (S.O. 46(e)); or
- by the motion 'That the ballot be taken now' during the election of Speaker or Deputy Speaker (S.O. 11(h)).

A debate may be interrupted:

- by the automatic adjournment (S.O. 31);
- at the time fixed for Members' 90 second statements (S.O. 43)
- at the time fixed for the beginning of Question Time (S.O. 97(a));
- when the time fixed for the conclusion of certain proceedings under the guillotine procedure has been reached (S.O. 85(a)); or
- at the end of the time determined by the Selection Committee (S.O. 222(c));

In all these cases the standing orders make provision as to how the question before the House is to be disposed of (where necessary).

A debate in the Federation Chamber may be interrupted by:

- the grievance debate;
- the adjournment of the House (S.O. 190(c));
- the motion for the adjournment of the sitting of the Federation Chamber (S.O. 190(e)); or
- the motion that further proceedings be conducted in the House (S.O. 197).

446 S.O.s 82–85.
447 Time limits are consolidated in S.O. 1.

The Federation Chamber may resume proceedings at the point at which they were interrupted following any suspension or adjournment (S.O. 196).

POWERS OF CHAIR TO ENFORCE ORDER

The Speaker or the occupier of the Chair at the time is responsible for the maintenance of order in the House.[448] This responsibility is derived specifically from standing order 60 but also from other standing orders and the practice and traditions of the House.

Sanctions against disorderly conduct

Under standing order 91, a Member's conduct is considered disorderly if the Member has:

- persistently and wilfully obstructed the House;
- used objectionable words, which he or she has refused to withdraw;
- persistently and wilfully refused to conform to a standing order;
- wilfully disobeyed an order of the House;
- persistently and wilfully disregarded the authority of the Speaker; or
- been considered by the Speaker to have behaved in a disorderly manner.

While specific offences are listed, it is not uncommon for a Member to be disciplined for an offence which is not specifically stated in the terms of the standing order but which is considered to be encompassed within its purview. For example, in regard to conduct towards the Chair, Members have been named for imputing motives to, disobeying, defying, disregarding the authority of, reflecting upon, insolence to, and using expressions insulting or offensive to, the Chair. Since 1905 an unnecessary quorum call has been dealt with as a wilful obstruction of the House.[449]

When the Speaker's attention is drawn to the conduct of a Member, the Speaker determines whether or not it is offensive or disorderly.[450] The standing orders give the Speaker the power to intervene[451] and take action against disorderly conduct by a Member, and to impose a range of sanctions, including directing the Member to leave the Chamber for one hour, or naming the Member.[452]

Before taking such action the Chair will generally first call a Member to order and sometimes warn the Member, but there is no obligation on the Chair to do so.[453] Sometimes the Chair will issue a 'general warning', not aimed at any Member specifically.[454] Members ignoring a warning may invite action by the Chair.

Direction to leave the Chamber

Pursuant to standing order 94(a), if the Speaker considers a Member's conduct to be disorderly he or she may direct the Member to leave the Chamber[455] for one hour. This

448 *See* Ch. on 'The Federation Chamber' re order in the Federation Chamber.

449 H.R. Deb. (24.8.1905) 1478. A Member who calls attention to the lack of a quorum when a quorum is present is immediately named by the Chair and a motion moved for the Member's suspension—S.O. 55(e), e.g. VP 1978–80/1277–8 (26.2.1980); VP 1993–96/194 (31.8.1993); H.R. Deb. (9.3.2004) 26264–5.

450 S.O. 92(b).

451 S.O. 92(a).

452 S.O. 94.

453 *See* H.R. Deb. (5.6.1975) 3404, where a Member was named for disorderly conduct without being called to order or warned; *and see* statement by Speaker Hawker H.R. Deb. (9.3.2005) 67; *and see* H.R. Deb. (14.2.2008) 387—statement by Speaker Jenkins.

454 Generally understood as applying to all Members for the remainder of the sitting.

455 Former S.O. 304A used the term 'order the Member to withdraw from the House'.

action is taken as an alternative to naming the Member—the decision as to whether a naming or a direction to leave is more appropriate is a matter for the Speaker's discretion. The direction to leave is not open to debate or dissent. When so directed, a Member failing to leave the Chamber immediately[456] or continuing to behave in a disorderly manner may be named.[457] In such cases the naming supersedes the direction to leave and the Member concerned is thus able to remain in the Chamber (and vote) until the suspension motion has been agreed to.

To avoid interrupting proceedings—for example, on occasions such as the Treasurer's Budget speech or Opposition Leader's speech in reply to the Budget—the Speaker may direct a Member to leave the Chamber by written note, with any further action initiated at the commencement of the next sitting.[458]

Speakers have not proceeded with directions to leave the Chamber after Members concerned have apologised for their actions.[459] Several Ministers have been directed to leave the Chamber under this procedure, including the Leader of the House at the same time as the Manager of Opposition Business.[460] Eighteen Members have been directed to leave on a single day.[461] The mover and seconder of a motion have been ordered to leave the House during the debate that followed the moving of the motion.[462]

This procedure was introduced in 1994 following a recommendation by the Procedure Committee. The committee, noting the seriousness of a suspension and that the process was time-consuming and itself disruptive, considered that order in the House would be better maintained if the Speaker were to have available a disciplinary procedure of lesser gravity, but of greater speed of operation. The committee saw its proposed mechanism as a means of removing a source of disorder rather than as a punishment, enabling a situation to be defused quickly before it deteriorated, and without disrupting proceedings to any great extent.[463] Since the procedure has operated the number of Members named and suspended has declined considerably.

A Member directed to leave the Chamber for an hour is also excluded during that period from the Chamber galleries and the room in which the Federation Chamber is meeting.[464]

Two Senators who disrupted proceedings at a meeting of the House and Senate in the House Chamber were ordered to withdraw from the House for one hour. On their refusing to do so, they were named 'for continuing to defy the Chair' and suspended for 24 hours, preventing them from attending a further such meeting the following day.[465]

456 E.g. VP 1996–98/758–9 (31.10.1996), 2461–2 (18.11.1997).

457 E.g. VP 1998–2001/397–8 (11.3.1999), 2052 (7.2.2001), 2126 (1.3.2001); VP 2002–04/1527–8 (24.3.2004); VP 2008–10/1142 (18.6.2009).

458 H.R. Deb. (10.5.2011) 3432.

459 E.g. VP 1998–2001/663 (24.6.1999); VP 2004–07/941 (14.2.2006); H.R. Deb. (5.6.2008) 4717.

460 VP 2008–10/509 (4.9.2008); H.R. Deb. (4.9.2008) 7244.

461 VP 2013–16/1014–6 (27.11.2014).

462 VP 2004–07/1899 (28.5.2007).

463 Standing Committee on Procedure, *About time: bills, questions and working hours*, PP 194 (1993) 28.

464 S.O. 94(e).

465 VP 2002–04/1276 (23.10.2003); J 2002–04/2597 (23.10.2003). Although the motion agreed to took the usual form of suspending the offenders 'from the service of the House' they were in effect also barred from a meeting of the Senate. *Odgers* reports that the Speaker 'purported to eject two Senators from one meeting and exclude them from the other' (14th edn, p. 184). For other references *see* 'Addresses to both Houses by foreign heads of state' in Ch on 'Order of business and the sitting day'.

Naming of Members

The naming of a Member is, in effect, an appeal to the House to support the Chair in maintaining order. Its first recorded use in the UK House of Commons was in 1641.[466] The first recorded naming in the House of Representatives was on 21 November 1901 (Mr Conroy). Mr Conroy apologised to the Chair and the naming was withdrawn.[467] The first recorded suspension was in respect of Mr Catts on 18 August 1910.[468] A Member is usually named by the name of his or her electoral division, the Chair stating 'I name the honourable Member for . . .'. Office holders have been named by their title.[469] In 1927, when a point of order was raised that the Speaker should have named a Member by his actual name the Speaker replied:

> It is a matter of identification, and the identity of the individual affected is not questioned. I named him as member for the constituency which he represents, and by which he is known in this Parliament.[470]

Office holders named have included Ministers,[471] Leaders of the Opposition[472] and party leaders.[473] Members have been named together, but, except in the one instance, separate motions have been moved and questions put for the suspension of each Member.[474] No Member has been named twice on the one occasion, but the Chair has threatened to take this action.[475]

The naming of a Member usually occurs immediately an offence has been committed but this is not always possible. For example, Members have been named at the next sitting as a result of incidents that occurred at the adjournment of the previous sitting of the House.[476] A Member has been named for refusing to withdraw words which the Chair had initially ruled were not unparliamentary. When that ruling was reversed by a successful dissent motion and the Chair then demanded the withdrawal of the words, the Member refused to do so.[477]

The Chair has refused to accept a dissent motion to the action of naming a Member on the quite correct ground that, in naming a Member, the Chair has not made a ruling.[478]

Proceedings following the naming of a Member

Following the naming of a Member, the Speaker must immediately put the question, on a motion being made, 'That the Member [for . . .] be suspended from the service of the House'. No amendment, adjournment, or debate is allowed on the question.[479]

466 John Hatsell, *Precedents of proceedings in the House of Commons*, 4th edn, London, 1818, vol. II, p. 238; Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. III, p.72 n 1.

467 H.R. Deb. (21.11.1901) 7654.

468 VP 1910/78 (18.8.1910).

469 E.g. H.R. Deb. (27.2.1975) 824, but the identity of the Minister named is shown in the Votes and Proceedings as 'the honourable Member for …', VP 1974–75/502 (27.2.1975).

470 H.R. Deb. (1.12.1927) 2397.

471 VP 1929–31/593 (24.4.1931), 828 (18.9.1931); VP 1937–40/135 (15.6.1938) (and suspended); VP 1961/36 (23.3.1961) (and suspended); VP 1974–75/502–3 (27.2.1975) (motion for suspension negatived, leading to resignation of Speaker).

472 VP 1914–17/148 (17.12.1914); VP 1948–49/295–6 (1.6.1949); VP 1985–87/1151 (24.9.1986). On each occasion suspensions followed.

473 E.g. VP 1973–74/404–5 (27.9.1973); VP 1985–87/1081–2 (21.8.1986) (and suspended).

474 VP 1932–34/608–10 (5.4.1933); VP 1973–74/93–5 (5.4.1973); VP 1974–75/1068–9 (29.10.1975). On the occasion when two Members were suspended on one motion an attempt to raise the matter as one of privilege the next day was ruled out of order as the vote could not be reflected upon except on a rescission motion, VP 1946–48/40 (28.11.1946), 43 (29.11.1946).

475 H.R. Deb. (9.10.1975) 1927; while bells were ringing for division on question for suspension, the Member reflected on the Chair.

476 VP 1934–37/361 (21.11.1935); VP 1974–75/154 (17.9.1974). On the latter occasion the Member was named for refusing to apologise for his conduct on the adjournment of the House at the preceding sitting.

477 VP 1937/106–7 (10.9.1937).

478 H.R. Deb. (24.9.1986) 1316–18.

479 S.O. 94(b).

Especially before the introduction of standing order 94(a), it was not uncommon for the Chair to withdraw the naming of a Member or for the matter not to be proceeded with after other Members had addressed the Chair on the matter and the offending Member had apologised.[480] Such interventions are usually made by a Minister or a member of the opposition executive before the motion for suspension is moved, as it was put on one occasion 'to give him a further opportunity to set himself right with the House'.[481] The motion for suspension has not been proceeded with when:

- the Speaker requested that the motion not proceed;[482]
- the Speaker stated that no further action would be taken if the Member (who had left the Chamber) apologised immediately on his return;[483]
- a Member's explanation was accepted by the Chair;[484]
- the Chair thought it better if the action proposed in naming a Member were forgotten;[485]
- the Chair accepted an assurance by the Leader of the Opposition that the Member named had not interjected;[486]
- the Chair acceded to a request by the Leader of the Opposition not to proceed with the matter;[487]
- the Member withdrew the remark which led to his naming and apologised to the Chair;[488]
- the Member apologised to the Chair;[489]
- the Speaker instead,[490] or having withdrawn the naming,[491] directed the Member to leave the Chamber for one hour.

On one occasion the motion for a Member's suspension was moved but, with disorder in the House continuing, the Speaker announced that to enable the House to proceed he would not put the question on the motion.[492]

A motion for the suspension of a Member has been moved at the commencement of a sitting following his naming during a count out of the previous sitting.[493] Although the Chair has ruled that there is nothing in the standing orders which would prevent the House from proceeding with business between the naming of a Member and the subsequent submission of a motion for his or her suspension,[494] the intention of the standing order, as borne out by practice, is presumably that the matter be proceeded with immediately without extraneous interruption.

480 E.g. H.R. Deb. (29.11.1901) 8056–7; VP 1970–72/1268 (19.10.1972); H.R. Deb. (19.10.1972) 2955; VP 1983–84/916 (4.10.1984); H.R. Deb. (4.10.1984) 1631; VP 1990–93/1899 (24.11.1992).

481 H.R. Deb. (4.7.1919) 10464. On occasions the Chair has, initially at least, declined to allow Members to apologise, H.R. Deb. (1.10.1912) 3622–3, H.R. Deb. (12.12.1912) 6941. On other occasions Members named have been given no opportunity to apologise, H.R. Deb. (27.4.1955) 218–21, 222–3; H.R. Deb. (5.6.1975) 3404; H.R. Deb. (11.9.1980) 1225–6.

482 VP 1937–40/233 (2.11.1938).

483 VP 1973–74/166 (9.5.1973).

484 VP 1974–75/109 (1.8.1974), 256 (23.10.1974). On the latter occasion the motion for the suspension had been moved but the question had not been put, H.R. Deb. (23.10.1974) 2727. On an earlier occasion, a Member having apologised for his conduct after the suspension motion had been moved, the motion was withdrawn, by leave, VP 1970–72/324 (24.9.1970). *See also* H.R. Deb. (24.11.1992) 3391. H.R. Deb. (11.8.1999) 8386–8.

485 H.R. Deb. (30.8.1962) 943–4.

486 VP 1964–66/153 (15.9.1964); H.R. Deb. (15.9.1964) 1093.

487 VP 1964–66/626 (23.8.1966); H.R. Deb. (23.8.1966) 307.

488 VP 1978–80/342 (16.8.1978).

489 VP 1983–84/216 (14.9.1983); H.R. Deb. (14.9.1983) 750.

490 VP 1998–2001/2509 (21.8.2001).

491 H.R. Deb. (22.11.2010) 3255.

492 H.R. Deb. (18.2.1982) 321–4, VP 1980–83/720–1 (18.2.1982).

493 VP 1914–17/567 (22.2.1917).

494 H.R. Deb. (16.3.1944) 1473–4.

Following the naming of a Member it is usually the Leader of the House or the Minister leading for the Government at the particular time who moves the motion for the suspension of the Member[495] and the Chair has seen it as within his or her right at any time to call on the Minister leading the House to give effect to its rules and orders.[496]

The motion for the suspension of a Member has been negatived on three occasions. On the first occasion the Government did not have sufficient Members present to ensure that the motion was agreed to.[497] On the second occasion the Government, for the only time, did not support the Speaker and the motion for the suspension of the Member was moved by the Opposition and negatived. The Speaker resigned on the same day because of this unprecedented lack of support.[498] On the third occasion the minority Government did not obtain sufficient support from crossbench Members to ensure that the motion was agreed to.[499]

During the short-lived experiment with Friday sittings on 22 February 2008, during which any divisions were to be deferred until the next sitting, two Members were named and motions moved that they be suspended. The motions were agreed to when the divisions on them occurred two weeks later.[500]

A suspension on the first occasion is for 24 hours; on the second occasion in the same year, for three consecutive sittings[501]; and on the third and any subsequent occasion in the same year, for seven consecutive sittings.[502] Suspensions for three and seven sittings are exclusive of the day of suspension. A suspension in a previous session or a direction to leave the Chamber for one hour is disregarded and a 'year' means a year commencing on 1 January and ending on 31 December.[503] There is only one instance of a Member having been suspended on a third occasion.[504]

A Member has been suspended from the service of the House 'Until he returns, with the Speaker's consent, and apologises to the Speaker'.[505] The relevant standing order at that time had a proviso that 'nothing herein shall be taken to deprive the House of power of proceeding against any Member according to ancient usages'. Members have also been suspended for varying periods in other circumstances—that is, not following a naming by the Chair— *see* 'Punishment of Members' in the Chapter on 'Privilege'.

Once the House has ordered that a Member be suspended he or she must immediately leave the Chamber. If a Member refuses to leave, the Chair may order the Serjeant-at-Arms to remove the Member—*see* 'Removal by Serjeant-at-Arms' at page 541.

A Member suspended from the service of the House is excluded from the Chamber, its galleries and the room in which the Federation Chamber is meeting,[506] and may not

495 The motion has been moved by a Member other than a Minister, VP 1974–75/502 (27.2.1975), VP 1996–98/360 (27.6.1996) (no seconder in either case); and has not been moved when it appeared that the Chair did not wish the Minister to do so, H.R. Deb. (27.4.1955) 223.

496 H.R. Deb. (14.7.1920) 2710; H.R. Deb. (28.7.1920) 3015.

497 VP 1937–40/223 (14.10.1938); H.R. Deb. (14.10.1938) 862.

498 VP 1974–75/502–3 (27.2.1975); for details *see* 'Speaker's authority not supported by the House' in Ch. on 'The Speaker, Deputy Speakers and officers'.

499 Following the vote the Speaker announced that he would consider his position. A motion of confidence in the Speaker was immediately moved by the Leader of the Opposition, seconded by the Prime Minister and carried unanimously. VP 2010–13/584 (31.5.2011), H.R. Deb. (31.5.2011) 8284–6.

500 VP 2008–10/120, 122 (22.2.2008), 128–9 (11.3.2008).

501 VP 2013-16/1465P (25.6.2015)—first instance under current provisions.

502 Before February 1994 the penalties were 24 hours, 7 calendar days and 28 calendar days.

503 S.O. 94(d) refers to 'the same calendar year'.

504 VP 1917–19/506 (28.8.1919)—suspended for one month under the rule then applying (until 1963 the count was not recommenced in each calendar year or each Parliament).

505 VP 1914–17/148 (17.12.1914), 153 (18.12.1914). A letter of apology was submitted and accepted at the next sitting.

506 S.O. 94(e), e.g. H.R. Deb. (1.12.1988) 3667. This standing order (i.e. former S.O. 307) was adopted in the 1963 revision of the standing orders and followed a 1955 resolution to that effect, VP 1962–63/455 (1.5.1963); H of R 1 (1962–63) 55. Prior to this Members under suspension had on occasions been instructed to leave Parliament House.

participate in Chamber related activities. Thus petitions, notices of motion and matters of public importance are not accepted from a Member under suspension. A suspended Member is not otherwise affected in the performance of his or her duties. In earlier years notices of questions have been accepted from a Member after his suspension,[507] although this has not been the recent practice, and notices of motions standing in the name of a suspended Member have been called on, and, not being moved or postponed, have been lost, as have matters of public importance.[508]

Suspension from the service of the House does not exempt a Member from serving on a committee of the House.[509] The payment of a Member's salary and allowances is not affected by a suspension.

Members have been prevented from subsequently raising the subject of a suspension as a matter of privilege as the matter has been seen as one of order, not privilege,[510] and because a vote of the House could not be reflected upon except for the purpose of moving that it be rescinded.[511] Members have also been prevented from subsequently referring to the naming of a Member once the particular incident was closed.[512]

A Member, by indulgence of the Speaker, has returned to the Chamber, withdrawn a remark unreservedly and expressed regret. The Speaker then stated that he had no objection to a motion being moved to allow the Member to resume his part in the proceedings, and standing orders were suspended to allow the Member to do so.[513] On other occasions Members have returned and apologised following suspension of the standing orders[514] and following the House's agreement to a motion, moved by leave, that 'he be permitted to resume his seat upon tendering an apology to the Speaker and the House'.[515]

Gross disorder by a Member

If the Speaker determines that there is an urgent need to protect the dignity of the House, he or she can order a grossly disorderly Member to leave the Chamber immediately. When the Member has left, the Speaker must immediately name the Member and put the question for suspension without a motion being necessary. If the question is resolved in the negative, the Member may return to the Chamber.[516]

This standing order has only once been invoked[517] but its pre-1963 predecessor was used on a number of occasions. The standing order was amended in 1963 to make it quite clear that its provisions would apply only in cases which are so grossly offensive that immediate action was imperative and that it could not be used for ordinary offences.

507 NP 38 (6.9.1960) 366–7; VP 1960–61/159 (1.9.1960).

508 VP 1974–75/788–90 (5.6.1975); NP 82 (5.6.1975) 8523–4; VP 1987–90/527 (18.5.1988); VP 1987–90/1273 (24.5.1989).

509 Redlich comments on the adoption by the House of Commons of a resolution on this matter (later to constitute a standing order) 'The chief question which was raised upon this rule, and which led to some debate, was whether a suspended member was to be excused from serving upon committees, more particularly upon select committees on private bills. It was correctly argued by several speakers that, if he were so excused, suspension might in some cases afford a refractory member a very pleasant holiday from parliamentary work; it was therefore decided to retain the former practice, *i.e.*, that suspension should not release a member from the duty of attending committees upon which he had been placed'. Josef Redlich, *The procedure of the House of Commons*, Archibald Constable, London, 1908, vol. I, p. 182. *See also May*, 24th edn, p. 458.

510 VP 1917–19/509 (29.8.1919).

511 VP 1946–48/43 (29.11.1946).

512 H.R. Deb. (13.12.1912) 7032–3.

513 VP 1970–72/327 (24.9.1970).

514 VP 1962–63/461 (2.5.1963); VP 1964–66/98 (14.5.1964).

515 VP 1959–60/15 (18.2.1959). In this case standing orders should have been suspended to enable the motion to be moved.

516 S.O. 94(c).

517 VP 2008–10/120 (22.2.2008).

In addition, provision was made for the House to judge the matter by requiring the Chair to name the Member immediately after he or she had left the Chamber.[518]

Removal by Serjeant-at-Arms

If a Member refuses to follow the Speaker's direction in a case of disorderly conduct, the Speaker may order the Serjeant-at-Arms to remove the Member or take the Member into custody.[519]

No cases have occurred of a Member being taken into custody by the Serjeant-at-Arms. Removal by the Serjeant has usually occurred after a Member has been named and suspended but has refused to leave the Chamber.[520] On one occasion, the Speaker having ordered the Serjeant-at-Arms to direct a suspended Member to leave, the Member still refused to leave and grave disorder arose which caused the Speaker to suspend the sitting. When the sitting was resumed, the Member again refused to leave the Chamber. Grave disorder again arose and the sitting was suspended until the next day, when the Member then expressed regret and withdrew from the Chamber.[521]

A Member has also been escorted from the Chamber by the Serjeant when failing to leave when directed under standing order 94(a).[522]

Grave disorder in the House

In the event of grave disorder occurring in the House, the Speaker, without any question being put, can suspend the sitting and state the time at which he or she will resume the Chair; or adjourn the House to the next sitting.[523] On four occasions when grave disorder has arisen the Chair has adjourned the House until the next sitting.[524] The Chair has also suspended the sitting in such circumstances on nine occasions.[525]

Disorder in the Federation Chamber

Disorder in the Federation Chamber is covered in the Chapter on 'The Federation Chamber'.

Other matters of order relating to Members

The Speaker can intervene to prevent any personal quarrel between Members during proceedings.[526] This standing order has only once been invoked to prevent the prosecution of a quarrel[527] but the Chair has cited the standing order in admonishing Members for constantly interjecting in order to irritate or annoy others.[528]

518 VP 1962–63/455 (1.5.1963); H of R 1 (1962–63) 55; *see also Report of 2nd Conference of Presiding Officers and Clerks–at–the–Table*, Brisbane, 1969, PP 106 (1969) 120.

519 S.O. 94(f).

520 E.g. VP 1914–17/567 (22.2.1917); VP 1920–21/213–4 (22.7.1920), 258–9 (19.8.1920), 386 (20.10.1920); VP 1923–24/159 (17.8.1923); VP 1990–93/757 (16.5.1991); VP 1996–98/3194–5 (2.7.1998).

521 VP 1970–72/76 (8.4.1970).

522 VP 2008–10/120 (22.2.2008) (following a point of order the Member was subsequently named under S.O. 94(c)).

523 S.O. 95.

524 VP 1954–55/351 (13.10.1955); VP 1956–57/169 (24.5.1956); VP 1973–74/405 (27.9.1973); VP 1985–87/1273 (23.10.1986).

525 VP 1917–19/453 (4.7.1919) (15 minutes); VP 1954–55/184 (3.5.1955) (until 2.30 p.m. the next day); VP 1970–72/76 (8.4.1970) (on two occasions, until the ringing of the bells and until 10.30 a.m. this day); VP 1970–72/209 (11.6.1970), 691 (7.9.1971) (until the ringing of the bells—both occasions followed grave disorder arising in the galleries); VP 2008–10/120, 122 (22.2.2008) (two occasions on the same day, for 15 minutes and until the ringing of the bells); VP/2016–18/419 (30.11.2016) (until the ringing of the bells following disorder in the galleries).

526 S.O. 92(a).

527 VP 1980–83/1118 (20.10.1982); H.R. Deb. (20.10.1982) 2318.

528 H.R. Deb. (27.6.1906) 751.

A Member who wilfully disobeys an order of the House may be ordered to attend the House to answer for his or her conduct. A motion to this effect can be moved without notice.[529]

529 S.O. 93.

15
Questions

One of the more important functions of the House is its critical review function. This includes scrutiny of the Executive Government, bringing to light issues and perceived deficiencies or problems, ventilating grievances, exposing, and thereby preventing the Government from exercising, arbitrary power, and pressing the Government to take remedial or other action. Questions are a vital element in this function.

It is fundamental in the concept of responsible government that the Executive Government be accountable to the House. The capacity of the House of Representatives to call the Government to account depends, in large measure, on its knowledge and understanding of the Government's policies and activities. Questions without notice and on notice (questions in writing) play an important part in this quest for information.

QUESTION TIME

The accountability of the Government is demonstrated most clearly and publicly at Question Time when, for a period (usually well over an hour) on each sitting day, questions without notice are put to Ministers.[1] The importance of Question Time is demonstrated by the fact that at no other time in a normal sitting day is the House so well attended. Question Time is usually an occasion of special interest not only to Members themselves but to the news media, the radio and television broadcast audience and visitors to the public galleries. It is also a time when the intensity of partisan politics can be clearly manifested.

The purpose of questions is ostensibly to seek information or press for action.[2] However, because public attention focuses so heavily on Question Time it is often a time for political opportunism. Opposition Members will be tempted in their questioning to stress those matters which will embarrass the Government, while government Members will be tempted to provide Ministers with an opportunity to put government policies and actions in a favourable light or to embarrass the Opposition.[3]

However, apart from the use of Question Time for its political impact, the opportunity given to Members to raise topical or urgent issues is invaluable. Ministers accept the fact that they must be informed through a check of press, television or other sources, of possible questions that may be asked of them in order that they may provide satisfactory answers.

Some historical features

Although the original standing order covering the order of business of the House referred only to 'Questions on notice', in practice questions without notice were answered from the outset. During the first sitting days of the first Parliament the Speaker

1 For statistics on questions *see* Appendix 21, Questions without notice may also, from time to time, be put to the Speaker and to private Members; *see below*—'Direction of questions'.

2 *May*, 24th edn, p. 358.

3 Questions which Ministers have arranged for government Members to ask in order to provide such opportunities are known colloquially as 'Dorothy Dixers'. The allusion is to a magazine column of advice to the lovelorn.

made the following statement in reply to a query from the Leader of the Opposition as to whether a practice of asking questions without notice should be created:

> There is no direct provision in our standing orders for the asking of questions without notice, but, as there is no prohibition of the practice, if a question is asked without notice and the Minister to whom it is addressed chooses to answer it, I do not think that I should object.[4]

The practice of Members asking questions without notice developed in a rather ad hoc manner. It was not until 1950 that the standing orders specifically permitted questions without notice or included them in the order of business, despite their long de facto status.

It was not until 1962[5] that a reference to questions without notice was made in the Votes and Proceedings. This long term absence from the official record of proceedings is perhaps indicative of the somewhat unofficial nature of Question Time, its features having always been heavily influenced by practice and convention.

From the outset it was held that Ministers could not be compelled to answer questions without notice.[6] Rulings were given to the effect that questions without notice should be on important or urgent matters, the implication being that otherwise they should be placed on the Notice Paper, particularly if they involved long answers.[7] This requirement presented difficulties of interpretation for the Chair and the rule was not enforced consistently.[8] When questions without notice were specifically mentioned as part of the order of business for the first time in 1950, it was also provided that questions without notice should be 'on important matters which call for immediate attention'. These qualifying words were omitted in 1963, the Standing Orders Committee having stated:

> Occupants of the Chair have found it impracticable to limit such questions as required by these words. This difficulty is inherent in the nature of the Question without Notice session which has come to be recognised as a proceeding during which private Members can raise matters of day-to-day significance.[9]

Although it remains the case that Ministers are not compelled to answer questions without notice, the political attention now given to the period would mean that a refusal by Ministers to answer questions would likely attract an adverse reaction (*and see* similar comments at page 545 relating to the reaction to restrictions on the occurrence or duration of Question Time).

The proportion of the time of the House spent on Question Time and the number of questions dealt with varied considerably. On some days in the early Parliaments no questions without notice were asked, and on others there were only one or two questions. By the time of World War I several questions without notice were usually dealt with on a typical sitting day[10] and the period gradually tended to lengthen. During the early 1930s the record indicates that 18 and 19 questions were able to be asked in the period, and, on one occasion in 1940, 43 questions without notice were asked in approximately 50 minutes.[11] As could be expected the questions in the main were short and to the point, as were the answers.

Prior to the introduction of the daily Hansard in 1955, related questions without notice were grouped together in Hansard in order to avoid repeated similar headings. This

4 H.R. Deb. (3.7.1901) 1954–5.
5 VP 1962–63/10 (20.2.1962).
6 H.R. Deb. (3.7.1901) 1954–5; H.R. Deb. (2.10.1913) 1762. *See also* statement by Speaker Child, H.R. Deb. (28.11.1988) 3329–30.
7 H.R. Deb. (29.9.1920) 5079.
8 H.R. Deb. (21.4.1921) 7595.
9 Standing Orders Committee, *Report*, H of R 1 (1962–63) 33.
10 H.R. Deb. (8.7.1915) 4714–21.
11 H.R. Deb. (8.8.1940) 329–37.

meant that, until 1955, the order in which questions appeared in Hansard did not necessarily reflect the order in which they were asked.

There appears to have been a greater tendency in the past to interrupt Question Time with other matters, such as the presentation of documents,[12] statements by leave and sometimes replies to them,[13] motions[14] and even the presentation of a bill,[15] despite rulings that such interruptions were irregular.[16] In addition there have been instances where Ministers, on being asked a question, offered, or were prompted by the Chair, to make a statement by leave on the matter during Question Time.[17]

Duration of Question Time

Question Time is a period during which only questions without notice may be asked and answered. While a Question Time normally takes place on each sitting day, technically it is entirely within the discretion of the Prime Minister or the senior Minister present as to whether Question Time will take place and, if so, for how long.[18] In order to bring Question Time to a conclusion the Prime Minister or the senior Minister present may, at any time, rise and ask that further questions be placed on the Notice Paper, even if a Member has already received the call[19] or asked a question.[20] The Speaker is then obliged to call on the next item of business. If the Government does not want Question Time to take place on a particular sitting day, the Prime Minister or senior Minister asks, as soon as the Speaker calls on questions without notice, that questions be placed on the Notice Paper. The basis of this discretion of the Prime Minister is that, as Ministers cannot be required to answer questions, it would be pointless to proceed with Question Time once the Prime Minister has indicated that questions, or further questions, without notice will not be answered.[21]

Although having effective control over the duration of Question Time, the Government is, at the same time, subject to the influence of private Members from both sides of the House and public opinion. A Government which refused to allow Question Time to proceed, or restricted the time available for questions, would be exposed to considerable criticism. Question Time has extended, without substantial interruption, for up to 126 minutes.[22] Since 2011, the first complete year of the 43rd Parliament, following the introduction of restrictions on duration of questions and answers, it has been about 70 minutes.

If Question Time is interrupted by such matters as the naming of a Member, a motion of dissent from the Speaker's ruling, a motion to suspend standing orders or a censure motion,[23] the Government has often not allowed Question Time to continue for a period

12 H.R. Deb. (12.2.1943) 651.
13 H.R. Deb. (17.3.1943) 1864–7.
14 H.R. Deb. (29.10.1920) 6079–80.
15 H.R. Deb. (22.11.1920) 6770.
16 H.R. Deb. (9.9.1913) 942.
17 E.g. H.R. Deb. (29.10.1941) 18–19.
18 H.R. Deb. (29.3.1973) 853–4; H.R. Deb. (28.11.1988) 3329–30. Question Time was not held for the week 9–12 February 2009, by agreement between Government and Opposition, following serious bushfires in Victoria.
19 H.R. Deb. (4.5.1960) 1332–3; H.R. Deb. (9.10.1996) 5061–2. *But see* H.R. Deb. (10.12.2002) 9986—Speaker permitted Member already given the call to ask a question.
20 H.R. Deb. (20.3.2003) 13155–6; H.R. Deb. (2.3.2016) 2937.
21 H.R. Deb. (4.10.1933) 3198. *And see* VP 1993–96/814–6 (24.2.1994), 2689 (30.11.1995); H.R. Deb. (29.10.1975) 2593; H.R. Deb. (24.3.2003) 13302, *and see* Ch on 'Order of business and the sitting day'.
22 On 4.2.2009.
23 Some such interruptions have been lengthy—for example, over five hours of debate has occurred following a motion moved by leave during Question Time, VP 2008–10/1547–50 (2.2.2010). (The time taken by the interruption is not counted as part of the duration of Question Time in House statistics.)

to compensate for the time lost.[24] When substantial time is spent on such a matter as a no confidence motion prior to questions without notice being called on, it is usual for Question Time not to proceed.[25]

Number of questions

From an average of 16 questions asked each Question Time during the late 1970s the number declined to about 12 in the years prior to 1996. This reduction was directly attributable to Ministers increasing the length of their answers. In 1986 the Procedure Committee recommended that Question Time continue until a minimum of 16 questions had been answered.[26] Although no action was taken by the House on the recommendation, the Government of the day subsequently adopted an unofficial practice of permitting seven opposition questions each Question Time.[27] In 1993 the Procedure Committee again recommended a minimum of 16 questions.[28] In responding to the report the Government accepted a minimum of 14 (although again as an unofficial target rather than as a requirement of the standing orders).[29] In recent years there have about 19 questions per sitting.[30]

Allocation of the call

The Speaker first calls an opposition Member, and the call is then alternated from right to left of the Chair, that is, between government and non-government Members.[31] With the opposition call priority is given to the Leader and Deputy Leader of the Opposition and, if two coalition parties are in opposition, the Leader and Deputy Leader of the second party. The number of calls given to each Member is recorded and, with the exception of the opposition leaders, the Speaker allocates the call as evenly as possible.

Independent Members receive the call in proportion to their numbers.[32] During the 43rd Parliament the Leader of the House advised that, after five questions, if a non-aligned Member sought the call no government Member would seek it.[33] This practice continued in the 44th and 45th Parliaments.

When two questions have come from one side consecutively, the Speaker may then take two calls in succession from the other side.[34] When there is more than one party in government or opposition agreement may be reached as to the ratio of questions to be permitted to the Members of each party. In special circumstances, when government Members have not sought the call, consecutive questions have come from non-government Members.[35]

As the allocation of the call is within the Speaker's discretion, the Speaker may choose 'to see' or 'not to see' any Member. The Speaker's decision to exercise this discretion has at times been based on a desire to discipline a Member, and the call may

24 *But see* H.R. Deb. (15.5.2008) 2975, for example of questions continuing.
25 VP 1974–75/1059–65 (29.10.1975); H.R. Deb. (29.10.1975) 259.
26 PP 354 (1986) 10.
27 H.R. Deb. (14.5.1987) 3239–42.
28 PP 194 (1993) 24–25.
29 H.R. Deb. (10.2.1994) 826.
30 2014–16. The 1996–2016 average was also 19.
31 Speaker Cameron did not necessarily alternate the call. *See* H.R. Deb. (25.5.1950) 3280; H.R. Deb. (28.9.1950) 76; H.R. Deb. (21.4.1955) 75–6.
32 H.R. Deb. (7.5.1992) 2631; H.R. Deb. (19.9.1996) 4762–3.
33 H.R. Deb. (18.11.2010) 3027.
34 E.g. H.R. Deb. (29.6.1999) 7691–3; H.R. Deb. (20.8.2003) 19048–19050; H.R. Deb. (2.6.2008) 3962.
35 E.g. H.R. Deb. (15.10.2002) 7581–3; H.R. Deb. (24.3.2003) 13301–2; H.R. Deb. (25.3.2003) 13411–413.

be withdrawn if a Member makes extraneous remarks, for example, instead of coming to the question.[36]

In 1986 the Procedure Committee considered the allocation of the call at Question Time. While noting that the majority of questions (54 per cent) were asked by the Opposition, the committee pointed out that the practice of giving priority to opposition leaders meant a consequent reduction in opportunities for opposition backbenchers. However, it concluded that the apportioning of questions within parties was for the parties, and recommended that provisions for allocation of the call remain unchanged.[37]

Supplementary questions

Questions often refer to answers to earlier questions. However, the practice of alternating the call between the right and left of the Chair has the effect that follow-up questions are not immediate.

There was formerly provision in the standing orders which gave the Speaker discretion to allow supplementary questions to clarify an answer to a question asked during Question Time. The degree to which Speakers exercised this discretion to permit immediate supplementary questions varied.[38]

RULES GOVERNING QUESTIONS

The rules governing the form and content of questions are set down in standing orders or have become established by practice. In addition to rules specifically applying, the content of questions must comply with the general rules applying to the content of speeches.[39]

Questions without notice by their very nature may raise significant difficulties for the Chair. The necessity to make instant decisions on the application of the many rules on the form and content of questions is one of the Speaker's most demanding tasks. Because of the importance of Question Time in political terms, and because of the need to ensure that this critical function of the House is preserved in a vital form, Speakers tend to be somewhat lenient in applying the standing orders, with the result that, for example, breaches of only minor procedural importance have not prevented questions on issues of special public interest. The extent of such leniency varies from Speaker to Speaker and to some degree in the light of the prevailing circumstances. In addition, some latitude is generally extended to the opposition leaders in asking questions without notice and to the Prime Minister in answering them. The result of these circumstances is that rulings have not always been well founded and inconsistencies have occurred. Speakers have commented that only a small proportion of questions without notice are strictly in order and that to enforce the rules too rigidly would undermine Question Time.[40] Only those rulings which are regarded as technically sound and of continuing relevance are cited in this chapter without qualification.

36 E.g. H.R. Deb. (28.11.2005) 29–30; H.R. Deb. (4.12.2014) 14325–6.

37 Standing Committee on Procedure, *Standing orders and practices which govern the conduct of Question Time.* PP 354 (1986) 50–1. For earlier consideration of these matters by the Standing Orders Committee *see* PP 20 (1972), H.R. Deb. (23.8.71) 511–12 and H.R. Deb. (18.4.72) 1745–50.

38 Former S.O. 101(b), omitted November 2013, *see* earlier editions for historical detail.

39 *And see May*, 24th edn, p. 359.

40 E.g. H.R. Deb. (31.8.1961) 691; H.R. Deb. (6.11.1991) 2423–4, 2429–30; H.R. Deb. (29.6.2000) 18718.

In disallowing a question the Speaker may permit the Member to re-phrase the question and to ask it again, immediately[41] or later[42] in Question Time. This indulgence is not automatically extended.[43] Similarly the Speaker, having ruled part of a question out of order, may[44] or may not[45] choose to allow that part of the question which is in order, and a Minister may be directed or permitted to ignore part of a question that is out of order.[46] If the Speaker considers that Members have been unable to hear a question the Speaker may permit the Member to repeat it.[47]

The rules governing questions are applied strictly to questions in writing which are submitted to the Clerk before being placed on the Notice Paper (*see* page 564).

Questioners

Although the standing orders place no restrictions on who may ask questions, the following is accepted practice.

Private Members

Any private Member may ask a question.

Ministers

Ministers do not ask questions, either of other Ministers, or where permitted, of private Members. However, on occasion Ministers have directed questions to the Speaker.[48]

Parliamentary Secretaries

Parliamentary Secretaries do not ask questions, either of Ministers, or where permitted, of private Members.[49] This restriction is a recent development, accompanying the expansion of the role of Parliamentary Secretaries, who now perform some duties formerly performed exclusively by Ministers (*see* Chapter on 'House, Government and Opposition'). Parliamentary Secretaries have, however, asked questions of the Speaker.[50]

The restrictions on Parliamentary Secretaries apply equally to Assistant Ministers who are Parliamentary Secretaries.

Speaker

It is not the practice for questions to be asked by the Speaker. Nevertheless Speaker Nairn, who, exceptionally, was a member of the Opposition, placed questions on notice during the period 1941 to 1943.[51]

41 E.g. H.R. Deb. (4.5.1978) 1780; H.R. Deb. (30.3.1999) 4663; H.R. Deb. (2.11.2006) 80–1; H.R. Deb. (17.6.2008) 5051; H.R. Deb. (19.10.2010) 665 (supplementary); H.R. Deb. (14.9.2015) 9974; H.R. Deb. (15.9.2015) 10231–2; H.R. Deb. (15.9.2015) 10224.

42 H.R. Deb. (28.8.1979) 625–6, 627; H.R. Deb. (22.11.1973) 3679, 3681; H.R. Deb. (9.3.2000) 14336–8.

43 E.g. H.R. Deb. (6.6.1978) 3075; H.R. Deb. (30.3.1999) 4669; H.R. Deb. (16.6.2008) 4842; H.R. Deb. (20.10.2010) 938 (supplementary); H.R. Deb. (14.9.2015) 9965.

44 H.R. Deb. (15.3.1978) 737–8; H.R. Deb. (11.9.1996) 3995–6; H.R. Deb. (8.12.1998) 1559; H.R. Deb. (17.8.2000) 19275; H.R. Deb. (19.10.2010) 678; H.R. Deb. (21.6.2011) 6662.

45 H.R. Deb. (7.11.1978) 2441.

46 E.g. H.R. Deb. (27.3.2006) 15; H.R. Deb. (3.6.2014) 5290–1; H.R. Deb. (17.9.2015) 10592.

47 E.g. H.R. Deb. (11.10.1999) 11198; H.R. Deb. (8.9.2015) 9431–2; H.R. Deb. (8.2.2016) 829.

48 E.g. H.R. Deb. (8.11.2000) 22437; H.R. Deb. (27.6.2002) 4612–4. *And see* statement by Speaker, H.R. Deb. (19.8.2002) 4813–4.

49 H.R. Deb. (26.3.1992) 1247.

50 *And see* statement by Speaker, H.R. Deb. (19.8.2002) 4813–4.

51 NP 48 (29.10.1941) 173; NP 131 (17.3.1943) 441.

Direction of Questions

To Ministers

All but a very small proportion of questions are directed to Ministers. Questions may not be put to one Minister, other than the Prime Minister, about the ministerial responsibilities of another[52] except that questions may be put to Ministers acting in another portfolio.[53] Where a question may involve the responsibility of more than one Minister, it should be directed to the Minister most responsible. Questions relating to the responsibilities of a Minister who is a Senator are addressed to the Minister in the House representing the Senate Minister.

A Minister may refuse to answer a question.[54] He or she may also transfer a question to another Minister and it is not in order to question the reason for doing so.[55] If a question has been addressed to the incorrect Minister, the responsible Minister may answer, but a Member has been given an opportunity to redirect the question.[56] In many instances the responsibilities referred to in a question may be shared by two or more Ministers and it is only the Ministers concerned who are in a position to determine authoritatively which of them is more responsible.[57] It is not unusual for questions addressed to the Prime Minister to be referred to the Minister directly responsible.[58] No direct statement, request or overt action by the Prime Minister is required to indicate that another Minister will answer a question addressed to the Prime Minister.[59] The Prime Minister may also choose to answer a question addressed to another Minister.[60]

Misdirected questions in writing are transferred by the Table Office, upon notification by the departments concerned.

ROSTERING OF MINISTERS

Although there is no rule to this effect, it has been traditionally expected that all Ministers who are Members of the House, unless sick, overseas or otherwise engaged on urgent public business, will be present at Question Time.

In February 1994 a sessional order was agreed to providing for a roster of Ministers at Question Time.[61] Ministers were rostered to appear two days each week (out of four), with the Prime Minister appearing on Mondays and Thursdays. These arrangements were introduced as a trial,[62] and followed Procedure Committee recommendations for a more limited experiment.[63] The sessional order providing for the roster was not renewed in the following Parliament.

To Parliamentary Secretaries

It is considered that Ministers alone are responsible and answerable to Parliament for the actions of their departments. Even though the *Ministers of State and Other Legislation Amendment Act 2000* provided for the appointment of Parliamentary

52 H.R. Deb. (6.10.1976) 1538.
53 H.R. Deb. (9.10.1979) 1719.
54 H.R. Deb. (12.5.1970) 1949; *May*, 24th edn, p. 364.
55 H.R. Deb. (5.3.1947) 352–3; H.R. Deb. (4.4.1962) 1264–73; H.R. Deb. (22.8.1979) 428–30. In the 1962 instance a motion of dissent from the Speaker's ruling, which upheld the practice that Ministers may transfer questions to other Ministers, was defeated; *see also May*, 24th edn, p. 358.
56 H.R. Deb. (27.3.1995) 2134, 2137.
57 *See The Table* XXIX, 1960, pp. 150–1 for reference to UK House of Commons practice and its rationale.
58 E.g. H.R. Deb. (23.6.2010) 6346; H.R. Deb. (1.3.2016) 2640.
59 H.R. Deb. (29.6.2000) 18718–9; *and see* H.R. Deb. (22.5.2006) 34–5 (Acting Prime Minister).
60 E.g. H.R. Deb. (6.11.2003) 22359; H.R. Deb. (18.2.2004) 25104; H.R. Deb. (26.3.2007) 34, 35.
61 Sessional order 151A, VP 1993–96/782 (10.2.1994).
62 H.R. Deb. (8.2.1994) 538.
63 PP 194 (1993) 25–7.

Secretaries to administer Departments of State, standing order 98 specifically excludes the asking of questions of Parliamentary Secretaries. Additionally, as Parliamentary Secretaries could be in charge of government business in the House without ultimately being responsible for it, they may not be questioned under the provision of standing order 99 applying to questions to private Members (*see below*). This exclusion makes Parliamentary Secretaries the only Members of whom questions cannot be asked under any circumstances. This is not to suggest that there is no accountability to the House, for the relevant Ministers may be questioned about matters in which Parliamentary Secretaries have been involved[64] and a Parliamentary Secretary's conduct can be challenged by substantive motion.[65] A Minister who has been a Parliamentary Secretary may not be asked questions directly about actions taken as a Parliamentary Secretary,[66] however, if a Minister has made a statement or given information, as a Minister, about actions taken as a Parliamentary Secretary, questions which refer to such statements or information may be permitted.[67] The restrictions on Parliamentary Secretaries apply equally to Assistant Ministers who are Parliamentary Secretaries.[68]

To private Members

Only rarely are questions directed to private Members, and even then they have often been disallowed for contravention of the strict limitations imposed by standing orders and practice. Standing order 99 provides that during Question Time, a Member may ask a question orally of another Member who is not a Minister or Parliamentary Secretary. Questions must relate to a bill, motion, or other business of the House or of a committee, for which the Member asked is responsible. There is no provision for questions in writing to private Members, the standing order refers to questions without notice only.

Questions most often allowed have concerned private Members' bills listed as notices on the Notice Paper.[69] A question asking when the bill will be introduced, whether the bill has been drafted, or whether the questioner could see a copy of the bill would be in order.[70] Questions have been allowed to a Member in charge of a bill actually before the House,[71] but the Procedure Committee has indicated its support for such questions being confined essentially to matters of timing and procedure.[72] Questions have been asked in connection with a notice of motion, but the scope is very limited—for example, a question has asked whether there was any urgency in a matter and whether the Member could indicate when a motion might be debated.[73] A question may not be asked of a private Member about a question in writing in the Member's name[74]—such a matter is not regarded as business of the House for which the Member is responsible.

Questions not meeting the conditions of standing order 99, such as questions concerning party policies and statements made inside or outside the House, notably by the Members to whom such questions are directed, have been ruled out of order. The following cases are illustrative of the type of question which may not be asked:

64 E.g. H.R. Deb. (9.12.2004) 77; H.R. Deb. (9.3.2005) 81.
65 E.g. H.R. Deb. (6.12.2004) 38.
66 H.R. Deb. (2.12.2004) 78–9, 87–9; H.R. Deb. (6.12.2004) 38; H.R. Deb. (7.12.2004) 5–18, VP 2004–07/95 (7.12.2004).
67 H.R. Deb. (8.12.2004) 68–71; (9.12.2004) 68–74; (9.3.2005) 75–8.
68 E.g. H.R. Deb. (6.2.2007) 27–8.
69 H.R. Deb. (1.3.1972) 410–12; H.R. Deb. (25.2.1976) 259; H.R. Deb. (26.2.1976) 313–15; H.R. Deb. (16.3.1976) 625; H.R. Deb. (16.3.2000) 14894–5; 14897.
70 H.R. Deb. (16.3.1976) 625.
71 H.R. Deb. (9.10.1984) 1897–8; H.R Deb. (13.9.2016) 720.
72 Standing Committee on Procedure: *The operation of standing order 143: Questions to Members other than Ministers,* PP 115 (1996).
73 H.R. Deb. (23.10.1995) 2664; H.R. Deb. (23.6.1999) 7198.
74 H.R. Deb. (7.6.2000) 17227.

- to a private Member asking if he had been correctly reported in a newspaper;[75]
- to a private Member regarding a statement outside the House;[76]
- to the Leader of the Opposition as to whether he would 'give a lead' to the members of his party on certain issues;[77]
- to the Leader of the Opposition with regard to his conduct in connection with a Royal Commission;[78]
- to a private Member concerning a petition he had just presented;[79]
- to the Leader of the Opposition regarding his statements on television;[80]
- to the Deputy Leader of the Opposition regarding a statement he had made in the House;[81] and
- to the Deputy Leader of the Opposition concerning the platform of his party.[82]

It is not in order to question a private Member about matters with which he or she is, or has been, concerned as a member of a body outside the House, nor to question a private Member concerning the Member's past actions as Prime Minister or Minister. Such questions would clearly contravene standing order 99. A Member's responsibility to the House for ministerial actions, after ceasing to be a Minister, is more appropriately discharged by action pursuant to a substantive motion in the House.

In 1995[83] and 1996[84] Leaders of the Opposition were asked questions about private Members' bills they had introduced, and gave answers which the Procedure Committee noted, in its 1996 report on the matter, as going beyond the previous limits. Following the 1995 occasions, the equivalent standing order to current standing order 99 was suspended on the initiative of the Government, for the remainder of the period of sittings.[85] In its report the Procedure Committee recommended that the standing order be retained in its present form, but that the limits traditionally applied should be enforced—that is, questions should be tightly confined, essentially to matters of timing and procedure, and occasionally to brief explanations of a particular clause. The committee stated that 'Issues of substance and policy are addressed more appropriately in debate (such as a second reading debate on a bill) than in a question without notice'.[86]

To committee chairs, etc

While questions in writing to committee chairs have never been accepted, it has been the practice to allow a question without notice of a strictly limited nature to be addressed to a Member in his or her capacity as chair of a committee. Standing order 99 now allows questions without notice to any Member (other than a Minister or Parliamentary Secretary) relating to the business of a committee for which the Member asked is responsible.

75 H.R. Deb. (3.8.1926) 4769.
76 H.R. Deb. (21.6.1912) 68.
77 H.R. Deb. (25.11.1953) 475.
78 H.R. Deb. (9.9.1954) 1099.
79 H.R. Deb. (21.5.1924) 778.
80 H.R. Deb. (14.5.1958) 1758.
81 H.R. Deb. (31.8.1961) 696.
82 H.R. Deb. (21.9.1967) 1183–4.
83 H.R. Deb. (26.9.1995) 1692–5; H.R. Deb. (28.9.1995) 1988–90.
84 H.R. Deb. (19.6.1996) 2252–3.
85 VP 1993–96/2557–8 (26.10.1995) (former S.O. 143).
86 Standing Committee on Procedure, *The operation of standing order 143: Questions to Members other than Ministers*, PP 115 (1996) 7. *See also* e.g. H.R. Deb. (16.2.2005) 66–7.

A question to a committee chair asking when a report would be tabled has been permitted.[87] A question asking if a committee had been requested to inquire into a certain matter has not been permitted.[88] The Speaker has ruled out of order a question to a chair which asked that the committee examine certain matters.[89] Questions concerning statements by a committee chair are not permitted.[90] A question to the chair of a subcommittee has been ruled out of order on the ground that the chair is responsible to the committee and not to the House.[91] A question addressed to a committee chair has been answered by a Minister, at the request of the committee chair, the Minister being able to respond to matters within his responsibility.[92] The timing of a government response to a report is outside a chair's responsibilities and not therefore something he or she can be questioned about.[93] A part of a question asking a chair to confirm the findings of a committee has been permitted, but the second part of the question asking whether the chair agreed with the findings was ruled out of order.[94]

Opportunities to ask questions about committee business are restricted by standing order 100(e), which prevents questions from referring to proceedings of a committee not reported to the House (*see* page 556).

To the Speaker

At the conclusion of Question Time, Members may ask questions orally of the Speaker about any matter of administration for which he or she is responsible.[95] However, Members seeking information on a matter of order or privilege must raise the matter under the appropriate procedure; such matters cannot be put to the Speaker as questions.[96] Any Member may direct a question without notice to the Speaker, including Ministers and Parliamentary Secretaries.[97]

Once exceptional, questions without notice to the Speaker have become more frequent in recent years. Many of these questions have related to procedural rather than to administrative matters. As such they fall outside the provisions of standing order 103, and also deviate from the principle that a procedural matter should be raised at the point at which it occurs.[98]

In 1994 standing orders were amended to provide for questions to the Speaker to be taken at the conclusion of Question Time,[99] recognising what had in fact been the practice for some time. In earlier years the rare questions to the Speaker would be asked during Question Time proper, sometimes between questions directed to Ministers. When these arrangements operated Speakers suggested that Question Time was an inappropriate time to deal with minor or detailed matters of parliamentary administration

87 H.R. Deb. (18.2.1948) 6. The chair was also Attorney-General.
88 H.R. Deb. (21.6.2011) 6661–2, *but see* H.R. Deb. (16.10.1957) 1393–4 (question permitted).
89 H.R. Deb. (6.10.1953) 1004–5; H.R. Deb. (7.10.1953) 1064–5.
90 H.R. Deb. (3.2.2010) 241.
91 H.R. Deb. (10.10.1972) 2242.
92 H.R. Deb. (15.5.2003) 14721–4; *and see* H.R. Deb. (27.5.2003)15039–56.
93 H.R. Deb. (3.2.2010) 242.
94 H.R. Deb. (29.5.2013) 4292–3.
95 S.O. 103. For a description of the Speaker's administrative responsibilities *see* Ch. on 'The Speaker, Deputy Speakers and officers'.
96 H.R. Deb. (24.6.2008) 5740*, and see May*, 24th edn, p. 357.
97 H.R. Deb. (19.8.2002) 4814.
98 *And see* statements by Speakers Hawker and Jenkins, H.R. Deb. (9.3.2005) 67; H.R. Deb. (19.2.2008) 691–2; H.R. Deb. (18.6.2008) 5217.
99 VP 1993–96/779 (10.2.1994) (sessional order, made permanent in 1996). Since 1992 questions to the Speaker had been separately identified in Hansard under the heading 'Questions to Mr Speaker'.

and that they would be better dealt with by an approach to the relevant domestic committee, by correspondence or by personal interview with the Speaker.[100]

Occurrences in committees may not be raised in questions to the Speaker as the Speaker has no official cognisance of such proceedings.[101]

While the standing orders provide for questions in writing to be directed only to Ministers, written requests for detailed information relating to the administration of the parliamentary departments may be directed to the Speaker.[102] Such requests are lodged with the Clerk in the same way as questions in writing addressed to Ministers. However, a question to the Speaker, if in order, is printed in the daily Hansard rather than the Notice Paper. Answers provided by the Speaker are also printed in Hansard.[103]

Length of questions

The duration of each question is limited to 30 seconds[104] (from September 2016, 45 seconds for non-aligned Members). The clock is paused if there is an interruption to a question—for example, by a point of order—and reset if the Speaker asks a Member to repeat or rephrase the question.[105]

Form and content of questions

To relate to Minister's public responsibilities

A Minister can only be questioned on matters for which he or she is responsible or officially connected. Such matters must concern public affairs, administration, or proceedings pending in the House.[106] The underlying principle is that Ministers are required to answer questions only on matters for which they are responsible to the House. Consequently Speakers have ruled out of order questions or parts of questions to Ministers which concern, for example:

- statements, activities, actions or decisions of a Minister's own party (including party[107] or party/union[108] activities which may have had some connection to a Minister), or of its conferences, officials, representatives or candidates, or of those of other parties, including opposition parties;[109]
- what happens or is said in the party rooms or in party committees;[110]
- party leadership and related issues where there is no connection with a matter in respect of which the (Prime) Minister is responsible to the House;[111]

100 H.R. Deb. (1.12.1953) 707; H.R. Deb. (1.11.1933) 4117.

101 H.R. Deb. (16.4.1964) 1136, 1138; H.R. Deb. (27.10.1909) 5049.

102 For establishment of this practice *see* H.R. Deb. (28.2.1980) 499 and 1st edn, p. 485. Examples, H.R. Deb. (26.11.1980) 57–8, 118; H.R. Deb. (24.2.1981) 43; H.R. Deb. (12.9.1996) 4223.

103 E.g. H.R. Deb. (6.10.1987) 827; H.R. Deb. (17.9.1996) 4491–2.

104 S.O. 100(f).This provision was introduced at the start of the 43rd Parliament (2010), initially at 45 seconds, and changed to 30 seconds in February 2012. Previously no time limit applied. An extension may be granted, e.g. VP 2010–13/89 (19.10.2010); VP 2010–13/185 (16.11.2010).

105 H.R. Deb. (9.2.2016) 1003.

106 S.O. 98(c). For statistics *see* Appendix 21.

107 E.g. H.R. Deb. (13.6.2007) 75.

108 E.g. H.R. Deb. (22.2.2011) 905; H.R. Deb. (13.9.2011) 9890.

109 E.g. H.R. Deb. (6.4.1967) 970; H.R. Deb. (22.11.1973) 3679; H.R. Deb. (10.9.1975) 1194; H.R. Deb. (19.4.1988) 1748; H.R. Deb. (9.10.1996) 5051; H.R. Deb. (30.3.1999) 4668; H.R. Deb. (10.4.2000) 15553; H.R. Deb. (28.8.2001) 30365, 30374–5; H.R. Deb. (10.8.2004) 32555; H.R. Deb. (17.11.2004) 80; H.R. Deb. (18.11.2004) 1; H.R. Deb. (10.8.2005) 69; H.R. Deb. (17.10.2006) 20–21; H.R. Deb. (17.3.2008) 1880. *But see* H.R. Deb. (16.6.2010) 5545–9.

110 E.g. H.R. Deb. (6.6.1978) 3075; H.R. Deb. (25.10.1979) 2481.

111 E.g. H.R. Deb. (4.3.2004) 26024; H.R. Deb. (9.3.2004) 26267–8; H.R. Deb. (10.3.2004) 26437–9; H.R. Deb. (18.9.2007) 16; H.R. Deb. (27.2.2012) 1764 (statement); H.R. Deb. (14.9.2015) 9965; H.R. Deb. (15.9.2015) 10229–30, H.R. Deb. (12.11.2015) 13085.

- arrangements between parties, for example, coalition agreements on ministerial appointments;[112]
- policies of previous governments;[113]
- statements in the House by other Members;[114]
- statements by people outside the House[115] including other Members,[116] notably opposition Members,[117] and Senators;[118]
- the attitude, behaviour or actions of a Member of Parliament[119] or the staff of Members;[120]
- matters of a private nature not related to the public duties of a Minister;[121]
- actions taken as a private Member before becoming Minister,[122]
- actions taken by the Minister when a Parliamentary Secretary;[123]
- matters in State Parliaments or State matters,[124] but this rule does not prevent questions about State matters where there is a connection with Commonwealth Government activities;[125]
- the internal affairs of a foreign country,[126] although it is in order to ask a Minister, for example, about the Government's position or action on a matter arising in or concerning a foreign country.[127]

As is clear from the above examples, it is not in order for Ministers to be questioned on opposition policies, for which they are not responsible. Speakers have been critical of the use of phrases at the end of questions, such as 'are there any threats to . . .', that could be viewed as intended to allow Ministers to canvass opposition plans or policies,[128] and has ruled parts of questions using such terms as 'are there any other policy approaches?' and 'what risks are there?' out of order on the assumption that they invited comments about opposition policies or approaches.[129] However, Speakers have also indicated a preparedness to allow such additions to questions, as it had been the long standing practice that the use of such phrases was permitted (as long as they did not directly seek a view about opposition policies) and it was reasonable for Ministers to discuss alternative approaches as part of a free flowing debate.[130]

A Minister may not be asked a question about his or her actions in a former ministerial role.[131] However, in a case when a Minister had issued a statement referring to earlier responsibilities, a question relating to the statement was permitted.[132] Similarly,

112 E.g. H.R. Deb. (26.10.1978) 2338; H.R. Deb. (1.6.2006) 63–4; H.R. Deb. (15.9.2015) 10231–2.
113 E.g. H.R. Deb. (21.8.1975) 382.
114 E.g. H.R. Deb. (5.5.1964) 1489–90.
115 E.g. H.R. Deb. (4.5.1977) 1512.
116 E.g. H.R. Deb. (22.10.1974) 2617; H.R. Deb. (25.5.2009) 4079; H.R. Deb. (15.9.2015) 10223–4.
117 E.g. H.R. Deb. (12.10.1977) 1892–3.
118 E.g. H.R. Deb. (10.8.2005) 73–4.
119 E.g. H.R. Deb. (26.5.1981) 2519; H.R. Deb. (16.6.2008) 4842.
120 E.g. H.R. Deb. (8.9.1981) 991.
121 E.g. H.R. Deb. (12.11.1965) 2680; H.R. Deb. (29.8.2000) 19519; H.R. Deb. (29.8.2002) 6163–5. H.R. Deb. (15.10.2015) 11392, 11394.
122 E.g. H.R. Deb. (28.5.2009) 4775.
123 H.R. Deb. (2.12.2004) 78–9, 87–9; H.R. Deb. (6.12.2004) 38; H.R. Deb. (7.12.2004) 5–18, VP 2004–07/95 (7.12.2004).
124 E.g. H.R. Deb. (31.3.1971) 1206; H.R. Deb. (6.10.1976) 1537.
125 E.g. H.R. Deb. (16.2.2000) 13583.
126 H.R. Deb. (5.5.1964) 1480.
127 H.R. Deb. (3.4.2000) 15007.
128 H.R. Deb. (13.2.2008) 225, 227.
129 H.R. Deb. (3.6.2009) 5466; H.R. Deb. (14.9.2011) 10083.
130 H.R. Deb. (11.8.2015) 7911; H.R. Deb. (12.8.2015) 8093–4.
131 H.R. Deb. (6.12.2004) 38; H.R. Deb. (16.2.2012) 1656. H.R. Deb. (8.2.2016) 829–31, H.R. Deb. (9.2.2016) 1043–4.
132 H.R. Deb. (9.2.2006) 80.

questions have been permitted relating to a statement a Minister has made, as a Minister, about actions taken while a Parliamentary Secretary.[133] Also, where Ministers have made statements either inside or outside the House about matters that may concern their actions before becoming a Member and/or a Minister, questions have been permitted on those statements.[134]

It is not in order for questions to reflect on or be critical of the character, conduct or private affairs of a Minister. A Minister's conduct may only be challenged on a substantive motion.[135]

Statutory authorities

The nature and degree of ministerial responsibility for the policies and operations of statutory authorities or corporations varies. The practice of the House has been to allow questions about such bodies and substantive replies have usually been provided. However, a Minister may choose not to answer any question or may answer it as he or she sees fit. Ministers have exercised this discretion in relation to some questions on statutory authorities, particularly in instances where a large degree of autonomy exists or where an answer may be to the commercial disadvantage of an authority operating in a competitive commercial environment. A Minister has answered that publication of information sought by a Member might be to the commercial disadvantage of an authority and asked that the information be provided direct to the Member on a confidential basis.[136]

Questions to seek factual information or press for action

The purpose of questions is to enable Members to obtain factual information or press for action on matters for which the Minister questioned is responsible to the House. The standing orders, particularly standing orders 98 and 100, contain detailed provisions, outlined in later sections of this chapter, whose primary objective is to ensure that this purpose is given effect. In particular, they attempt to restrain the questioner from giving unnecessary information or introducing or inviting argument and thereby starting a debate.

Debate, argument, etc.

Questions must not be debated,[137] or contain debate;[138] nor can they contain arguments,[139] comments[140] or opinions.[141] They may not become lengthy speeches[142] or statements and they may not in themselves suggest an answer.[143] In short, questions should not be used as vehicles for the discussion of issues. The call may be withdrawn from a Member who prefaces a question with an extraneous remark.[144]

133 H.R. Deb. (8.12.2004) 68–71; H.R. Deb. (9.12.2004) 68–74; H.R. Deb. (9.3.2005) 75–8.
134 H.R. Deb. (26.11.2015) 13890; H.R. Deb. (3.12.2013) 14686.
135 S.O. 100(c).
136 H.R. Deb. (22.11.1979) 3425–6.
137 S.O. 100(a).
138 E.g. H.R. Deb. (22.9.2011) 11232.
139 S.O. 100(d); e.g. H.R. Deb. (26.8.1982) 960; H.R. Deb. (14.12.1982) 3396; H.R. Deb. (18.10.1999) 11728; H.R. Deb. (16.6.2003) 16400; H.R. Deb. (3.6.2010) 5221–2; H.R. Deb. (20.10.2010) 938 (supplementary); H.R. Deb. (21.6.2011) 6661; H.R. Deb. (20.3.2012) 3502.
140 H.R. Deb. (13.4.1961) 799; H.R. Deb. (10.10.1996) 3819.
141 H.R. Deb. (5.7.1949) 1927.
142 H.R. Deb. (31.8.1966) 584. The introduction of time limits on questions has now ensured that questions will not be unduly lengthy.
143 H.R. Deb. (5.5.1978) 1880; H.R. Deb. (18.11.2004) 91.
144 E.g. H.R. Deb. (9.3.2000) 14336–7.

Inferences, etc.

Questions must not contain inferences,[145] imputations,[146] insults,[147] ironical expressions[148] or hypothetical matter;[149] nor may they be facetious or frivolous[150] or attribute motive.[151] Speaker Andrew acknowledged that many questions convey an element of imputation; and that his general attitude was not to intervene where the imputation was directed to a difference in philosophy or viewpoint, but to intervene where the attribution of personal motive was such that it could not be ignored.[152] A question has been ruled out of order on the ground that it contained scorn and derision.[153]

References to debates

References in questions to debates in the current session, concluded or adjourned, are out of order.[154] The rule does not preclude questions on the subject matter of such debates, which may be so broad as to cover, for example, the country's whole foreign policy, but rather precludes reference to the debate itself and to specific statements made in it. The Chair has interpreted this rule as applying equally to debates in the Senate.[155] Questions mentioning decisions of the Senate are permitted where they are connected with a Minister's area of responsibility.[156]

It has also been held to be out of order to ask a question repetitive of a matter already determined by the House,[157] or which reflects upon any vote of the House.[158]

References to committee proceedings

Questions must not refer to proceedings of a committee not reported to the House.[159] However, no exception has been taken to questions merely coinciding in subject matter with current committee inquiries.[160] The following private ruling of President Cormack has equal relevance to the House:

> . . . if I were to rule that questions should not be allowed on any matters which may be under examination by committees, such a rule strictly applied would operate to block questions on a very wide variety of subjects.
>
> The practice which I follow, and which I shall continue to follow unless otherwise directed by the Senate, is to allow questions seeking information on public affairs for which there is ministerial responsibility provided that such questions are not of a nature which may attempt to interfere with a committee's work or anticipate its report.[161]

145 E.g. H.R. Deb. (18.10.1999) 11728; H.R. Deb. (28.8.2001) 30360; H.R. Deb. (2.11.2006) 81; H.R. Deb. (14.9.2011) 10082–3.
146 E.g. H.R. Deb. (18.10.1999) 11728; H.R. Deb. (30.8.2000) 19681; H.R. Deb. (20.8.2001) 29712–3; H.R. Deb. (28.5.2003) 15200, 15203; H.R. Deb. (17.9.2003) 20309–10; H.R. Deb. (11.3.2004) 26637–8; H.R. Deb. (29.3.2006) 84; H.R. Deb. (14.9.2011) 10082–3; H.R. Deb. (27.2.2012) 1774.
147 E.g. H.R. Deb. (3.6.2010) 5217, 5222.
148 E.g. H.R. Deb. (24.8.1999) 8889. H.R. Deb. (12.10.2006) 74–5.
149 S.O. 100(d). E.g. H.R. Deb. (13.4.1967) 1212; H.R. Deb. (8.12.1998) 1559; H.R. Deb. (8.6.2000) 17443.
150 E.g. H.R. Deb. (1.7.1941) 591; H.R. Deb. (8.10.1936) 898; H.R. Deb. (12.2.2003) 11642; H.R. Deb. (23.6.2005) 74–5; (H.R. Deb. (17.8.2006) 69–70.
151 E.g. H.R. Deb. (26.4.1977) 1198.
152 H.R. Deb. (7.12.2000) 23808–9; H.R. Deb. (28.5.2003) 15200.
153 H.R. Deb. (30.3.1999) 4668.
154 S.O. 100(e); H.R. Deb. (21.5.1975) 2545; H.R. Deb. (25.8.1976) 525; H.R. Deb. (26.6.1996) 2788–9.
155 H.R. Deb. (20.8.1969) 431.
156 H.R. Deb. (31.8.2000) 19867.
157 H.R. Deb. (16.11.1978) 2892.
158 S.O. 74; *See also May*, 24th edn, p. 364.
159 S.O. 100(e).
160 E.g. H.R. Deb. (27.10.1987) 1482; H.R. Deb. (16.2.1988) 13; H.R. Deb. (8.2.1994) 505, 507, 508.
161 *Odgers*, 6th edn, p. 309.

Information, comment, etc. in questions

Questions must not contain statements of fact unless they can be authenticated and are strictly necessary to render the question intelligible.[162] Thus, Members may not give information under the guise of asking a question—otherwise questions cease to be questions and can become excessively long. While short introductory words may be tolerated, the use of prefaces is to be avoided and a Member called to ask a question places the retention of the call at risk if comment is made relating to an answer just given or some other extraneous matter.[163] Similarly, rhetorical questions should not be asked; these have been seen as a device to put information forward.[164] A question seen as producing an orchestrated chorus of support has been disallowed.[165] Prior to the introduction of time limits on questions, Speakers could intervene to deal with overly long questions or where a Member did not come quickly to the point.[166]

The requirement that information contained in a question be authenticated by the questioner is rarely applied unless the accuracy of the information is challenged. In such cases the Speaker simply calls on the questioner to vouch for the accuracy of the statement and, if the Member cannot do so, the question is disallowed.[167] If the Member vouches for the statement's accuracy, the Speaker accepts the authentication.[168] Questions based on rumour—that is, unsubstantiated statements—are not permissible.[169]

References to newspaper reports, etc.

It is established practice that, provided the Member asking a question takes responsibility for the accuracy of the facts upon which the question is based, he or she may direct attention to a statement, for example, in a newspaper or a news report, but may not quote extracts.[170] It has been held that the questioner must vouch for the accuracy of any such report referred to, not simply for the accuracy of the reference to it. When a Member could not do so a question has been ruled out of order,[171] but Speaker Andrew indicated he would not seek to impose a strict application of past practice.[172]

In 1977 a Member's authentication of a newspaper report referred to in his question was challenged by the Member whose speech was the subject of the report. As he was in no position to adjudicate on the matter the Speaker accepted the questioner's authentication at face value and suggested that if any misrepresentation was involved this could be corrected in a personal explanation after Question Time. Instead leave was granted for the full text of the reported statement to be incorporated in Hansard.[173] In a similar case in 1978, when leave was not granted for incorporation of the reported statement, the Member concerned made a personal explanation.[174] In 1981 the Speaker stated that he only asked for Members to vouch for the accuracy of press reports over which there was clearly controversy.[175]

162 S.O. 100(d).
163 H.R. Deb. (7.12.2000) 23810; e.g. H.R. Deb. (28.11.2005) 29–30.
164 H.R. Deb. (7.12.2000) 23810.
165 H.R. Deb. (27.5.2004) 29388.
166 *See* previous editions (6th edn, pp. 557–8).
167 H.R. Deb. (7.9.1977) 801.
168 H.R. Deb. (29.3.1977) 645–7.
169 H.R. Deb. (19.9.1978) 1105.
170 Standing Orders Committee, *Report*, H of R 1 (1962–63) 32.
171 H.R. Deb. (7.9.1977) 801; *but see* for example H.R. Deb. (11.9.1996) 3984–5.
172 H.R. Deb. (7.12.2000) 23810.
173 H.R. Deb. (29.3.1977) 645–7.
174 H.R. Deb. (24.5.1978) 2390–1, 2395, 2396–7.
175 H.R. Deb. (4.3.1981) 415.

The restriction on quotations in questions, which reflects UK House of Commons practice,[176] has always been applied to questions in writing but the Chair has often chosen not to apply it to questions without notice, perhaps on the basis that, where a statement of fact is strictly necessary to render a question intelligible, a succinct quotation may more readily achieve this objective.[177] In permitting quotations the Chair has ruled that they may not contain matter which would otherwise be ruled out of order, for example, comment, opinion, argument or unparliamentary language.[178] In 1962 the Standing Orders Committee recommended that standing orders be amended to make explicit provision for questions not to contain quotations. Consideration of the proposal was deferred by the House and subsequently lapsed.[179]

It has been the practice, following that of the House of Commons,[180] that it is not permissible to ask whether a reported statement is correct.[181] A Minister, although he or she may have responsibility for a matter, does not have responsibility for the accuracy of reports by others on the matter. It is in order to ask whether a Minister's attention has been drawn to a report concerning a matter for which the Minister has responsibility and to ask a question in connection with the subject of the report.[182]

Questions seeking opinions

Questions may not ask Ministers for an expression of opinion,[183] including a legal opinion,[184] for comment,[185] or for justification of statements made by them.[186]

Legal opinions, such as the interpretation of a statute, or of an international document, or of a Minister's own powers, should not be sought in questions. Ministers may be asked, however, by what statutory authority they have acted in a particular instance, and the Prime Minister may be asked to define a Minister's responsibilities. Speaker Morrison of the UK House of Commons explained the basis for not permitting questions seeking an expression of opinion on a question of law:

> A Question asking a Minister to interpret the domestic law offends against the rule of Ministerial responsibility, since such interpretation is not the responsibility of a Minister . . . But it also offends against the rule that a Question may not ask for a Minister's opinion. The interpretation of written words is a matter of opinion.[187]

Questions asking about the extent to which federal legislation would prevail over State legislation or administrative action have been permitted.[188] In addition it has been ruled that in response to a question dealing with the law a Minister may provide any facts, as opposed to legal opinions, the Minister may wish to give.[189] Questions asking whether legislation existed on a specified subject,[190] whether an agency was entitled to take a particular action,[191] whether a specified Act provided certain protection,[192]

176 *May*, 24th edn, p. 359.
177 H.R. Deb. (14.10.1985) 1937–8.
178 H.R. Deb. (13.12.1934) 1205; H.R. Deb. (7.6.1945) 2685; H.R. Deb. (29.9.1948) 937.
179 H of R 1 (1962–63) 32.
180 *May*, 24th edn, p. 361.
181 H.R. Deb. (16.6.1939) 2085; H of R 1 (1962–63) 32; H.R. Deb. (27.9.1960) 1329 (statement by the Speaker).
182 E.g. H.R. Deb. (10.2.1997) 471.
183 E.g. H.R. Deb. (15.2.2006) 68–9; H.R. Deb. (17.6.2008) 5040.
184 S.O. 98(d).
185 H.R. Deb. (25.8.1977) 628; H.R. Deb. (19.5.1988) 2674.
186 H.R. Deb. (20.11.1957) 2322.
187 H.C. Deb. 543 (5.7.1955) 961–2.
188 H.R. Deb. (6.10.1976) 1542.
189 H.R. Deb. (4.4.1979) 1474.
190 H.R. Deb. (5.5.1976) 1926.
191 H.R. Deb. (8.6.2000) 17442.
192 H.R. Deb. (21.6.2007) 87–8.

whether certain actions were in breach of regulations,[193] whether offences against Commonwealth laws may have been committed,[194] and what the consequences of certain actions had been,[195] have been permitted.

In 1951, a question seeking a legal opinion from the Prime Minister having been disallowed, a Member asked the Prime Minister if he would table legal opinions he had received on the matter specified. The Prime Minister declined, stating that it was not his practice to table opinions received from the Crown's legal advisers.[196] The Attorney-General has also answered a question in writing (which did not explicitly seek a legal opinion), to the effect that that he did not consider it appropriate to provide the substance of a legal opinion in response to a question in writing.[197]

Announcement of government policy

Members must not ask Ministers to announce government policy, but may seek an explanation about the policy and its application, and may ask the Prime Minister whether a Minister's statement in the House represents government policy.[198]

This rule is often misunderstood but the practice of the House is quite clear. A question which directly asks a Minister to announce new policy is obviously out of order but a request for an explanation regarding existing policy and its application, or regarding the intentions of the Government is in order.[199]

Questions regarding persons

Questions must not contain names of persons unless they can be authenticated and are strictly necessary to render the question intelligible.[200] A question with or without notice which is laudatory of a named individual[201] or contains the name of an individual in order to render the question intelligible is permissible.[202] A Member has been warned after repeating the name of a person in a question after the Speaker had stated that the inclusion of the name was not necessary,[203] and a Minister has been asked to ignore a sentence in a question containing the name of a person.[204]

Questions must not reflect on or be critical of the character or conduct of a member of either House,[205] the Queen, the Governor-General,[206] a State Governor, or a member of the judiciary: their conduct may only be challenged on a substantive motion.[207] This rule applies to both questions without notice and questions in writing. (*See also* 'Inferences, etc.' at page 556)

Questions critical of the character or conduct of other persons must be in writing.[208] Although this rule is generally applied to named persons, it has also been applied to

193 H.R. Deb. (7.3.2000) 14020.
194 H.R. Deb. (8.10.2003) 20841–2.
195 H.R. Deb. (15.2.2000) 13424.
196 H.R. Deb. (6.11.1951) 1542. It has been stated that questions seeking information about advice given to the Crown by law officers are in fact out of order, Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 151.
197 H.R. Deb. (19.9.1996) 4853.
198 S.O. 98(d); *see also* Standing Orders Committee, *Report*, PP 129 (1964–66) 9.
199 E.g. H.R. Deb. (27.2.2006) 33.
200 S.O. 100(d).
201 *See* H of R 1 (1962–63) 33.
202 H.R. Deb. (4.11.1977) 2882.
203 H.R. Deb. (20.8.2002) 5188, and, for example, *see* H.R. Deb. (20.6.2001) 28095.
204 H.R. Deb. (20.8.2002) 5199.
205 E.g. H.R. Deb. (30.5.1978) 2721; H.R. Deb. (4.6.2003) 16005–6; H.R. Deb. (16.6.2008) 4841–2.
206 H.R. Deb. (7.10.1976) 1622. Questions have been permitted concerning matters in which a Governor-General had been involved before appointment to the office, e.g. H.R. Deb. (13.5.2003) 13961–74.
207 S.O. 100(c).
208 S.O. 100(c). E.g. H.R. Deb. (4.3.1998) 400; H.R. Deb. (1.12.2003) 23299–300; H.R. Deb. (1.12.2005) 82.

unnamed, but readily identifiable, persons.[209] The purpose of the rule is to protect a person against criticism which could be unwarranted. A question in writing does not receive the same publicity and prominence as a question without notice and the reply can be more considered.

The standing orders do not prevent criticism of Ministers or others in high office but rather preclude such criticism from being aired in questions.[210] A substantive motion relevant to the criticism must be moved so that the House may then debate the criticism and make its decision.[211] It has been held that once the House has made a decision on the matter, further questions, whether containing criticism or not, are out of order on the ground that the House has made its determination.[212] In modern practice, in matters such as the actions of a Member of the Government, questions having a somewhat critical cast have been permitted although the House may have made a decision on the matter.[213]

In 1976 Speaker Snedden, referring to a question about the Chief Justice of the High Court of Australia, said:

> I have ruled that the reference in *May's Parliamentary Practice* which would prevent even the mention of such an office holder . . . is far too restrictive and that there can be discussion about such an office holder provided that the discussion relates to a statement as to whether the actions were right or wrong, is conducted in a reasonable fashion and does not attribute motive to or involve criticism of the office holder.[214]

Although not specifically referred to in the standing orders, it has been a practice of the House that opprobrious reflections may not be cast in questions on rulers or governments of Commonwealth countries or other countries friendly with Australia, or on their representatives in Australia.[215] The application of this rule has, however, tended to vary according to particular considerations at the time. A recommendation by the Standing Orders Committee to include such a requirement in the standing orders was rejected by the House in 1963.[216] In 1986 the Procedure Committee stated its opinion that the rule was unduly restrictive and recommended it be discontinued,[217] but no action was taken on this recommendation.

Questions concerning the Crown

Questions may be asked of Ministers about matters relating to those public duties for which the Queen or her representative in the Commonwealth, the Governor-General, is responsible.[218] However, just as in debate, a Member in putting a question must not refer disrespectfully to the Queen, the Governor-General, or a State Governor, in debate or for the purpose of influencing the House in its deliberations.[219] As noted above, a question must not reflect on or be critical of the character or conduct of the Queen, the Governor-General or a State Governor. Their conduct may only be challenged on a substantive motion.[220]

209 H.R. Deb. (5.4.1979) 1560.
210 H.R. Deb. (23.11.1978) 3333.
211 *See* Ch. on 'Motions'.
212 H.R. Deb. (16.11.1978) 2892.
213 E.g. H.R. Deb. (20.10.1999) 11982 (critical reference in question the day after a censure motion was defeated); *and see* H.R. Deb. (7.12.2000) 23808–10.
214 H.R. Deb. (7.10.1976) 1628–9.
215 VP 1951–53/117 (10.10.1951); H.R. Deb. (10.10.1951) 459–60.
216 VP 1962–63/455 (1.5.1963).
217 PP 354 (1986) 32.
218 *See also May*, 24th edn, p. 360.
219 S.O. 88.
220 S.O. 100(c).

In 1956 Prime Minister Menzies presented documents relating to the double dissolution of the Senate and the House by the Governor-General in 1951. The documents referred to an interview which the Prime Minister had had with the Governor-General and contained copies of a letter from the Prime Minister to the Governor-General and the latter's reply.[221] Questions seeking the tabling of these documents had been asked by the Leader of the Opposition some five years earlier. In answer to those questions the Prime Minister acknowledged the importance of making the documents public as historical records and guides to constitutional practice but indicated that he would not present them until the Governor-General concerned had left office so that they would not involve the incumbent Governor-General in public debate.[222] In 1979 Prime Minister Fraser presented documents relating to the dissolution of the House in 1977 and the double dissolution of 1975. These included correspondence between the Prime Minister and the Governor-General relating to the grounds for the dissolutions.[223] He indicated that he was presenting the documents in response to a question asked earlier by the Deputy Leader of the Opposition.[224]

The practice in the UK House of Commons not to permit questions to the Prime Minister on advice given to the Crown concerning the granting of honours has not been followed in the House of Representatives, although care has been taken to ensure that nothing in such a question could bring the Queen into disrespect.[225]

The sub judice convention

Questions should not raise matters awaiting or under adjudication in a court of law. In such cases the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice rule or, more properly, as the sub judice convention. The convention, which is discussed in detail in the Chapter on 'Control and conduct of debate', also applies to questions and answers. It is for the Speaker to determine whether a question (or an answer) which may touch on matters before, or due to come before, a court may be permitted, just as the application of the convention in debate is subject to the discretion of the Speaker.[226]

Language

The Speaker may direct a Member to change the language of a question asked during Question Time if the language is inappropriate or does not otherwise conform with the standing orders,[227] and may, on the same grounds, change the language of a question in writing.[228]

Repetition of questions

A question fully answered must not be asked again.[229] A question may however contain a reference to a question already answered. Members occasionally place

221 VP 1956–57/167 (24.5.1956).
222 H.R. Deb. (13.6.1951) 49; H.R. Deb. (26.9.1951) 37.
223 H.R. Deb. (20.2.1979) 17; VP 1978–80/616 (20.2.1979).
224 H.R. Deb. (23.11.1978) 3276.
225 E.g. H.R. Deb. (25.8.1954) 587; H.R. Deb. (19–20.8.1959) 393; H.R. Deb. (29.9.1960) 1579–80; H.R. Deb. (31.8.1961) 787; H.R. Deb. (12.9.1961) 1081; H.R. Deb. (19.11.1987) 2466.
226 H.R. Deb. (28.5.1998) 4135; H.R. Deb. (9.8.1999) 8095.
227 S.O. 101(a). E.g. H.R. Deb. (23.3.2004) 26907; H.R. Deb. (11.8.2015) 7910.
228 S.O. 101(c).
229 S.O. 100(b); H.R. Deb. (27.8.1958) 777; H.R. Deb. (23.3.2004) 26909–10; 26911–12.

questions in writing asking Ministers to up-date information provided in answer to earlier specified questions.

UK House of Commons practice is that Members are out of order in renewing questions to which an answer has been refused; that where a Minister has refused to take the action or give the information asked for in a particular question, he or she may be asked the same question again after three months; and that a question which one Minister has refused to answer cannot be addressed to another Minister.[230] However, Ministers rarely refuse to answer questions in the House of Representatives and circumstances in which these House of Commons rules could have been applied do not appear to have arisen.

Question without notice similar to question on Notice Paper

It has been the general practice of the House that questions without notice which are substantially the same as questions already on the Notice Paper are not permissible.[231] It is not relevant that the questions on and without notice may be addressed to different Ministers.[232] However, in 1986 the Speaker ruled such a question acceptable, as it had been asked by the Member who had placed the original question on the Notice Paper. In that case the Speaker's view was that the purpose of the rule was to prevent a Member asking a question in writing from being disadvantaged and the Member's question being pre-empted, and logic and common sense dictated that the practice should not apply in respect of a Member's own question.[233] The Procedure Committee subsequently recommended that past practice be continued, despite this precedent to the contrary.[234] A Member may withdraw a question in writing at any time by informing the Clerk of the House, and the withdrawal is effective immediately. As the withdrawal could take place as a preface to a question without notice, the previous restriction could be easily circumvented.

Personal interest

A Member asking a question need not disclose any personal interest he or she may have in the subject matter of the question. The resolution of the House effective from 1984 until 1988 providing for the oral declaration of interests by Members participating in debate and other proceedings specifically excluded the asking of questions.[235]

Questions requiring detailed response

If a question cannot reasonably be expected to be answered without notice, it is disallowed, and the Chair suggests that it be placed on the Notice Paper.[236] This rule is mainly applied to questions seeking very detailed replies or to questions with many parts. Ministers themselves occasionally indicate that they are unable to answer a question without notice and ask that the Member place it on notice or, alternatively, they undertake to provide the Member with the information in writing. In the latter case, if the Minister provides a copy of the reply to the Clerk of the House, the question and reply are printed in Hansard.

230 *May*, 24th edn, pp. 363–4.
231 H.R. Deb. (30.8.2000) 19683–4, *and see* H.R. Deb. (23.3.2004) 26903.
232 H.R. Deb. (10.5.1979) 2058; H.R. Deb. (25.5.1988) 2975, 3047.
233 H.R. Deb. (25.9.1986) 1433, 1484; VP 1985–87/1166–7 (25.9.1986).
234 PP 354 (1986) 36.
235 VP 1983–84/946 (8.10.1984); VP 1987–90/961 (30.11.1988). In the UK House of Commons a declaration of relevant interest is required, although it is recognised that this is often impractical in the case of oral questions, *May*, 24th edn, p. 366.
236 H.R. Deb. (9.3.1971) 698.

QUESTIONS IN WRITING

'Questions on notice' were originally part of the order of business in the House, a period during which Ministers read to the House answers to questions in writing, the terms of which had been printed on the Notice Paper. Questions were placed on notice to be answered on a particular day, either the next or one in the near future, and were commonly answered on the day for which notice had been given. Questions without notice were also asked during this item of business. In the early Parliaments relatively few questions on notice were asked, only two or three usually appearing on the Notice Paper for a particular day and more than eight or nine being unusual. These figures included any questions remaining unanswered from the previous sitting.

Over the years more and more time was taken up with questions without notice, and in order to save the time of the House, a new standing order was adopted in 1931 to provide that the reply to a question in writing could be given by delivering it to the Clerk, who would supply a copy to the Member concerned and arrange for its inclusion in Hansard.[237] Soon afterwards answers, which until then had been printed in Hansard immediately after questions without notice, were added at the end of the report of the day's proceedings. Questions themselves, however, remained listed prominently as the first item of business on the Notice Paper until 1950 when 'Questions without notice' replaced 'Questions on notice' in the order of business.

By the early 1980s an average of 50 questions was being asked each sitting day, with a record number of 711 questions being placed on a single day's Notice Paper.[238] In the years 2008–2014 only about 8 questions in writing were being asked each sitting day, but this number increased to 19 in 2015, and was 14 in 2016.[239]

Notice of question

Members may ask questions in writing by having them placed on the Notice Paper. Neither the question nor the answer is read in the House. There is no rule limiting the number of questions a Member may place on the Notice Paper at any time or on the length of a question, although in very extraordinary circumstances practical considerations, such as printing arrangements, could impose a limit.

A Member lodging a question for the Notice Paper must deliver it in writing, to the Clerk at the Table or to the Table Office. The question must be authorised by the Member. Authorisation generally implies a signature. However, this is not insisted on when the Member delivers the question in person. Questions forwarded by e-mail are accepted if the message comes from the Member's official e-mail address or the Member's office. Questions for the next Notice Paper must be lodged by the cut off time determined by the Speaker, otherwise they will be included in the Notice Paper for the following sitting.[240] The Speaker has determined that questions for the next day's Notice Paper should, in normal circumstances, be lodged by 4 p.m., although if a proposed question requires extensive editing or checking it may not be included in the next Notice Paper.

Questions are not accepted from Members while they are suspended from the service of the House.

237 VP 1929–31/693 (26.6.1931); H.R. Deb. (25.6.1931) 3029–30; H.R. Deb. (26.6.1931) 3127–9. There were however earlier instances of incorporation, H.R. Deb. (10.9.1915) 6913, 6924.

238 NP 23 (9.4.1981) 1347–1430 (691 by one Member).

239 The 1996–2007 average was about 21 per sitting day.

240 S.O. 102. For statistics *see* Appendix 21.

Form and content

In general, the rules governing the form and content of questions without notice apply equally to those asked on notice, but they are able to be applied more strictly to the latter because of the opportunity to examine them closely.

The Speaker has authority to ensure that questions conform with the standing orders,[241] but, in practice, this task is performed by the Clerks, who have traditionally had the Speaker's authority to amend questions submitted before placing them on the Notice Paper. The Clerks also edit questions to adapt them to the style of the Notice Paper, to eliminate unnecessary words, to put them into proper interrogative form, and to ensure that they are addressed to the correct Ministers. Where changes of substance are involved, if practicable the amendments are discussed with the Member concerned or a person on the Member's staff. No question is amended so as to alter its sense without the Member's consent. Only in instances where agreement cannot be reached does the Speaker become personally involved, and any decision then made is final.[242]

Printing of questions on Notice Paper

Notices of questions are placed on the Notice Paper in the order in which they are received.[243] Each question is numbered, and the question retains the same number until it is fully answered and the reply is delivered to the Clerk. On the first sitting day of each sitting fortnight all unanswered questions appear in full on the Notice Paper. On other days only new questions for that day are printed, along with a list identifying by number the unanswered questions not printed. An electronic 'questions paper' on the House website, updated daily, gives the full text of all unanswered questions.[244]

Removal of questions from Notice Paper

A Member may withdraw a question appearing on the Notice Paper in his or her name by informing the Clerk. Withdrawal does not need to be notified in writing; oral advice is sufficient. The withdrawal is effective immediately, and the responsible department is advised as soon as practicable. When a Member ceases to be a Member or becomes a Minister, any questions appearing on the Notice Paper in his or her name are automatically removed.

Any questions remaining on the Notice Paper at the time when the Parliament is prorogued or the House is dissolved lapse.[245]

ANSWERS

No obligation to answer

It is the established practice of the House, as it is in the House of Commons, that Ministers cannot be required to answer questions.[246] Outright refusal to answer questions is relatively rare, being restricted largely to questions dealing with clearly sensitive and confidential matters such as security arrangements, Cabinet and Executive Council

241 S.O. 101(c).
242 H.R. Deb. (12.12.1914) 1689.
243 For further details concerning the format of the Notice Paper *see* Ch. on 'Documents'.
244 <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/>
245 *See* Ch. on 'The parliamentary calendar'.
246 H.R. Deb. (12.5.1970) 1949; H.R. Deb. (28.11.1988) 3329. *May*, 24th edn, p. 364. However, *see* page 544 for comments on possible political consequences of failing to answer questions.

deliberations, and communications between Ministers and their advisers. Further, if a Minister does not wish to reply to a question on the Notice Paper ultimately he or she may choose simply to ignore it (despite any reminders given in accordance with standing order 105—*see* page 571). The question then eventually lapses on prorogation of the Parliament or dissolution of the House.

Occasionally Ministers reply to questions in writing by stating, for example, that the information sought by a Member is unavailable or that the time and staff resources required to collect the information cannot be justified.[247] Ministers have refused to answer questions in writing which a public servant had admitted to preparing.[248] A Minister has declined to supply information which was considered to be readily obtainable by other means—for example, a Minister has suggested that a Member use the resources of the Parliamentary Library rather than those of his department.[249] Ministers have also stated that the question or part of the question sought, for example, a legal opinion or an answer to a hypothetical situation, and a substantive reply has not been given.[250]

The fact that a question which contravenes the standing orders appears on the Notice Paper from time to time is no reflection on the Speaker or the Clerks, as it is not always possible for them to understand the full implications of questions—only the Minister or his or her staff may have this knowledge. Ministers in replying to such questions generally recognise this situation and are careful in their answers that they do not reflect on the Speaker by suggesting, through implication or otherwise, that he or she has been negligent in permitting a question.

Answers to questions put to Ministers representing Senate Ministers

When a question without notice is addressed to a Minister in his or her capacity as Minister representing a Senate Minister, the Minister provides, if possible, a substantive and immediate answer. If the Minister cannot do so, but wishes the question to be answered, he or she undertakes to seek an answer from the responsible Minister and to pass it on to the questioner. In the case of questions in writing the question is also directed to the Minister representing the Senate Minister in the House but the answer is prepared under the authority of the responsible Minister. When the question and answer are printed in Hansard, the answer is prefaced with a statement along the following lines: 'The Minister for . . . [the responsible Minister in the Senate] has provided the following answer to the honourable Member's question: . . .'

Answers to questions without notice

Ministers' answers to questions without notice are given orally and immediately. There is no prohibition on a Minister reading an answer.[251] When a Minister is occasionally unable to provide an immediate substantive answer, he or she may either undertake to supply the Member with the requested information in writing at a later date[252] or suggest that the Member place the question on the Notice Paper. When the former option is taken, a Minister will usually treat the question as if it were a question

247 E.g. H.R. Deb. (30–31.5.1972) 3289; H.R. Deb. (18.2.1988) 404.
248 H.R. Deb. (25.5.1977) 1897–1903, *and see The Table* XLVI, 1978, p. 109.
249 H.R. Deb. (18.2.1988) 403.
250 H.R. Deb. (5.9.1967) 823; H.R. Deb. (26.3.1969) 954.
251 H.R. Deb. (3.12.1998) 1350, 1358–9.
252 E.g. H.R. Deb. (30.5.1977) 2099; H.R. Deb. (18.8.1977) 496; H.R. Deb. (10.9.1996) 3823–4; H.R. Deb. (12.9.1996) 4269–70; H.R. Deb. (7.11.1996) 6825.

in writing and will deliver a copy of the reply to the Clerk in order that the question and answer may be printed in Hansard.

Although Ministers have not normally been permitted to answer questions which have been ruled out of order,[253] answers have often been permitted, for example, when the Minister or third parties have been criticised and the Minister has sought an opportunity to refute the criticism.[254]

It is in order for more than one Minister to answer a particular question without notice in the case of shared responsibility.[255] A Minister has also answered a question addressed to another.[256] In 1987 the Treasurer responded to questions directed to the Minister Assisting the Treasurer on Prices, saying that questions should not be directed to a Minister Assisting when the Minister was in the House.[257] It is in order for the Prime Minister, who has overall responsibility for the Government, to add to the answer to a question addressed to another Minister,[258] but a Minister may not add to an answer by the Prime Minister unless requested to do so by the Prime Minister.[259]

Addition to or correction of an answer

Ministers may seek and be granted the indulgence of the Chair to add to or correct an answer given to a question without notice asked on that day[260] or on a previous day.[261] A Minister will generally seek indulgence for this purpose immediately after Question Time, but may also do so at other times of the day—between items of business or even on occasion so as to interrupt debate.[262]

Alternatively, the additional or corrected information may be given in writing to the Clerk, who will treat it in the same manner as an answer to a question in writing.[263] A revised answer to a question answered in the previous Parliament has been presented as a paper.[264] A Minister, providing additional information by indulgence, has added to an answer given by another Minister.[265] A Minister has added to an answer he had given while in a previous portfolio.[266] In answering a question Ministers have provided additional comment and information on another question asked of them earlier on the same day,[267] or on an earlier day.[268] A Minister has also by leave added to an answer given the previous day.[269] In the case of additional information, the Minister may choose simply to write directly to the Member concerned.

253 H.R. Deb. (2.5.1978) 1591.

254 E.g. H.R. Deb. (21.11.1978) 3075; H.R. Deb. (13.10.1994) 2005–6; *and see* statement by Speaker Andrew and references to questions containing imputation, H.R. Deb. (7.12.2000) 23808–10.

255 H.R. Deb. (5.12.2013) 1792. For earlier examples *see* H.R. Deb. (3.3.1970) 19–20; H.R. Deb. (30.4.1987) 2278–9.

256 E.g. H.R. Deb. (8.6.2000) 17449.

257 H.R. Deb. (18.3.1987) 1026–28.

258 E.g. H.R. Deb. (9.8.2005) 15; H.R. Deb. (23.6.2010) 6346–8.

259 H.R. Deb. (25.6.1992) 3948; H.R. Deb. (7.2.1994) 420–1, 423; H.R. Deb. (10.9.1996) 3834; H.R. Deb. (17.2.2000) 13784, 89; H.R. Deb. (29.6.2000) 18719; H.R. Deb. (5.2.2009) 601.

260 E.g. H.R. Deb. (31.5.1973) 2938–9; H.R. Deb. (11.9.1996) 4060; H.R. Deb. (22.6.1999) 6986, 6994–5; H.R. Deb. (17.2.2000) 13788; H.R. Deb. (30.9.2010) 354; H.R. Deb. (22.2.2016) 1647.

261 E.g. H.R. Deb. (14.8.1969) 255; H.R. Deb. (23.3.1994) 1981–3 (Minister's previous rostered day); H.R. Deb. (17.9.1996) 4408; H.R. Deb. (23.11.1999) 12359–60; H.R. Deb. (4.12.2003) 23843–4; H.R. Deb. (6.2.2007) 26; H.R. Deb. (2.12.2015) 14448–9.

262 Debate has been adjourned to facilitate this, e.g. H.R. Deb. (10.2.2004) 24187, H.R. Deb. (26.2.2009) 1992–3, although this may not be necessary, e.g . H.R. Deb. (8.2.2006) 131 (between speakers); H.R. Deb. (6.2.2007) 65 (Member speaking made way by seeking leave to continue remarks).

263 E.g. H.R. Deb. (21.9.1976) 1276; H.R. Deb. (18.8.1977) 496; H.R. Deb. (30.10.1996) 6249–50; H.R. Deb. (1.12.2005) 113; H.R. Deb. (27.5.2008) 3393–4.

264 VP 2004–07/484 (9.8.2005).

265 H.R. Deb. (9.12.1998) 1730.

266 H.R. Deb. (10.2.2004) 24109.

267 E.g. H.R. Deb. (17.10.1995) 2204; H.R. Deb. (16.6.2003) 16399.

268 H.R. Deb. (9.9.2003) 19511; H.R. Deb. (7.9.2006) 71–2; H.R. Deb. (18.3.2010) 2999–3001.

269 H.R. Deb. (2.9.1999) 9816–7.

Content of answers and relevance

The standing orders and practice of the House have been criticised in that restrictions similar to those applying to the form and content of questions do not apply to answers. For instance, Ministers have not been prevented from introducing argument into their answers. Although it has been claimed that the standing order provision that 'questions cannot be debated' should be read as meaning a prohibition of debate in answering, as well as in putting, a question, it has not been interpreted by the Chair in this way.[270]

The main provision in the standing orders which deals specifically with the form and content of answers to questions is the requirement that an answer must be directly relevant to the question.[271] Only one point of order regarding relevance may be taken during an answer.[272]

The requirement for 'direct' relevance was inserted in the standing orders in 2010. This gave the Speaker greater authority in what has long been a difficult area. Although the interpretation and application of the provision has remained challenging, the requirement for direct relevance, rather than the former requirement which was merely for relevance, means that the Speaker can now require answers to be less wide-ranging.[273] It has been ruled that while a Minister is addressing the policy topic which is the subject of the question, the answer is directly relevant.[274]

The interpretation of 'relevant' has at times been very wide.[275] Although the test of relevance has been difficult to apply, especially before 2010, Ministers have been ordered to conclude their answers or resume their seats as their answers were not relevant,[276] or the Speaker has withdrawn the call and called the next question.[277] The Chair has also upheld points of order or intimations contesting the relevancy of a Minister's answer,[278] for example, directing a Minister to 'come to the question' or 'return to the question'.[279] The insertion of the requirement to be 'directly' relevant has given the Speaker more scope to direct Ministers in this way.[280]

Even though a question may invite a 'yes or no' type of answer, Members cannot demand that an answer be in such terms.[281] Further, the Speaker has indicated that, where a question has a preamble or a quotation of some breadth or length, it is not reasonable for a Member to conclude with a short sharp question and to then claim that the answer should be limited to the contents of the conclusion.[282]

270 H.R. Deb. (4.5.1987) 2487; H.R. Deb. (12.5.1987) 2972.

271 S.O. 104(a). *May* states 'An answer should be confined to the points contained in the question, with such explanation only as renders the answer intelligible, though a certain latitude is permitted to Ministers of the Crown'. *May,* 24th edn, p. 366.

272 S.O. 104(b).

273 E.g. H.R. Deb. (19.10.2010) 677; H.R. Deb. (20.10.2010) 933, 938–9; H.R. Deb. (21.2.2011) 627; H.R. Deb. (22.3.2011) 2662.

274 H.R. Deb. (11.8.2015) 7913; H.R. Deb. (13.10.2015) 10996.

275 H.R. Deb. (10.9.1981) 1158; H.R. Deb. (29.6.2000) 18718.

276 E.g. H.R. Deb. (13.9.1979) 1077–9; H.R. Deb. (18.9.1980) 1470; H.R. Deb. (24.5.1988) 2863; H.R. Deb. (9.3.1999) 3438; H.R. Deb. (6.9.2000) 20270, 20271; H.R. Deb. (20.6.2002) 4072; H.R. Deb. (10.8.2005) 79; H.R. Deb. (1.3.2006) 80; H.R. Deb. (18.2.2008) 520; H.R. Deb. (4.9.2008) 7240; H.R. Deb. (25.9.2008) 8692; H.R. Deb. (12.3.2009) 2530; H.R. Deb. (18.6.2009) 6577; H.R. Deb. (31.5.2010) 4558; H.R. Deb. (20.10.2010) 939; H.R. Deb. (19.9.2011) 10494; H.R. Deb. (13.3.2012) 2617.

277 E.g. H.R. Deb. (2.3.2006) 82.

278 H.R. Deb. (22.8.1979) 429; H.R. Deb. (25.8.1988) 382–4; H.R. Deb. (11.2.1999) 2508–12, 2519; H.R. Deb. (17.2.1999) 3006; H.R. Deb. (9.3.1999) 3438.

279 E.g. H.R. Deb. (11.10.1999) 11202, 11203; H.R. Deb. (13.5.2003) 13977; H.R. Deb. (10.8.2005) 79; H.R. Deb. (12.10.2015) 10767; H.R. Deb. (21.10.2015) 12004; H.R. Deb. (25.11.2015) 13713.

280 E.g. H.R. Deb. (18.10.2010) 443, 453; H.R. Deb. (20.10.2010) 933, 938–9; H.R. Deb. (24.11.2010) 3627, 3630; H.R. Deb. (22.3.2011) 2662; H.R. Deb. (23.8.2011) 9029; H.R. Deb. (20.3.2012) 3501.

281 H.R. Deb. (29.6.1999) 7680; H.R. Deb. (17.8.2009) 7965, 7967.

282 E.g. H.R. Deb. (29.6.2000) 18718; H.R. Deb. (7.12.2000) 23809; H.R. Deb. (18.6.2009) 6565; H.R. Deb. (22.11.2010) 3186; H.R. Deb. (21.9.2011) 11020–1.

Although a Minister has been directed that he 'should not engage in irrelevances, such as contrasting the Government and [the opposition party]',[283] it has also been ruled that 'It is relevant to contrast the action of the Government with another point of view'.[284] While a question must not ask a Minister about opposition policy (*see* page 553), comments on opposition policies in a Minister's answer have been permitted on many occasions when they have been regarded as relevant to the question asked.[285] However, the Speaker has been critical of debate of such matters in answers[286] and has deprecated the practice of referring in detail to opposition policies; and has withdrawn the call,[287] directed Ministers to return to the question,[288] to bring their answers to a conclusion,[289] or to resume their seats[290] when they have continued to criticise the Opposition.

Speakers have noted that the standing orders concerning questions and answers did not provide a complete statement of the rules governing Question Time—for example, the sub judice rule and the prohibitions on the use of offensive words, imputations, etc. apply to answers.[291] However, Speakers have not accepted that the provisions of standing order 75, dealing with irrelevance and tedious repetition in debate, apply to answers.[292] Similarly, requests for the Speaker to intervene as permitted by standing order 92 have not been upheld in respect to answers.[293] It is considered nevertheless that the Chair has sufficient authority to deal with irrelevance or tedious repetition in answers.

From time to time Speakers have indicated that responsibility for tightening standing orders relating to answers should be a matter for Procedure Committee consideration.[294] In fact over the years the Procedure Committee has more than once made such recommendations. In 1986 it recommended that standing orders be amended to provide that answers to questions must be relevant, not introduce matter extraneous to the question and should not contain arguments, imputations, epithets, ironical expressions or discreditable references to the House or any of its Members, or any offensive or unparliamentary expressions.[295] The Procedure Committee of a later Parliament (1992) while not in favour of such strict provisions, nevertheless recommended that the relevant standing order be amended to read 'The answer to a question without notice (a) shall be concise and confined to the subject matter of the question, and (b) shall not debate the subject to which the question refers'.[296] No action was taken by the House on either of the recommendations. In revisiting the subject in 1993 the Procedure Committee of the 37th Parliament concluded that, however much the requirements of the standing orders were to be tightened up, relevance would continue to be a matter of opinion, and that

283 H.R. Deb. (27.8.1981) 856, 857; H.R. Deb. (9.9.81) 1063–4. *And see* H.R. Deb. (22.3.2012) 4008.
284 H.R. Deb. (10.9.1981) 1160.
285 E.g. H.R. Deb. (4.4.1984) 1352; H.R. Deb. (24.11.1988) 3208; H.R. Deb. (17.8.2000) 19277–8. H.R. Deb. (18.3.2010) 2999.
286 E.g. H.R. Deb. (21.9.2011) 11024.
287 E.g. H.R. Deb. (21.9.2011) 11040.
288 E.g. H.R. Deb. (20.9.2011) 10811; H.R. Deb. (21.9.2011) 11027, 11035.
289 E.g. H.R. Deb. (14.9.2011) 10084, 10088; H.R. Deb. (22.9.2011) 11232, 11242.
290 E.g. H.R. Deb. (19.9.2011) 10494; H.R. Deb. (21.9.2011) 11028, 11034; H.R. Deb. (13.2.2012) 854; H.R. Deb. (15.2.2012) 1393.
291 H.R. Deb. (28.11.1988) 3329, *and* see statement by Speaker Andrew, H.R. Deb. (7.12.2000) 23809.
292 H.R. Deb. (28.11.1988) 3329; H.R. Deb. (28.6.2000) 18475–6; H.R. Deb. (18.6.2009) 6570.
293 H.R. Deb. (4.9.2008) 7217, 7226.
294 E.g. H.R. Deb. (3.6.2010) 5221, 5226.
295 Standing Committee on Procedure, *The standing orders and practices which govern the conduct of Question Time*. PP 354 (1986) 45.
296 Standing Committee on Procedure, *The standing orders and practices governing questions seeking information*. PP 179 (1992) 15.

significant change in the nature of answers would depend more on changes of attitudes than on changes to rules.[297]

Length of answers

The duration of each answer is limited to three minutes.[298] From time to time motions have been moved that a Minister giving a lengthy answer be no longer heard. This motion has also been moved since the introduction of the time limit on answers.[299]

Answers and the authority of the Chair

The above paragraphs relating to answers to questions without notice reflect the attitudes of successive Speakers over a number of years. However, it is important to recognise that, as a consequence of a lack of provisions in the standing orders relating to answers, the Chair has a considerable degree of discretion in developing the practice of the House in this area. Thus the Chair may assume the authority to make a ruling or decision which the Chair thinks appropriate and then leave it to the House to challenge that ruling or decision if it does not agree with it.

Answers to questions in writing

An answer is given by delivering it to the Clerk, who must supply a copy to the Member who asked the question and arrange for both question and reply to be printed in Hansard.[300] Answers are neither read nor presented to the House. Answers delivered to the Clerk after the prorogation of the Parliament or dissolution of the House are not accepted. In these circumstances the Minister concerned may supply the answer directly to the questioner and, if he or she wishes, to the press. However, it has been considered that absolute privilege might not attach to the distribution of copies of the answer, and the answer would not be published in Hansard (*and see Parliamentary Privileges Act 1987*).

Answers received by the Clerk after the last sitting of a session or Parliament but prior to prorogation or dissolution are published if they are received in time to be included in the final edition of Hansard for that session or Parliament. Answers which miss this deadline are not published in the Hansard of the next session or next Parliament.

Occasionally Ministers supply interim answers to questions in writing. Interim answers are published in Hansard but the relevant questions are not removed from the Notice Paper until they are fully answered. The following guidelines are used in determining an interim, as opposed to a final, reply. Any answer which makes a real attempt to supply the information sought in a question is considered fully answered. An answer to a question seeking information about an area outside a Minister's administrative responsibilities is considered fully answered if the Minister replies that he or she is having inquiries made and will provide the information. Similarly an answer to a question seeking information about various matters both within and outside a Minister's responsibility is considered fully answered if an answer is supplied to those parts within the Minister's administrative responsibility. An example of such a question

297 Standing Committee on Procedure, *About time: bills questions and working hours*. PP 194 (1993) 22–3.

298 S.O. 104(c). This provision was introduced at the start of the 43rd Parliament (2010), initially at four minutes, and changed to three minutes in February 2012. Previously no time limit applied. An extension may be granted, e.g. VP 2010–13/89 (19.10.2010); VP 2010–13/185 (16.11.2010). The clock is paused during a point of order.

299 Negatived on division. H.R. Deb. (21.10.2010) 1148–9; H.R. Deb. (28.10.2010) 2066–7; H.R. Deb. (14.8.2017) 8271; H.R. Deb. (17.8.2017) 8900. In such cases the Speaker has ruled that the clock should be paused, and the answer resumed when the motion is negatived.

300 S.O. 105(a).

would be one seeking statistical information on activities of the Australian Government and overseas governments within a field for which the Minister is responsible in Australia.[301] However, if the question concerns matters wholly within a Minister's administrative responsibility, a reply that the Minister will provide the information at a later date is insufficient and the question remains on the Notice Paper. Technically, a statement by a Minister that he or she refuses to answer a question, with or without reasons, is considered to fully answer the question. Answers have referred to the cost of obtaining information sought in a question or a part of a question as not being justified, in the opinion of the Minister, and the information has not been provided.[302]

A Minister has answered a question in writing on behalf of another.[303] The answer to a question in writing may refer the Member to the answer to another question if relevant.[304] This approach should be adopted if, for example, an answer applies equally to two questions.[305] It is unacceptable to give a single reply to two (or more) separate questions. However, a single whole of government response 'on behalf of all Ministers' is acceptable from one Minister or the Prime Minister in response to the same question addressed to all Ministers.[306]

Supplementary answers adding to or correcting information contained in earlier answers to questions in writing are themselves dealt with as answers to questions in writing. The original question number is used for identification.[307] A revised answer to a question has been presented as a paper.[308]

If a Minister relinquishes a portfolio before an answer has been published in Hansard, it is returned to the former department or to the new Minister. The answer should then be re-submitted under the new Minister's name if he or she is satisfied with it, or alternatively the answer resubmitted may be prefaced 'The answer provided by my predecessor (. . .) to the honourable Member's question is as follows: . . .'.[309]

In 1975 an answer to a question was submitted by a Minister who had resigned as a Member. The answer was not accepted because, while the Minister could continue to act in his executive capacity, he could no longer act in his parliamentary capacity. The Minister resigned from the Ministry soon afterwards and an answer to the question was submitted by his successor.

From time to time answers have not been printed in Hansard because of their extreme length and the difficulties which would be created in producing Hansard. The answer recorded by Hansard has been along the following lines:

> The information which has been collated for the honourable member is too lengthy to be published in Hansard. A copy of the reply is filed in the Table Office of the House of Representatives where it can be read or a copy of it obtained.[310]

This practice was first approved by Speaker McLeay in 1966 and has been continued under subsequent Speakers. In such cases the Member who asked the question is given a copy of the full answer.

301 H.R. Deb. (9.12.1976) 3688–9.
302 E.g. H.R. Deb. (9.5.2007) 203.
303 H.R. Deb. (16.2.1982) 144.
304 H.R. Deb. (7.4.1970) 781, question No. 1.
305 *See* H.R. Deb. (26.11.2003) 23105.
306 E.g. H.R. Deb. (14.5.1997) 3650–51.
307 H.R. Deb. (15.8.1972) 147–8.
308 VP 2004–07/484 (9.8.2005).
309 H.R. Deb. (16.2.1971) 73, question No. 1570.
310 H.R. Deb. (28.11.1986) 4028, question No. 1239.

It is not in order for a Minister to supply an abbreviated reply to the Clerk for publication in Hansard and a full reply to the Member concerned, even if a further copy of the full reply is placed in the Parliamentary Library or the House of Representatives Table Office. Any decision to exempt an answer from publication in Hansard lies with the Speaker, not Ministers.

Hansard's objective is to publish on the first day of a period of sittings answers to questions in writing which are provided during a non-sitting period. However the volume of answers is sometimes so large that some answers must be held over for publication in subsequent issues of Hansard.[311]

Unanswered questions

As noted earlier, there is no obligation on Ministers to answer. Members' expectations that Ministers will or should provide answers are not always realised. If a reply has not been received 60 days after a question first appeared on the Notice Paper, the Member who asked the question may, at the conclusion of Question Time, ask the Speaker to write to the Minister concerned, seeking reasons for the delay in answering.[312] Any response to the Speaker's letter is forwarded to the Member concerned.

311 H.R. Deb. (3.6.1986) 4497–8.
312 S.O. 105(b). *See also* Procedure Committee reports, PP 179 (1992) 18; PP 194 (1993) 29.

16
Non-government business

As a means of analysing how the time of the House is occupied the following categorisation may be used:

Government business—government sponsored legislation and motions, and ministerial statements.

Business of the House—petitions, Question Time, presentation of documents, privilege matters, personal explanations, motions to refer business to the Federation Chamber and the presentation of reports from the Federation Chamber, messages from the Governor-General and the Senate, dissent motions, announcements of ministerial arrangements, motions to appoint committees, statements and debate on committee and parliamentary delegation reports, motions for addresses, motions of condolence, motions for leave of absence and special adjournment motions.

Private Members' business—bills and motions sponsored by private Members.

Other opportunities for private Members—adjournment and grievance debates, Members' statements, discussion of matters of public importance, and debate on the Address in Reply.

Most of the time of the House is occupied in the consideration of government business,[1] a situation which is common to most Westminster-style Parliaments. At the time of Federation a Government's right to reserve a significant part of the time of the House for its own purposes had, from necessity, already become established. The increasing need for Governments to control House time, assisted by the growth of strong party loyalty, led to a steady curtailment of opportunities for private Members to initiate bills and motions, and procedures to expedite the consideration of government business.[2] Private Members frequently objected to the limits placed on opportunities to raise matters in the House, and to encroachments on their relatively few opportunities to have issues of their own choosing debated.[3] The procedures for private Members' business introduced in 1988 ameliorated this situation. Since then, the time available for private Members' business has further increased, and additional opportunities have been created for Members to raise matters in the House and Federation Chamber.[4]

The private Member has the opportunity, provided by the standing orders, to participate in all House activity, including government business and business of the House. The rights of the private Member have long been preserved in respect of lodging a petition, the giving of a notice and the asking of questions. Other procedures which permit private Members to raise and draw attention to issues which they consider to be important are the adjournment debate, grievance debate, Members' statements, discussion of matters of public importance and debate on the Address in Reply. Members also have an opportunity to raise matters of their own choosing during debate on the

1 Appendixes 22 and 23 show the proportion of House time spent on various categories of business in recent years.

2 A feature of changes to the standing orders since Federation has been the adoption of the closure of the question, closure of a Member, the guillotine and time limits for Members' speeches which have been shortened.

3 *See* H.R. Deb. (23.2.1978) 194, 218; H.R. Deb. (24.5.1978) 2444; H.R. Deb. (7.6.1978) 3172; H.R. Deb. (23.8.1978) 632; H.R. Deb. (19.9.1978) 1162; H.R. Deb. (23.8.1979) 601, 607; H.R. Deb. (24.10.1979) 2435; H.R. Deb. (25.10.1979) 2530, 2557; H.R. Deb. (4.10.1980) 402.

4 *See* 'Members' 90 second statements' and 'Constituency statements' at page 587.

second reading of the main appropriation and supply bills and, subject to the relevancy rule, in the consideration of the proposed expenditures of government departments. While these opportunities are important to private Members, none of them enables a Member to initiate debate on a topic of his or her own choice in a form which could enable a distinct vote of the House on it, or to initiate legislative proposals. The private Members' business procedures provide such opportunities.

PRIVATE MEMBERS' MONDAYS

Order of business on Mondays

Time is reserved on each sitting Monday for non-government business as follows:

In the House

Petitions[5] (from 10 a.m. for up to 10 minutes);

Committee and delegation business and private Members' business (to 12 noon).[6]

In the Federation Chamber

Committee and delegation business and private Members' business (from 11 a.m. to 1.30 p.m., and from 4.45 p.m. to 7.30 p.m.).

There are no longer separate periods for committee business and private Members' business. The amount of time available for the latter depends on the amount of committee business. This practice allows greater flexibility to accommodate the flow of committee report presentation, which is necessarily low at the beginning of a Parliament and tends to peak towards the end. Since the introduction of the modern form of private Members' business in 1988, only in the most unusual circumstances has other business been given priority at the time for private Members' business—and this has always been by agreement, not merely by government decision.[7] Sometimes, when the House has not met on a Monday of a sitting week, special arrangements have been made to enable some or all of the items normally dealt with on a Monday to be considered later.[8]

Selection and programming of business—role of the Selection Committee

The timetable for committee and delegation business and private Members' business on Mondays, in the House and in the Federation Chamber, is the responsibility of the Selection Committee, which determines the order of consideration of matters, and the times allotted for debate on each item and for each Member speaking.[9]

5 Presentation of petitions and any Petitions Committee report—*see* 'Petitions' in the Chapter on 'Documents'.

6 S.O. 34.

7 VP 1993–96/25–6 (5.5.1993); VP 1996–98/43 (1.5.1996); VP 1998–2001/55 (12.11.1998), 59 (23.11.1998) (priority to Address in Reply, Selection Committee not having met to select private Members' business). VP 1993–96/2181–2 (19.6.1995) (motion on French nuclear testing). VP 1996–98/239 (17.6.1996) (motion on helicopter crash, part of private Members' time only). An order of the Court of Disputed Returns has been presented before presentation of committee and delegation reports—this action was taken because of the importance to the House of the subject matter and only took a very short time, VP 1998–2001/717 (9.8.1999). VP 1998–2001/1531 (19.6.2000) (death of sitting Member). VP 1998–2001/2595–6 (17.9.2001) (terrorist attacks in the USA). VP 2002–04/191 (27.5.2002) (death of former Prime Minister).VP 2002–04/477 (14.10.2002) (terrorist attacks in Bali). VP 2008–10/849 (9.2.2009) (Victorian bushfires and Queensland floods). VP 2013–16/1219 (23.3.2015) (death of former Prime Minister). Any attempt to take unilateral action to displace the usual order of business has been opposed, e.g. VP 1998–2001/2547 (27.8.2001).

8 E.g. VP 1993–96/1769 (1.2.1995); 1996–98/375 (21.8.1996), 563 (9.10.1996); VP 2008–10/1235 (17.8.2009).

9 S.O. 222. In the 42nd Parliament a Selection Committee was not established and its functions were managed by the Whips (former S.O. 41A).

The Selection Committee meets usually once each sitting week on Tuesday to consider committee and delegation business and private Members' business. If necessary the committee can also meet on other days.

The Selection Committee reports its determinations regarding private Members' and committee business to the House in time for them to be adopted and published on the Notice Paper of the sitting Thursday before the Monday being considered. The report is treated as adopted by the House on presentation and is printed in Hansard.[10]

The standing orders oblige the Selection Committee to give notices by private Members of their intention to present bills priority over other notices and orders of the day.[11] In other matters relating to the selection and programming of private Members' business the following general principles have been followed:

1. In formulating the priority to be given to items of private Members' business the Selection Committee shall have regard to:
   (a) the importance of the subject;
   (b) the current level of interest in the subject;
   (c) the extent of the current discussion on the subject both in the Parliament and elsewhere;
   (d) the extent to which the subject comes within the responsibility of the Commonwealth Parliament;
   (e) the probability of the subject being brought before the House by other means within a reasonable time; and
   (f) whether the subject is the same, or substantially the same, as another item of business which has been debated or on which the House has already made a decision in the same period of sittings and, if so, whether new circumstances exist.
2. The Committee shall accord priority to private Members' business:
   (a) with regard to the numbers of Members affiliated with each party in the House;
   (b) in a way which ensures that a particular Member or the Members who comprise the Opposition Executive do not predominate as the movers of the items selected;
   (c) in a way which seeks to ensure balance is achieved over each period of sittings;
   (d) in a manner that ensures appropriate participation by non-aligned Members.
3. When a private Member has the responsibility for the carriage of a bill transmitted from the Senate for concurrence, the bill shall be accorded priority following the question for the second reading being put to the House in the same way as a private Member's bill originating in the House is accorded priority by standing order 41.
4. Priority shall not be accorded to any item of private Members' business if the matter should be dealt with by the House in another, more appropriate, form of proceeding.
5. The general principles set out above shall be observed by the Selection Committee but nothing in the general principles shall be taken to prevent the Selection Committee departing from those general principles in order to meet circumstances, which, in its opinion, are unusual or special.
6. These general principles shall continue in effect until altered by the House following a report from this or a future Selection Committee.[12]

Referral of business to the Federation Chamber

The Selection Committee selects private Members' notices and other items of private Members' and committee and delegation business for referral to the Federation Chamber**,** or for return to the House. Such a referral by determination of the Selection Committee, once the determination has been reported to the House, is deemed to be a referral by the House.[13]

10 S.O. 222(e). Selection Committee determinations adopted may be varied by order of the House, e.g. VP 2010–13/1252–3 (27.2.2012), 1749 (10.9.2012).

11 S.O. 41(b).

12 H.R. Deb. (21.10.2010) 1158–9.

13 S.O.s 183, 222.

COMMITTEE AND DELEGATION BUSINESS

The periods on Mondays from 10.10 a.m. to 12 noon in the House, and from 11 a.m. to 1.30 p.m. and from 4.45 p.m. to 7.30 p.m. in the Federation Chamber, may be used for private Members' business (*see* page 577); for the resumption of debate on orders of the day relating to parliamentary committee and delegation reports previously presented, and for the presentation of these reports. Statements by the chair or deputy chair of a committee (or both) concerning a committee inquiry may also be made.[14] For presentation of committee reports at other times *see* 'Presentation of reports' in the Chapter on 'Committee inquiries'.

Business periods on Tuesdays, Wednesdays and Thursdays in the Federation Chamber may be used for either government business or for committee and delegation business. During these periods proceedings may be resumed on motions in relation to committee and delegation reports.[15]

Consideration in the House or Federation Chamber

Subject to any determination by the Selection Committee, the Member presenting a report and other Members may each make statements in relation to the report for a maximum of 10 minutes. After the statements the Member presenting the report may move without notice a specific motion in relation to the report (normally 'That the House take note of the report'), and debate on the question is adjourned to a future day. The Selection Committee often allots five minutes for statements rather than the 10 minute maximum. However, Members have been permitted to speak again by leave[16] and Members have been given an extension of time.[17] When time has not been allocated for statements a Member has spoken by leave.[18] When reports scheduled for presentation are not available the House is informed and the next business is proceeded with.[19]

Following presentation of reports, orders of the day for resumption of debate on earlier reports may be debated according to the order of priority and times allotted for debate determined by the Selection Committee.[20] Each Member may speak for a maximum of 10 minutes or for any lesser period allotted.[21] If the consideration of any question has not concluded by the time appointed, the debate is interrupted and the resumption of debate made an order of the day for a future day. If debate concludes before the time allocated for the item has expired, and the Selection Committee has determined that consideration is to continue on a future day (the usual practice), the Chair announces that the resumption of debate will be made an order of the day for the next sitting Monday. Standing orders have been suspended to enable debate to be resumed on the same day.[22]

After presentation of a report in the House and the moving of a motion to take note of the report, the order of the day for the resumption of debate on the motion may be referred to the Federation Chamber.

14 S.O. 39.
15 S.O. 40(c).
16 E.g. VP 1990–93/884 (20.6.1991); VP 2004–07/1226 (19.6.2006); VP 2010–13/1877 (21.6.2010).
17 E.g. VP 1990–93/566 (7.3.1991); VP 1993–96/1343 (10.10.1994).
18 VP 2004–07/564 (5.9.2005).
19 E.g. VP 2002–04/1311 (24.11.2003).
20 Since there has been opportunity for debate of reports in the Main Committee/Federation Chamber the resumption of debate in the House has been rare.
21 S.O. 40, e.g. VP 1993–96/1343 (10.10.1994).
22 VP 2002–04/1311–2 (24.11.2003).

Removal of reports from the Notice Paper

Generally, debate on a motion to take note of a report is adjourned and the order of the day remains listed as House or Federation Chamber business on the Notice Paper, thus enabling further debate. If not called on for eight consecutive sitting weeks the order of the day is automatically removed from the Notice Paper.[23]

PRIVATE MEMBERS' BUSINESS

A private Member is defined by the standing orders as a Member other than the Speaker or a Minister.[24] This definition, indirectly, provides additional opportunities to opposition leaders.[25] In addition since 2010 the standing orders have provided that the Speaker and Deputy Speaker may participate in private Members' business.[26]

During the private Members' business period notices and orders of the day relating to private Members' business are called on by the Clerk in the order in which they appear on the Notice Paper—that is, as previously determined by the Selection Committee. Standing and sessional orders have been suspended to allow other Members to move motions in the absence of the Members who had given notices accorded priority,[27] although leave may be sufficient for this.[28] Priority must be given to notices of intention to present private Members' bills.[29] Subject to this requirement, the Selection Committee must provide for the consideration of private Members' notices to alternate between those of government and non-government Members.[30]

A Member may withdraw a notice of motion or of intention to present a bill even though it has been accorded priority,[31] and may alter the date in respect of which a notice has been given after it has been given priority.[32]

One private Member acting for another

If a Member is not present when his or her notice is called on, another Member, at his or her request, may set a future time for the moving of the motion or presentation of the bill.[33]

While there is no provision in the standing orders allowing a private Member to move a motion on behalf of another, this has been done by leave,[34] and standing orders have been suspended to permit a private Member's bill to be presented by another Member.[35] When the sponsor of a private Member's bill has not been available, leave has been granted for another Member to move the second reading on his or her behalf.[36]

23 S.O. 42.
24 S.O. 2. The term 'Minister' here includes a person designated as Parliamentary Secretary.
25 The definition places a restriction on who may sponsor business, not on who may speak. The Prime Minister and Ministers sometimes speak on high-profile 'conscience' issues. However, the participation of Ministers in private Members' business debates is otherwise unusual. For further discussion of the definition of private Member *see* Ch. on 'Members'.
26 S.O. 41(e).
27 E.g. VP 1990–93/1013 (11.9.1991); VP 1996–98/588 (10.10.1996); VP 2002–04/747 (3.3.2003).
28 VP 2004–07/1733 (26.2.2007); VP 2013–16/972 (24.11.2014).
29 S.O. 41(b).
30 S.O. 41(e).
31 E.g. NP 171 (8.3.2001) 9793; NP 172 (26.3.2001) 9835.
32 E.g. NP 172 (26.3.2001) 9835, VP 1998–2001/2176 (26.3.2001). A Member may also postpone his or her motion or bill by setting a future time when the notice is called on (S.O. 113), e.g. VP 2016–18/1015 (4.9.2017) (here to a specified date, but more usually to the next sitting Monday).
33 S.O. 113, e.g. VP 2016–18/165, 166 (10.10.2016) (postponed to a later hour); VP 2016–18/97, 98 (12.9.2016) (postponed to the next sitting Monday).
34 E.g. VP 2002–04/1648 (31.5.2004); VP 2010–13/916 (19.9.2011); VP 2013–16/972 (24.11.2014), 1769, 1770 (30.11.2015).
35 VP 2002–04/510 (21.10.2002).
36 VP 2010–13/916 (19.9.2011), 2280 (27.5.2013). These instances occurred under former procedures, when the second reading was not moved immediately after presentation but on a later day.

Removal of private Members' business from the Notice Paper

An item of private Members' business which has not been called on for eight consecutive sitting Mondays is removed from the Notice Paper.[37] However, an item removed from the Notice Paper in this way can be reinstated by means of a new notice.

Consideration in government time

From time to time, standing orders are suspended to permit specified items of private Members' business to be called on and considered during government business time. This course has been taken to permit immediate consideration of a matter of which notice has just been given, such as a censure or no confidence motion,[38] to initiate debate on a matter of particular significance to the Parliament[39] or to the community[40] or to bring on a matter when the time factor is significant, such as a motion for the disallowance of delegated legislation (regulations, ordinances, and so on),[41] in order to enable a vote to be taken (*see below*) or to enable a matter to be disposed of expeditiously.[42] Such action may also be taken when the Government has decided to support a private Member's bill, to provide time for further debate and facilitate speedy passage.[43]

A suspension of standing orders for any of these purposes is usually a government initiative and attempts by private Members alone to obtain precedence to a particular item of business without government support have, to date, not been successful.

Selection Committee determinations do not apply to items being taken in government time, and unless otherwise ordered the 'normal' times provided in standing order 1 apply.

Voting on private Members' business

When an item of private Members' business is to be voted on, it has been the practice for the vote to take place in government business time, following the suspension of standing orders.[44] This practice was continued when, in the 43rd Parliament, express provision was made for the Selection Committee to recommend items of private Members' business to be voted on.[45]

In that Parliament the practice was for the Leader of the House, during government business time on Thursday morning, to move a motion without notice to suspend standing orders in order to call on immediately specified private Members' orders of the day—that is, the items recommended by the Selection Committee to be voted on.[46] In the 44th Parliament the provision for the Selection Committee to recommend items of private Members' business to be voted on was removed, and the practice of regularly providing time for voting on Thursdays was not continued.

37 S.O. 42. A private Member's notice is also removed if the sponsoring Member ceases to be a private Member (or a Member).

38 E.g. VP 1978–80/269 (31.5.1978).

39 E.g. the reference of a matter to the Court of Disputed Returns, VP 1977/108–12 (5.5.1977).

40 E.g. VP 1978–80/683 (21.3.1979); VP 1980–82/139 (12.3.1981); VP 1987–90/389 (25.2.1988); VP 2016–18/1261 (5.12.2017).

41 E.g. VP 1998–2001/382 (10.3.1999); VP 2013–16/704 (15.7.2014); *see* 'Delegated legislation' in Ch. on 'Legislation'.

42 E.g. VP 2008–10/970 (19.3.2009).

43 E.g. VP 1998–2001/675–7 (28.6.1999).

44 E.g. VP 1990–93/918 (21.6.1991), 1490 (7.5.1992); VP 1993–96/718 (3.2.1994), 871 (24.3.1994); *see also* VP 1996–98/494–5 (16.9.1996); VP 2016–18/1261 (5.12.2017).

45 Former S.O. 222(a)(ii).

46 For first three instances of this process in the 43rd Parliament *see* H.R. Deb. (28.10.2010) 1990–4; H.R. Deb. (18.11.2010) 2944–57; and H.R. Deb. (25.11.2010) 3761–73. In total 12 items were voted on, of which seven were agreed to (including one bill) and five negatived. Recommendation for a vote does not override S.O. 42, and an item may be removed from the Notice Paper without a vote occurring, e.g. Wild Rivers (Environmental Management) Bill 2011, NP 112 (18.6.2012) 46.

Private Members' motions

The procedures applying to the moving of motions are described in the Chapter on 'Motions'. The procedures for private Members' motions are the same as for motions moved by a Minister except that motions are required to be seconded. The time for each debate and for each Member speaking is set by the Selection Committee—for example, the mover of a motion and the Member next speaking may be allotted 10 minutes each, and other Members five minutes each. Amendments are sometimes moved to private Members' motions.[47]

By decision of the Selection Committee, the usual practice is that motions considered during the time available under the private Members' business provisions are not voted on at that time, the debate being adjourned and made an order of the day for the next sitting (in practice, usually a subsequent private Members' day). When the Selection Committee has determined that debate on a motion should continue on a future day, the motion cannot be voted on (unless standing orders are suspended[48]), and for that reason the debate cannot be closured.[49]

When a private Member's motion has been voted on the practice has been for it to be called on outside of the times reserved for private Members' business—*see* p. 578. Some private Members' motions brought before the House involve issues of social and/or moral significance, often referred to as matters of conscience, such as euthanasia, abortion or homosexuality,[50] or issues concerning the parliamentary institution. By arrangement within the parties, when such motions have been voted on these have generally been decided by a free vote or conscience vote.[51] Outright government support for a private Member's motion, in its original form, is less common when the motion is put forward by an opposition Member.[52] However, when regular opportunities for votes to occur on private Members' motions became available in the 43rd Parliament (*see* p. 578) the practice developed of Members moving to amend their own motions immediately prior to the vote, with a view to making their terms more acceptable to Members on both sides of the House and thus increasing the chances of agreement.[53]

If a private Member's motion is agreed to, the Government does not necessarily consider itself bound by its terms. For example, in 1965 the House agreed to the following motion:

> That as the Canberra Advisory Council is but part elected and believing that the citizens of Canberra have a right to say whether or not they want fluoridation of their water supply this House is of opinion that a referendum on the question should be held.[54]

No action was taken by the Government in the terms of the resolution.[55]

47 E.g. VP 1996–98/112 (20.5.1996); VP 2013–16/563 (16.6.2014). Ministers have moved such amendments, e.g. VP 1983–84/228–9 (15.9.1983), 532–3 (8.3.1984). Sometimes Members have been given leave to amend their own motions, e.g. VP 2010–13/1191–2 (9.2.2012).

48 E.g. VP 1996–98/495 (16.9.1996).

49 H.R. Deb. (9.3.1998) 780–81.

50 E.g. VP 1973–74/458 (18.10.1973); VP 1978–80/683–4 (21.3.1979); VP 1996–98/399–400 (9.9.1996).

51 E.g., a motion to determine the proposed site for the new and permanent Parliament House, VP 1973–74/289–90 (23.8.1973), 476 (24.10.1973); *and see* 'Free votes' in Ch. on 'Order of business and the sitting day' for other examples.

52 E.g., a motion for the establishment of the Select Committee on Specific Learning Difficulties initiated by the Leader of the Opposition was agreed to, VP 1974–75/286–7 (31.10.1974).

53 E.g. H.R. Deb. (24.3.2011) 3129, 3130, 3132.

54 VP 1964–66/251 (18.3.1965).

55 Such motions, and, for example, the several voted on and agreed to in the 43rd Parliament (e.g. VP 2010–13/649 (16.6.2011), condemning, and calling on the Government to abandon, proposed action on asylum seekers; VP 2010–13/907–9 (15.9.2011), calling on the Government to take certain action in relation to early childhood learning) are treated in effect as declarations of opinion. *See also* 'Motions agreed to—resolutions and orders of the House— effect' in Ch. on 'Motions'.

Private Members' bills

The procedures which apply to the processing of private Members' bills are substantially the same as those for government bills described in the Chapter on 'Legislation'. Upon the respective notice being called on by the Clerk, the Member in whose name the notice stands[56] presents the bill. The Member may also present an explanatory memorandum on the bill and leave is not required for this.[57] The bill is then read a first time and the Member moves the motion for the second reading. He or she then speaks to the motion for up to 10 minutes before the debate is automatically adjourned and the resumption of debate set down on the Notice Paper for the next sitting.[58] As the Selection Committee has allocated a 10 minute period for this item of business, it is permissible for the seconder to speak for the remainder of the 10 minutes if the mover does not speak for the full period. When the debate is resumed the mover may speak in continuation for five minutes. The occasion for the resumption of the debate on the bill's second reading, and the times to be allocated for debate, are matters for the Selection Committee.[59]

Although there is no exemption from the requirement in the standing orders concerning the seconding of motions for a motion for the second or third reading of a bill moved by a private Member, in practice a seconder is called for only on the second reading when the principles of the bill are under consideration.[60] If a private Member's bill passes the second reading stage, a seconder is not called for when motions such as that for the third reading are moved, the House having already affirmed its support for the bill.[61] Second reading amendments have been moved to private Members' bills.[62]

If a private Member's bill is to be voted on, the practice has been that the vote occurs during government business time following the suspension of standing orders—*see* page 578. If the motion for the second reading of any private Member's bill is agreed to by the House, further consideration is accorded priority over other private Members' business and the Selection Committee may determine times for consideration of the remaining stages of the bill.[63] The consideration in detail stage may then take place during private Members' business time in the Federation Chamber, with voting on amendments (and the third reading) occurring later in the House.[64] Private Members' bills have been referred to committees for advisory reports.[65]

56 The standing orders make provision for notices from individual Members only. In a situation where two Members have jointly sponsored a private Member's bill, the notice was given by one of the Members concerned, that Member presented the bill, and the other Member was seconder. However, the bill was printed with the names of both Members as sponsors—Protection of Australian Flags (Desecration of the Flag) Bill 2003, H.R. Deb. (18.8.2003) 18671–3, VP 2002–04/1085 (18.8.2003). Similarly, the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (later passed into law) was sponsored by three Members but presented by one of them, VP 2010–13/713 (4.7.2011). (Senate S.O. 76(4) provides for joint notices.)

57 S.O. 41(b). E.g. VP 2002–04/391 (16.9.2002); VP 2004–07/175 (14.2.2005); VP 2013–16/1226 (24.3.2015). Leave is required to present another document, e.g. VP 2004–07/1017 (27.3.2006), or to present an explanatory memorandum at a later time, e.g. VP 2010–13/927 (20.9.2011).

58 S.O. 41(c).

59 Prior to the 43rd Parliament few private Members' bills were selected to progress beyond the first reading stage.

60 E.g. H.R. Deb. (14.9.2010) 9496.

61 E.g. VP 1974–75/790 (5.6.1975); VP 1996–98/1003 (9.12.1996); H.R. Deb. (28.10.2010) 1990; VP 2010–13/906–7 (15.9.2011), 2063–4 (6.2.2013).

62 E.g. VP 2004–07/942 (13.12.2006); VP 2016–18/783 (29.5.2017).

63 S.O. 41(d); e.g. Auditor-General Amendment Bill 2011, H.R. Deb. (7.7.2011) 7984.

64 E.g. VP 2010–13/857, 868 (12.9.2011), 903–7 (15.9.2011).

65 E.g. Sydney Airport Curfew (Air Navigation Amendment) Bill 1995 (following suspension of standing orders), VP 1993–96/2286–7 (30.6.1995). Several private Members' bills were referred following Selection Committee determination in the 43rd Parliament, and the Fair Work Amendment (Protecting Take Home Pay of All Workers) Bill 2017 in the 45th Parliament (22.6.2017). Removal of the bill from the Notice Paper pursuant to S.O. 42 does not discontinue the referral, e.g. Wild Rivers (Environmental Management) Bill 2011, NP 112 (18.6.2012) 46, NP 113 (19.6.2012) 71.

As with private Members' motions, private Members' bills have sometimes related to matters of social and/or moral significance, such as euthanasia[66] and superannuation entitlements of same-sex couples.[67] The extent of government support in respect of successful private Members' bills has varied. In the case of the Matrimonial Causes Bill 1955, the Member who initiated the bill remained in charge of it through all stages in the House.[68] In the case of the National Measurement (Standard Time) Amendment Bill 1991, the Member who initiated the bill having moved the second reading, a Parliamentary Secretary moved the third reading.[69] In the case of the Parliament Bill 1974, the Member who initiated the bill having moved the second reading, another Member moved the third reading. The bill was amended at the committee (consideration in detail) stage on the motion of a Minister.[70] On the bill being returned from the Senate with amendments, it was taken over by the Government and was listed on the Notice Paper under government business.[71]

When a private Member's bill has passed the House and been transmitted to the Senate, its sponsorship in the Senate may be by either a private Senator[72] or a Minister in the Senate.[73] Similarly, private Members[74] and Ministers[75] have taken responsibility for private Senators' bills when they have been received in the House. A private Member takes responsibility for a private Senator's bill by moving, on the occasion of the bill's first reading in the House, that the second reading be made an order of the day for the next sitting (no seconder is required). The bill is then listed on the Notice Paper under Private Members' business. If a Minister moves this motion the bill is listed as government business.[76] The principles adopted by the House to guide the Selection Committee in respect of private Members' business include a provision that when a private Member has responsibility for the carriage of a bill transmitted from the Senate, the bill is to be accorded priority (following the question for the second reading being put to the House) in the same way as a private Member's bill is accorded priority by standing order 41.[77]

In 2011 Senate amendments to a private Member's bill were reported during government business time and the motion that the amendments be considered immediately was moved by a Minister; however, the subsequent motion that the House agree to the amendments was moved by the Member who had initiated the bill.[78]

66 VP 1996–98/399–400 (9.9.1996).

67 VP 1998–2001/563 (7.6.1999); VP 2002–04/1715 (21.6.2004).

68 VP 1954–55/190 (5.5.1955), 254 (7.6.1955).

69 VP 1990–93/918–9 (21.6.1991).

70 VP 1974–75/198–200 (26.9.1974), 246–8 (17.10.1974).

71 NP 30 (30.10.1974) 2840; VP 1974–75/426–8 (5.12.1974).

72 E.g. Parliament Bill 1974.

73 E.g. Life Assurance Companies Bill 1904 (passed Senate in 1905); National Measurement (Standard Time) Amendment Bill 1991 (discharged in Senate in 1992).

74 E.g. Superannuation Guarantee (Administration) (Exemption of Council Allowances) Amendment Bill 1993; Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU 486) Bill 2006; Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2011.

75 E.g. Parliamentary Presiding Officers Amendment Bill 1992. *See also* VP 1998–2001/1300 (15.3.2000) (Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999); VP 2002–04/1582 (1.4.2004), NP 166 (11.5.2004) 6849 (Kyoto Protocol Ratification Bill 2003 [No. 2])—government responsibility does not necessarily mean that the bill will proceed with alacrity (or at all).

76 In 2006 a private Member, by leave, moved a motion suspending standing orders enabling him to have carriage of a private Senator's bill, despite the order of the day for its consideration being set down under government business, VP 2004–07/1612 (30.11.2006). In 2011, in a similar case of a private Senator's bill listed as government business, the 2nd and 3rd readings were moved by a private Member with no suspension of standing orders, VP 2010–13/1013 (31.10.2011), 1027–8 (1.11.2011).

77 VP 1998–2001/70–1 (24.11.1998).

78 VP 2010–13/407 (21.3.2011).

The term 'private Member's bill' should not be confused with the term 'private bill'. Private bills, as known in the United Kingdom, conferring powers or benefits on individuals or bodies of persons, do not feature in the Australian Parliament.

Drafting

House staff are the first source of assistance to private Members in drafting matters. Any dealings between a Member and a parliamentary drafter are confidential. In recent years House staff have had access to an Office of Parliamentary Counsel drafter, on attachment to the Department of the House of Representatives, to provide professional drafting services to private Members. While attached to the Department the drafter serves the House of Representatives and not the Government.

In 1905 the Life Assurance Companies Bill, a private Member's bill which had been passed by the House in 1904, was passed by the Senate and sent to the Governor-General for assent. The Governor-General returned the bill recommending amendments. Commenting on the proposed amendments the Minister indicated that they were 'purely verbal' and did not affect the purpose of the bill. He pointed out that the initiator of the bill had not had the Parliamentary Draftsman's assistance in drafting it and had not understood the full significance of certain words he had used in the bill.[79]

While every effort is made to meet Members' requests for the drafting of bills, such requests cannot always be met. The constraints imposed by the Constitution—in respect of proposals with financial implications (*see below*), the limits on the law-making powers of the Commonwealth Parliament, and the implications of section 109—and the rules and practices of the House combine to limit the range of subjects on which private Members may introduce bills. Although the freedom apparently available to members of some other legislatures is therefore not enjoyed by Members of the House, another consequence is that legislative proposals which are introduced in the House all have a certain status.[80] Members often give notice of private Members' motions to advance proposals not suitable for inclusion in a bill, and this course has the advantage of allowing Members greater freedom to express their intentions.

Financial initiative

A private Member may not initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys. This would be contrary to the constitutional and parliamentary principle of the financial initiative of the Executive—that is, that no public charge can be incurred except on the initiative of the Government. This principle and its significance is discussed more fully in the Chapter on 'Financial legislation'.

The financial initiative in regard to appropriation is expressed in section 56 of the Constitution, and is extended in standing order 180 as follows:

> (a) All proposals for the appropriation of revenue or moneys require a message to the House from the Governor-General recommending the purpose of the appropriation in accordance with section 56 of the Constitution.
>
> (b) For an Appropriation or Supply Bill, the message must be announced before the bill is introduced.
>
> (c) For other bills appropriating revenue or moneys, a Minister may introduce the bill and the bill may be proceeded with before the message is announced and *standing order 147 (message recommending appropriation)* applies.
>
> (d) A further message must be received before any amendment can be moved which would increase, or extend the objects and purposes or alter the destination of, a recommended appropriation.

79 H.R. Deb. (25.10.1905) 4048.

80 That is, as potential legally effective Acts of Parliament.

In the application of this standing order, a proposed increase in expenditure funded by an existing appropriation is considered to be a proposal for an appropriation, requiring a message from the Governor-General. The same applies to a proposed change to the objects and purposes or destination of an existing appropriation.

It would not be possible for a private Member to obtain the Governor-General's recommendation for an appropriation. Furthermore, of those bills requiring a Governor-General's message, only those brought in by a Minister may be introduced and proceeded with before the message is announced. Therefore, only a Minister may bring in a bill which appropriates public moneys.[81]

The financial initiative in regard to taxation, which restricts private Members from initiating taxing bills, is expressed in, and given effect by, standing order 179:

> (a) Only a Minister may initiate a proposal to impose, increase, or decrease a tax or duty, or change the scope of any charge.
>
> (b) Only a Minister may move an amendment to the proposal which increases or extends the scope of the charge proposed beyond the total already existing under any Act of Parliament.
>
> (c) A Member who is not a Minister may move an amendment to the proposal which does not increase or extend the scope of the charge proposed beyond the total already existing under any Act of Parliament.

In 1988, following presentation of an Income Tax Assessment Amendment Bill initiated by a private Member, the Chair noted that the bill sought to restore an earlier interpretation of a provision of the Act. The Chair understood that the bill did not seek to increase or alleviate tax, although it could be argued that a reduction would occur in the sum a person might pay because of the restored interpretation. The Chair stated that it was felt appropriate to permit the Member to initiate the proposal, although its validity in procedural terms was not clear.[82] Private Members' bills have sought to amend the Customs and Excise Tariff Acts to introduce mechanisms by which a decrease in duty could be effected by subsequent parliamentary action.[83] In 2002 a private Member's bill made provision for the Taxation Commissioner to assess certain amounts, which were stated in the objects clause of the bill as intended to be used in the calculation of a tax to be imposed and administered by another Act; and in the calculation of increased expenditure to be appropriated by another Act.[84] In the same year, having introduced a bill providing for the assessment and collection of a levy, a Member presented as a document a copy of a proposed companion bill providing for the imposition of the levy.[85]

A motion proposing to suspend standing orders to permit a private Member to move to increase the scope of a proposed tax has been ruled out of order, as it would allow an action contrary to a fundamental principle of the scheme of government established by the Constitution.[86]

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81 Some private Members' bills which would cause expenditure if enacted have allowed for appropriation by other, not yet existing, Acts—for example, the commencement clause of the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005 provided for provisions to commence when an (unspecified) Act appropriating money had been assented to. In the 2010 version of the same bill the means of appropriation was less specific—i.e. provisions to commence 'by proclamation, provided that funds have been appropriated for the purposes of this Act' (but, in response to concerns over an uncertain commencement date, it was also provided that the provisions would not commence at all if funds were not appropriated within six months of assent). *See also* Tobacco Excise bill referred to below.

82 H.R. Deb. (10.11.1988) 2790–1; VP 1987–90/875 (10.11.1988).

83 H.R. Deb. (5.3.2001) 24900, 24904.

84 Tobacco Excise Windfall Recovery (Assessment) Bill 2002, H.R. Deb. (16.9.2002) 6224–6. As noted in the explanatory memorandum, the introduction of the other two bills of the proposed package was dependent on government action.

85 Plastic Bag Levy (Assessment and Collection) Bill 2002. The document presented was the Plastic Bag Levy Imposition Bill 2002. H.R. Deb. (21.10.2002) 8121–3; VP 2002–04/510 (21.10.2002).

86 VP 2010–13/1085 (22.11.2011); H.R. Deb. (22.11.2011) 13418. *See also* Ch. on 'Financial legislation'.

Impact

Bills initiated by private Members are a small proportion of the legislation dealt with by the House, although the introduction of new procedures for private Members' business in 1988 saw a significant increase in their number. Private Members introduced 59 bills between 1901 and 1987. This figure had almost doubled within the next five years. Between 1988 and June 2010 about 10 private Members' bills per year, on average, were introduced. The revised procedures introduced at the start of the 43rd Parliament led to a further increase. A record 28 private Members' bills were introduced in 2017. Table 16.1 lists all private Members' bills which have passed into law since Federation. By December 2017, 30 non-government bills had passed into law—10 initiated by private Members, 13 by private Senators and 7 by the Speaker and the President.

TABLE 16.1 PRIVATE MEMBERS' BILLS PASSED INTO LAW

Bill	*Initiator*
Life Assurance Companies 1904 (Lapsed in Senate at second reading stage; proceedings resumed in Senate in 1905—Act No. 12 of 1905)	Mr L. E. Groom
Conciliation and Arbitration 1908 (Lapsed in Senate at committee stage; proceedings resumed in Senate in 1909—Act No. 28 of 1909)	Senator Needham*
Electoral (Compulsory Voting) 1924 (Act No. 10 of 1924)	Senator Payne
Defence (No.2) 1939 (Act No. 38 of 1939)	Mr Curtin
Supply and Development (No. 2) 1939 (Act No. 40 of 1939)	Mr Curtin
Matrimonial Causes 1955 (Act No. 29 of 1955)	Mr Joske
Australian Capital Territory Evidence (Temporary Provisions) 1971 (Act No. 66 of 1971)	Senator Murphy*
Parliament 1974 (Act No. 165 of 1974)	Mr L. K. Johnson
Wireless Telegraphy Amendment 1980 (Act No. 91 of 1980)	Senator Rae
Senate Elections (Queensland) 1982 (Act No. 31 of 1982)	Senator Colston
Income Tax Assessment Amendment 1984 [No. 2] (Act No. 115 of 1984—assented to as Income Tax Assessment Amendment (No. 5) 1984)	Senator Evans*
Smoking and Tobacco Products Advertisements (Prohibition) 1989 (Act No. 181 of 1989)	Senator Powell*
Parliamentary Presiding Officers Amendment 1992 (Act No. 163 of 1992)	Senator Colston*
Euthanasia Laws 1997 (Act No. 17 of 1997)	Mr K. J. Andrews
Adelaide Airport Curfew 1999 (Act No. 29 of 2000)	Mrs Gallus
Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) 2006 (Act No. 5 of 2006)	Senator Nash
Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment 2006 (Act No. 172 of 2006)	Senator Patterson
Evidence Amendment (Journalists' Privilege) 2011 (Act No. 21 of 2011)	Mr Wilkie
Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) 2011 (Act No. 166 of 2011)	Senator Brown
Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) 2011 (Act No. 182 of 2011)	Mr Bandt
Auditor-General Amendment Act 2011 (Act No. 190 of 2011)	Mr Oakeshott
Low Aromatic Fuel 2013 (Act No. 1 of 2013)	Senator Siewert
Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Act No. 129 of 2017)	Senator Smith

* sponsored by the Government in the House of Representatives.

In addition, the provisions of other private Members' bills have become law by being incorporated into government legislation, for example:

- In 1957 a private Member initiated in the House the Matrimonial Bill to provide for uniform divorce laws. The bill passed the second reading but then lapsed. The objects of the measure were incorporated in the Government's Matrimonial Causes Bill which was passed in 1959.[87]
- The Government's Industrial Relations Legislation Amendment Bill (No. 2) of 1992 included provisions to amend the Conciliation and Arbitration Act 1904 in respect of a matter addressed in a private Member's bill introduced three times between 1990 and 1992.[88]
- In 1995 the Parliament passed the Anzac Day Bill 1994. This bill was initiated by the Government, but the Government's actions followed the actions of one private Member in moving a motion on the subject and of another in preparing and giving notice of his intention to introduce a private Member's bill.[89]
- In 1995 the Parliament passed the Government's Sydney Airport Curfew Bill 1995, which took up in amended form the objects of a private Member's bill, the Sydney Airport Curfew (Air Navigation Amendment) Bill 1995,[90] after a report on that bill by the Standing Committee on Transport, Communications and Infrastructure.
- In 2002 the government-sponsored Superannuation Guarantee Charge Amendment Bill was enacted. This made compulsory superannuation contributions payable quarterly, a matter originally proposed by a private Member's bill.[91]
- In 2011 the government Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill incorporated principles of a private Member's bill on the same matter which had been introduced by the Leader of the Opposition.[92]
- The government Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 followed the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bills 2005 and 2010, bills introduced with a similar aim by a private Member in earlier Parliaments.[93]
- The government Australian Citizenship Amendment (Defence Families) Bill 2012 followed the Australian Citizenship Amendment (Defence Service Requirement) Bill 2012, a private Member's bill dealing with the same matter.

One of the more significant non-government bills from a parliamentary point of view was the Parliamentary Privileges Bill which was assented to in 1987, having been sponsored by President McClelland and Speaker Child.[94] Other bills introduced by the Presiding Officers have related to the administration of the Parliament. In 1999 the Parliamentary Service Bill, which had been presented by Speaker Andrew, was assented

87 *And see* H.R. Deb. (14.5.1959) 2223.

88 H.R. Deb. (17.12.1992) 4180.

89 VP 1993–96/1058 (6.6.1994) (motion); H.R. Deb. (12.5.1994) 876 (notice, which was later withdrawn).

90 Introduced by the Leader of the Opposition, VP 1993–96/2228–9 (26.6.1995). The second reading debate and referral to the committee occurred during government business time, VP 1993–96/2286–7 (30.6.1995).

91 Superannuation Guarantee (Administration) Amendment Bill 2000. VP 1998–2001/1818 (30.10.2000).

92 H.R. Deb. (24.3.2011) 3143–5, 3176.

93 The private Member's bill had bipartisan support. In his second reading speech to the 2010 bill Mr Kerr noted that 'It is sensible that a measure such as this will emerge as the product of the work of private members and senators who are also senior members of the bar rather than as a bill sponsored by the government. It makes it clear, if there was any suspicion, that this is not pursued by the executive to chasten the courts.' H.R. Deb. (31.5.2010) 4710. While the bill lapsed at dissolution of the House, in the following Parliament the Attorney-General announced the Government's intention to reintroduce it (press release dated 18 March 2011).

94 *See* Ch. on 'Parliamentary privilege'.

to. It provided a new legislative framework for the parliamentary departments and paralleled changes sponsored by the Government in respect of the public service generally.

TABLE 16.2 BILLS SPONSORED BY THE SPEAKER AND PASSED BY HOUSE

Bill	*Initiator in House*
Parliamentary Privileges 1987 Passed into law (Act No. 21 of 1987).	Speaker Child
Public Service (Parliamentary Departments) Amendment 1988 Passed House only.	Speaker Child
Public Service (Parliamentary Departments) Amendment 1993 Passed House only.	Speaker Martin
Parliamentary Service 1997 Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside.	Speaker Halverson
Parliamentary Service (Consequential Amendments) 1997 Passed into law (Act No. 189 of 1997).	Speaker Halverson
Parliamentary Service 1997 [No. 2] Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside.	Speaker Sinclair
Parliamentary Service 1999 Passed into law (Act No. 145 of 1999).	Speaker Andrew
Parliamentary Service Amendment 2001 Passed into law (Act No. 125 of 2001)	Speaker Andrew
Parliamentary Service Amendment 2005 Passed into law (Act No. 39 of 2005)	Speaker Hawker
Parliamentary Service Amendment 2013 Passed into law (Act No. 4 of 2013)	Speaker Burke
Parliamentary Service Amendment 2014 Passed into law (Act No. 26 of 2015)	Speaker Bishop

GRIEVANCE DEBATE

The grievance debate is derived from the centuries old financial procedures of the UK House of Commons. The traditional insistence of the Commons on considering grievances before granting supply to the Crown found expression in the practice of prefacing consideration in Committee of Supply by the motion 'That Mr Speaker do now leave the Chair'. The question now proposed in the House of Representatives is 'That grievances be noted'. It is because of the procedural origins of the grievance debate that it is listed on the Notice Paper as an order of the day under government business, rather than private Members' business.

Programming and scope of the debate

The motion 'That grievances be noted' is now a standing referral to the Federation Chamber.[95] The final order of the day in the Federation Chamber on each sitting Tuesday is the grievance debate. The question proposed by the Chair is 'That grievances be noted', to which question any Member may address the Chair. If consideration of the

95 S.O. 192B. (Before 2008 the grievance debate occurred in the House—see earlier editions for details.)

question has not concluded after one hour, the debate is interrupted by the Chair. The debate is then adjourned, and its resumption made an order of the day for the next sitting.

Any Member may address the House on, or move an amendment to,[96] the question 'That grievances be noted' but, in practice, Ministers rarely participate in order to give more private Members the opportunity to speak.[97] A Member's speech is limited to 10 minutes[98] and it is the traditional practice for the first speaker to be called from the Opposition.[99] The grievance debate is regarded by private Members as a most useful opportunity to raise matters in which they have a particular interest or to ventilate complaints or concerns of constituents. The matter raised need not necessarily be an actual 'grievance'. A wide-ranging debate, similar in scope to that which may occur on the motion for the adjournment of the House, may take place. A matter which has been the subject of a debate earlier in the session may be referred to, but the earlier debate itself may not be revived unless the allusion is relevant to a new aspect or matter which the Member is raising. This restriction does not prevent reference to previous grievance or adjournment debates. Through the application of the general rules of debate a Member may not anticipate discussion of a subject which appears on the Notice Paper and is expected to be debated on the next sitting day, but incidental reference is permitted.[100]

The scope of an amendment is practically unlimited and debate may then cover both the main question and the amendment. Amendments were frequently moved until about 1924—primarily to seek a resolution of the House or to focus attention on a particular subject—but are now rare.[101] Only three amendments have been agreed to, two of them involving amendments to proposed amendments.[102]

A Member may present a petition during the grievance debate provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.[103]

MEMBERS' 90 SECOND STATEMENTS

During this period any Member other than a Minister (or Parliamentary Secretary) may be called by the Chair to make a statement on any topic of concern for no longer than 90 seconds.[104] The call is alternated between government and non-government Members, subject to the proviso that Members who have not received the call are given priority over Members who have already spoken. Independent Members have been given the call with the frequency appropriate to their representation in the House. Opposition frontbench Members do not receive precedence. If no other Member rises to make a statement, a Member who has already spoken may speak again. The Chair has given the call preferentially to Members who have been present for the full period,[105] and to Members who were not regular participants.[106] The raising of spurious points of

96 VP 1974–75/452 (13.2.1975).
97 In recent years the participation of Parliamentary Secretaries has become more common.
98 S.O. 1.
99 H.R. Deb. (20.9.1973) 1333.
100 S.O. 77. *See also* Ch. on 'Control and conduct of debate'.
101 VP 1974–75/452 (13.2.1975); H.R. Deb. (13.2.1975) 276–9.
102 VP 1907–08/284–5 (19.3.1908); VP 1920–21/163 (13.5.1920), 271–2 (26.8.1920).
103 S.O.s 206, 207(b).
104 S.O. 43. However, Ministers have spoken on indulgence (e.g. 18.6.2012, 1.12.2014) and by leave (e.g. 27.6.2012) during this period.
105 H.R. Deb. (1.12.2003) 23291.
106 H.R. Deb. (22.3.2004) 26755.

order and other disruptive tactics are not in accord with the spirit of the procedure and have not been tolerated.[107]

A Member may present a petition during this period, provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.[108]

In the House a daily 30 minute period for 90 second statements is scheduled at 1.30 p.m. prior to Question Time. In the Federation Chamber a 45 minute period is scheduled at 4 p.m. on Mondays.[109]

CONSTITUENCY STATEMENTS

Periods are reserved for Members' constituency[110] statements at the start of Federation Chamber proceedings on every day that the Federation Chamber meets. This opportunity lasts for 30 minutes, irrespective of suspensions for divisions in the House. Any Member (including Parliamentary Secretaries and Ministers, and the Speaker[111] and Deputy Speaker) may speak for no longer than three minutes.[112] If no other Member rises, a Member who has already spoken may speak a second time. The period for statements is sometimes extended (by motion moved in the House or by leave of the Federation Chamber) when there is no other business to be considered by the Federation Chamber.[113] The standing orders do not define 'constituency statements', and matters of more general interest have been raised without objection.[114]

A Member may present a petition during this period provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.[115]

ADJOURNMENT DEBATE

Debate on the question 'That the House do now adjourn' is specifically exempted from the normal rules of relevance applying to other debates,[116] and by this means the adjournment debate provides Members with an opportunity to speak on any matter they wish to raise. Because of this, and because an adjournment debate takes place on a majority of sitting days, the adjournment debate is particularly valued by Members.

Although, technically, Ministers are not excluded from participation in the adjournment debate, in practice they have rarely participated,[117] and the period is regarded as an opportunity for private Members (*see* 'Call of the Chair' at page 590). Objection has also been raised when Parliamentary Secretaries have participated,[118] although more recently their participation has not been objected to.[119]

107 H.R. Deb. (17.3.1988) 983; H.R. Deb. (6.5.1993) 289.
108 S.O.s 206, 207(b).
109 Timetable operating since February 2014; previously the period was 15 minutes, and originally was in the House only, on Mondays.
110 Prior to 2008 known simply as 'Members' statements' (and Ministers were excluded).
111 First time H.R. Deb. (26.6.2013) 7192.
112 S.O. 193.
113 E.g. VP 2004–07/1813 (27.3.2007), (to 90 minutes); VP 2013–16/1495 (12.8.2015), (to 60 minutes).
114 E.g. H.R. Deb. (12.2.2009) 1314.
115 S.O.s 206, 207(b).
116 S.O. 76(a).
117 E.g. H.R. Deb. (21.11.2016) 3748–9.
118 H.R. Deb. (30.9.1997) 8832–3—point of order objecting to Parliamentary Secretary's participation disallowed.
119 E.g. H.R. Deb. (5.9.2006) 103.

The standing orders provide for a half hour adjournment debate to take place at the end of every sitting day. The detailed arrangements for the moving of the motion or the proposing of the question for the adjournment of the House are described in the Chapter on 'Order of business and the sitting day'. In brief, when the motion for the adjournment is not moved by a Minister, the automatic adjournment provisions apply as follows:[120]

- the Speaker interrupts proceedings to propose the question 'That the House do now adjourn' at 7.30 p.m. on Mondays, Tuesdays and Wednesdays and at 4.30 p.m. on Thursdays;
- a Minister may require the question to be put immediately without debate. If the question is then negatived, the House resumes its proceedings at the point at which they were interrupted;
- if the question is not put immediately, it may be debated. No amendment can be moved to the question. Only a Minister may move 'That the question be now put'.

In all cases, whether the adjournment debate has been initiated by a Minister or by the Chair, if debate is still continuing at 8 p.m. on Mondays, Tuesdays and Wednesdays or at 5 p.m. on Thursdays, or if debate concludes prior to these times, the Speaker automatically adjourns the House until the time of its next meeting. Before the Speaker adjourns the House, a Minister may require that the debate be extended for 10 minutes to enable Ministers to speak in reply to matters raised in the debate. A Minister may start his or her reply before the Speaker interrupts the debate, providing no other Member seeks the call. In this case the debate is still interrupted at the due time and the Minister may then require the debate to be extended. After the extension or on the earlier cessation of the debate, the Speaker automatically adjourns the House until the time of its next meeting. Standing and sessional orders have been suspended, by leave, to enable the debate to extend beyond the normal time.[121]

Time limits

Except for the limitation imposed by the automatic interruption by the Chair at the specified time, or such other times in special circumstances as may be specified, each Member receiving the call on the adjournment motion may speak for five minutes.[122] No extension of time may be granted. If no other Member from any part of the House rises, a Member who has already spoken to the motion may speak a second time for a period not exceeding five minutes.[123] Similar time limits apply to Ministers, with the exception that when a Minister's speech commences just prior to the interruption the Minister may conclude the speech after the interruption by requiring the debate to be extended. The Minister may then speak for a second period of five minutes, if no other Minister rises.

Debate

Subject to the general rules of debate,[124] matters irrelevant to the motion may be debated.[125] This means that the scope of debate is practically unlimited and provides the private Member with an opportunity to raise matters of his or her choosing.

120 S.O. 31. Times current for 45th Parliament.

121 E.g. VP 1993–96/2567–8 (26.10.1995); VP 1998–2001/712 (30.6.1999), 1063 (21.10.1999).

122 Standing orders have been suspended to enable Members speaking in the debate to speak for one period of 10 minutes, VP 1993–96/1723 (8.12.1994); VP 1996–98/360 (27.6.1996), 1051 (12.12.1996); VP 1998–2001/269 (10.12.1998).

123 S.O. 1. Leave is required for a Member to speak a third time. When no other Member has risen a Member has spoken a third and fourth time, H.R. Deb. (21.6.2011) 6760, 62, 64.

124 *See* Ch. on 'Control and conduct of debate'.

125 S.O. 76(a).

Through the application of the general rules of debate a Member may not anticipate discussion of a subject which appears on the Notice Paper and is expected to be debated on the next sitting day, but incidental reference is permitted.[126] Debates of the current session may not be revived unless the allusion is relevant to a new aspect or matter which the Member is raising. A passing reference may be made to a previous debate.[127] A Member may reply to matters raised in a previous debate to correct a misrepresentation by way of a personal explanation.[128] Remarks cannot be based on a question asked earlier in the day, but the facts may be stated without dealing with the question.[129] Provided that no other rules of debate are contravened, matters before State Parliaments may be discussed,[130] as may be activities of another Member of the Parliament.[131] Members have customarily advised other Members if they proposed to make remarks concerning them in the adjournment debate, although there is no formal requirement for them to do so. With the agreement of Members present, a Member has used the first slot in the adjournment debate to continue and complete a speech on a bill that had been interrupted by the automatic adjournment provisions.[132]

A Member may present a petition during the adjournment debate provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.[133]

Call of the Chair

The practice of the House is that an opposition Member receives the first call on the motion to adjourn the House.[134] Subsequently, if Members are rising on both sides, the Chair alternates the call in the normal way,[135] calling the Member who, in the Chair's opinion, first rose. The call is not alternated if it would lead to a Member who has already spoken being called again in preference to a Member who has not spoken.

The Speaker has stated that he would give preference for the call to backbenchers over frontbenchers from the same side of the House,[136] and that it would not be proper for the Chair to recognise a member of the Executive in the adjournment debate, except at times when no other Members have risen to speak.[137]

On one occasion in 1952, the Speaker gave preference to Members desiring to speak on a particular subject and on a later occasion stated that, although Members were at liberty to debate their chosen subjects, as he had been warned of two subjects he would hear them first.[138] On a later occasion the Speaker required assurances from Members that they proposed to debate certain matters already raised before he gave them the call.[139] These practices were not continued.

126 S.O. 77. *See also* Ch. on 'Control and conduct of debate'.
127 H.R. Deb. (23.3.1972) 1196.
128 H.R. Deb. (26.5.1955) 1201.
129 H.R. Deb. (21.2.1952) 256.
130 H.R. Deb. (25.11.1953) 529–30.
131 H.R. Deb. (25.10.1950) 1395.
132 H.R. Deb. (11.10.2016) 1587.
133 S.O.s 206, 207(b).
134 H.R. Deb. (10.5.1973) 2041.
135 *See* Ch. on 'Control and conduct of debate'.
136 H.R. Deb. (11.3.1998) 1040, 1042.
137 H.R. Deb. (16.10.2003) 21678. Example of a Minister speaking as the last participant in the debate when no other Member sought the call, H.R. Deb. (25.11.2003) 22808–9.
138 H.R. Deb. (14.5.1952) 342.
139 H.R. Deb. (11.3.1953) 871–5.

Adjournment debate in the Federation Chamber

The Federation Chamber stands adjourned on the completion of all matters referred to it, or may be adjourned on motion moved without notice by any Member 'That the Federation Chamber do now adjourn',[140] which may be debated.[141] In practice the timing of the motion is agreed between the whips.

It is now well-established practice that a regular 30 minute adjournment debate takes place on Thursdays in the Federation Chamber. However, the timing and duration of the debate are not fixed by the standing orders,[142] and the debate may be extended or occur on a day other than Thursday by agreement between the whips. The Deputy Speaker has stated that unless advised of an agreement for extended debate, after 30 minutes the Chair would cease to recognise Members seeking the call and put the question,[143] although in practice some flexibility is often allowed.

The rules applying to the adjournment debate in the House apply, as appropriate. However, any Member (rather than only a Minister) may require the question 'That the Federation Chamber do now adjourn' to be put immediately without debate.[144]

MATTERS OF PUBLIC IMPORTANCE

The order of business provides for discussion of a matter of public importance (MPI) on every sitting day, except Mondays.[145] The MPI takes place following the presentation of documents shortly after Question Time. The subject matter of the discussion does not attract a vote of the House as there is no motion before the Chair.

The MPI is one of the principal avenues available to private Members to initiate immediate debate on a matter which is of current concern. However, although Members on both sides of the House are entitled to propose a matter for discussion, and although occasionally a matter proposed by a government Member has been selected,[146] it now appears to be taken for granted that the opportunity is, on the whole, a vehicle for the Opposition. In practice the great majority of matters discussed are proposed by members of the opposition executive and are usually critical of government policy or administration (or such criticism is made in the discussion itself).

The matter of public importance procedure developed from a provision in the standing orders adopted in 1901 which permitted a Member to move formally the adjournment of the House for the purpose of discussing a definite matter of urgent public importance. The historical development of the modern procedure provided by present standing order 46 is outlined in earlier editions.

While, technically, any Member may initiate a matter for discussion, in practice Ministers would not be expected to use the procedure (and have not done so), as there are other avenues available to them to initiate debate on a particular subject. For a Minister to use the procedure would be regarded as an intrusion into an area recognised as the preserve of shadow ministers and backbench Members.

140 S.O. 190(e).
141 S.O. 191(a).
142 S.O. 191. Prior to September 2002 former S.O. 274 fixed the time of the debate as 12.30 p.m. on Thursdays.
143 *See* statement by Deputy Speaker, H.R. Deb. (17.9.2002) 6471.
144 S.O. 191(b), e.g. VP 1998–2001/273 (10.12.1998), 892 (23.9.1999); VP 2002–04/283 (20.6.2002); VP 2010–13/616 (2.6.2011).
145 S.O. 34.
146 E.g. H.R. Deb. (16.8.2007) 89; H.R. Deb. (22.2.2011) 926.

Proposal of matter to Speaker

Matters are usually proposed to the Speaker by letter in terms such as the following:

[date]

Dear Mr/Madam Speaker,

In accordance with standing order 46, I desire to propose that [today] [tomorrow] [on Tuesday, . . .] the following definite matter of public importance be put to the House for discussion, namely:

[terms of matter]

Yours sincerely,

[signature of Member]

The proposed matter must be received by 12 noon of the day of the discussion. On occasions when a matter proposed for discussion has not been presented to the Speaker by the time specified, standing and sessional orders have been suspended to allow the matter to be called on.[147]

The terms of a matter of public importance to be proposed to the House are made known to the Leader of the House or the Manager of Opposition Business, as the case may be, some time after 12 noon on the sitting day in question.

Discretionary responsibility of the Speaker

Whether matter in order

Standing order 46 invests the Speaker with the power to decide whether a matter of public importance is in order. A Member must present to the Speaker a written statement of the matter proposed to be discussed. In the absence of the Speaker, the Deputy Speaker, as Acting Speaker, decides whether matters are in order and determines priority, if necessary, before the House meets. In the event of the absence of both the Speaker and Deputy Speaker, the Second Deputy Speaker could perform the function.[148]

On two occasions following the resignation of a Speaker, when the House was not due to elect a new Speaker until after the 12 noon deadline, proposed matters of public importance were processed and included on the Daily Program in anticipation of the new Speaker's approval (the approval of the Member expected to be elected Speaker having been first ascertained).[149]

A matter is put before the House only if the Speaker has decided that it is in order[150] and the Speaker is not obliged to inform the House of matters determined to be out of order.[151] Members cannot read to the House (or present) matters determined to be out of order or not selected for discussion.[152]

The decision of the Speaker is regarded as a decision that cannot be challenged by a motion of dissent, as the Speaker does not make a ruling but exercises the authority vested in the Speaker by the standing order.[153] However, on one occasion when two matters were proposed and the Speaker made a choice, a point of order was taken that the matter selected by the Speaker did not contain an element of ministerial responsibility and did not comply with then standing order 107 (current S.O. 46). In

147 E.g. VP 1985–87/1713 (2.6.1987); VP 1996–98/1997 (24.9.1997).
148 VP 1978–80/985, 989 (13.9.1979); VP 1996–98/532 (19.9.1996).
149 VP 1985–87/675 (11.2.1986); VP 1987–90/1419 (29.8.1989).
150 VP 1964–66/547 (23.3.1966); VP 1985–87/548 (14.11.1985).
151 H.R. Deb. (30.9.1954) 1767.
152 VP 1954–55/85–6 (30.9.1954); H.R. Deb. (30.9.1954) 1773.
153 VP 1954–55/85–6 (30.9.1954); H.R. Deb. (30.9.1954) 1767–73; VP 1951–53/283–4 (5.3.1952) (in respect of according priority); H.R. Deb. (17.3.1982) 1042.

response to the point of order the Speaker ruled that he had exercised his responsibility of selecting a matter which he had determined to be in order. A motion of dissent from the Speaker's determination that the matter selected was in order was then moved.[154]

Members are sometimes requested by the Speaker to amend the wording of their proposed matter in order to make it accord with the standing orders, and Members often consult with the Clerk on the terms of proposed matters. For example, the Speaker has approved matters after the terms were altered to refer to 'the Government' rather than 'the Howard Government' or 'the Rudd Government'. A proposed matter determined to be in order and granted priority appears on the Daily Program if it has not already been issued. If the Daily Program has been issued, a separate notification of the proposed matter is distributed in the Chamber.

More than one matter proposed

In the event of more than one matter being proposed for discussion on the same day (up to five have been so proposed[155]), the Speaker selects the matter to be read to the House that day.[156] There is a precedent for a motion to suspend standing orders to enable a Member to bring on 'for discussion a matter of public importance in the following terms: . . .', the terms being those of a matter submitted but not given priority.[157] A matter determined to be in order but not selected for discussion has been accepted and selected for discussion on a later occasion.[158]

The Speaker, in selecting a matter for submission to the House, does so against the background that a principal function of the modern House is to monitor and publicise the actions and administration of the Executive Government. The Speaker cannot be required to give reasons for choosing one matter ahead of another.[159] There can be no challenge or dissent to the Speaker's selection, as the Speaker is exercising a discretionary power given by the standing order, not making a ruling.[160]

Criteria for determining a matter in order

In deciding whether a matter is in order the following aspects of the proposed matter must be considered:

Matter must be definite

The requirements of the House are that a proposed matter must be definite—that is, single, specific and precise in its wording. Prior to 1952 formal adjournment motions had been ruled out of order on the grounds that they were not definite.[161] Nowadays a Member would be asked to amend a proposed matter seen as too general or indefinite, before acceptance by the Speaker. The modern view is that the intent and spirit of the standing order is contravened by including diverse topics in the matter, the underlying reasons being:

- that notice of the discussion is limited and, therefore, it is impracticable to prepare for a wide-ranging debate; and

154 VP 1985–87/548–9 (14.11.1985).
155 VP 1977/396–7 (3.11.1977).
156 S.O. 46(d).
157 VP 1985–87/545–6 (14.11.1985).
158 Matter not accorded priority on 22 May 1979 was accorded priority the next day, VP 1978–80/792 (22.5.1979), 806 (23.5.1979).
159 H.R. Deb. (19.9.1996) 4458.
160 VP 1954–55/221 (24.5.1955), 265–6 (9.6.1955).
161 VP 1932–34/938 (31.7.1934) (the motion also anticipated an order of the day); VP 1943–44/101 (17.3.1944); H.R. Deb. (17.3.1944) 1562.

- the time limit for discussion is strictly limited and does not thereby allow for an adequate discussion of several disparate matters.

Public importance

In 1967 the Speaker directed that a matter be amended before presentation to the House partly because it dealt with procedure and proceedings of the House which were of domestic concern and could not be considered as appropriate for discussion as 'a definite matter of public importance'.[162] However, more recent interpretation would allow any matter relating to or concerning any subject in respect of which the House has an authority to act or a right to discuss.

Ministerial responsibility

In determining whether a matter of public importance is in order the Speaker has regard to the extent to which the matter concerns the administrative responsibilities of Ministers or could come within the scope of ministerial action. As a reflection of this, the standing order setting time limits for speeches, prior to 1972, presupposed that a matter would fall within areas of ministerial responsibility by providing that a Minister was given the same speaking time as the proposer in order to reply to the proposer's speech. The standing order was subsequently amended to take account of those cases where a matter is proposed by a government Member, and now provides for equal speaking time to the Member next speaking after the proposer, whether it be a Minister or a Member of the Opposition.[163]

Anticipation

The anticipation rule[164] was amended in 2005 and now applies only 'during a debate'. It does not apply to the discussion of a matter of public importance.[165]

Current committee inquiries

A matter of public importance encompassing a subject under consideration by a committee of the Parliament has been permitted.[166]

Sub judice

There is no specific difference between the application of the sub judice convention to matters of public importance and that which applies to debate generally.[167] The Chair has ruled that part of a proposed matter was sub judice but allowed discussion to take place on the remainder of the subject.[168] The Speaker has also upheld a point of order that the latter part of a matter was sub judice. Dissent from the ruling was negatived and the House then proceeded to discuss the matter with the latter part omitted.[169] In 1969 discussion of a matter before the Commonwealth Conciliation and Arbitration

162 *But see* VP 1970–72/172 (2.6.1970); VP 1974–75/571–2 (10.4.1975), 1044 (28.10.1975), 1066 (29.10.1975), 1086 (4.11.1975), 1096 (5.11.1975); VP 1993–96/744 (9.2.1994) for discussions of matters relating to the procedure and practice of the House.

163 VP 1970–72/1018–20 (19.4.1972).

164 S.O. 77; *and see* 'Anticipation' in Ch. on 'Control and conduct of debate'.

165 This wording of the revised standing order 77 was deliberate—*see* Standing Committee on Procedure, *The anticipation rule*, March 2005. p. 29.

166 The subject under inquiry was wastage and the defence force (N.P. (26.4.1988) 2171) and this subject was canvassed during discussion on a matter drafted in wider terms (H.R. Deb. (26.4.1988) 2056–64); *see also* VP 1993–96/753 (10.2.1994) (community cultural, recreation and sporting facilities—an issue subject to an inquiry by the Standing Committee on Environment, Recreation and the Arts).

167 *See* 'Sub judice convention' in Ch. on 'Control and conduct of debate'.

168 VP 1974–75/169–70 (18.9.1974); H.R. Deb. (18.9.1974) 1460.

169 VP 1962–63/297–8 (15.11.1962); H.R. Deb. (15.11.1962) 2462–74.

Commission was ruled to be in order on the ground that it was not before the Commonwealth Industrial Court.[170]

Matter discussed previously

Under the same motion rule the Speaker has the discretion to disallow any motion or amendment which he or she considers is the same in substance as any question already resolved during the same session.[171] The same principle may be applied to a proposed matter of public importance which has substantially the same wording as a motion previously agreed to. When a matter of public importance is proposed which is substantially the same as a matter of public importance discussed earlier in the session, the case is less clear. However, even if the same subject has been discussed, it can hardly be said to have been resolved, and indeed, the whole intention of the MPI procedure is to allow discussion on an issue without purporting to resolve it.

Nevertheless, Speakers have attempted to avoid matters with identical wording. The Speaker has privately disallowed a matter that was substantially the same as one discussed earlier in the session.[172] However, more recent thinking has been that a subject can continue to be one of public importance and that the Opposition should not be restricted in bringing it forward again with different wording. Thus matters are submitted and discussed on the same subject as ones previously discussed, the Chair having ruled privately that new, different or extenuating circumstances existed.[173] It has also been ruled that the scope of a matter was wider than the previous one, debate thus being permitted provided it did not traverse ground covered in the previous matter,[174] although this would be almost impossible to enforce.

It is normal practice that matters on which no effective discussion has taken place may be resubmitted and allowed during the same session.[175]

Matters involving legislation

It has been the practice of the House to allow matters involving legislation to be discussed, provided that no other criterion is transgressed. In 1967, however, the Speaker privately ruled that certain words in a proposed matter were out of order. The matter proposed was:

> The Government's failure to maintain the purchasing power of repatriation payments and general benefits and its abuse of legislative processes to prevent debate *and voting on the adequacy of Repatriation entitlements.*

The italicised words were ruled out of order on the grounds that their primary purpose was to draw attention to the way in which the Repatriation Bill 1967 had been drafted with a restricted title which limited debate to pensions payable to children of a deceased member of the Forces. When the bill was debated at the second reading, an amendment dealing with a wider range of repatriation matters had been ruled out of order as not being relevant to the bill.[176] A motion of dissent from the ruling was negatived. The words were also ruled out of order as, by inference, there was a criticism of the Chair, and a reflection upon the vote (current standing order 74) which negatived the motion of

170 H.R. Deb. (16.4.1969) 1145.
171 S.O. 114(b).
172 Matter submitted on 23 August 1971 was amended before submission to House so as not to be identical to matter previously discussed on 7 April 1971, VP 1970–72/514 (7.4.1971), 666–7 (23.8.1971).
173 VP 1951–53/357–8 (5.6.1952), 421–2 (12.9.1952); VP 1985–87/1432 (17.2.1987), 1484 (26.2.1987), 1511 (18.3.1987), 1539 (24.3.1987); VP 1998–2001/1080 (23.11.1999), 1128 (7.12.1999).
174 H.R. Deb. (1.11.1950) 1718.
175 VP 1977/302–3 (4.10.1977), 308 (5.10.1977).
176 VP 1967–68/211 (27.9.1967); H.R. Deb. (27.9.1967) 1356–8.

dissent. It might also be noted that the wording proposed was deficient in that it tended to raise more than one matter. The matter was submitted and discussed in its amended form.[177]

Subject that can only be debated upon a substantive motion

A matter of public importance is similar to a motion or question seeking information in that words critical of the character or conduct of a person whose actions can only be challenged by means of a substantive motion, should not be included in the matter proposed.[178] A formal adjournment motion has been ruled out of order as it reflected on the conduct of the Speaker which could only be questioned by means of a substantive motion.[179] In 1972 the Speaker ruled privately that a matter of public importance should not be the vehicle for the use of words critical of the conduct of a Member of the House.[180] It was ruled privately in 1955 that the committal to prison of Messrs Fitzpatrick and Browne, after being found guilty of a breach of privilege, could not be discussed as an urgency matter.

In 1922 the Speaker allowed a formal adjournment motion criticising the judgment and award of a judge in the Commonwealth Court of Conciliation and Arbitration. He ruled that discussion must be confined to the award and such matters as did not involve criticism and reflection on the judge. In giving reasons for his ruling the Speaker saw the matter as one of some doubt which 'must depend largely on the tone and scope of the discussion'. He had regard to the fact that the Member was debarred from moving a substantive motion because precedence had been given to government business, and he did not feel justified in ruling the motion out of order 'provided it is clearly understood that, under cover of this motion, no attack or personal reflection can be made upon the Judge or the Court, nor can the conduct of the Judge be debated'.[181]

Matter proposed withdrawn

Matters proposed which have been accepted and included on the Daily Program have been withdrawn, by the proposer notifying the Speaker in writing. The Speaker has informed the House of this fact when the time for discussion was reached. A matter has also been withdrawn after its announcement to the House.[182] Reasons for withdrawal have included:

- coverage of the subject of the discussion in earlier debate that day;[183]
- late commencement of the discussion prior to the imminent Budget speech;[184]
- a government motion in the same terms as the matter proposed for discussion;[185]
- general agreement to extend the preceding debate;[186]
- 'in the interest of the better functioning of the House' following debate of a censure motion;[187]

177 VP 1967–68/218 (3.10.1967).
178 S.O.s 89, 100(c); *and see* Ch. on 'Control and conduct of debate'.
179 VP 1944–45/58 (28.9.1944).
180 On 7 April 1971 a matter accusing a Minister of 'provocative behaviour' was altered. The matter discussed on 21 March 1972 had been altered at the Speaker's suggestion as it originally contained expressions critical of the conduct of a Member.
181 H.R. Deb. (20.9.1922) 2443–4.
182 VP 1998–2001/1299 (15.3.2000); VP 2004–07/129 (9.12.2004) (matter withdrawn by Manager of Opposition Business, by leave).
183 H.R. Deb. (4.11.1977) 2901; H.R. Deb. (8.2.2005) 22, 45.
184 H.R. Deb. (21.8.1984) 60.
185 H.R. Deb. (22.11.1989) 2662, 2679.
186 H.R. Deb. (21.8.1990) 1153, 1155.
187 H.R. Deb. (20.9.1990) 2333.

- following debate of a censure motion in similar terms;[188]
- to make way for motions moved by the Prime Minister[189] and Leader of the Opposition;[190] and
- to enable discussion of a different matter proposed by another Member.[191]

Discussion

Matter read to House and supported

If a matter has been proposed within the specified time, accepted as in order, and selected if more than one matter has been proposed, the Speaker reads it to the House before the calling on of government business.

After reading the matter to the House the Speaker calls on those Members who approve of the proposed discussion to rise in their places. The proposed discussion must be supported by at least eight Members, including the proposer, standing in their places as indicating approval. The Speaker then calls upon the proposer to open the discussion.

On occasions matters have not been further proceeded with because of the absence of the proposer[192] or because they lacked the necessary support.[193] The Member who proposes a matter for discussion must, under the standing orders, open the discussion in the House. However, on one occasion standing orders were suspended[194] and on another leave was granted[195] to enable another Member to act for the Member who had proposed a matter for discussion. On another occasion, when the Member who had proposed the approved discussion had been suspended from the service of the House prior to opening the discussion, standing orders were suspended to permit another Member to move a motion on a related subject.[196] The action of Members rising in their places does not necessarily indicate approval of the subject matter in any way, but simply indicates approval to a proposed discussion taking place. Government Members, including Ministers and Parliamentary Secretaries, have supported the discussion of matters proposed by non-Government Members.[197] Once a proposed discussion commences the only relevant provision concerning the number of Members present in the House is that relating to a quorum, and there is no requirement that all or any of the supporting Members remain.[198]

Matter amended

No amendment can be moved to a matter being discussed as it is not a motion before the House, although, as mentioned earlier, matters proposed are often amended on the suggestion of the Speaker or the Clerk before being accepted by the Speaker. In addition, the Speaker may not be aware when approving a matter for discussion that the matter, or

188 VP 1998–2001/1299 (15.3.2000).
189 H.R. Deb. (30.10.1996) 6156.
190 H.R. Deb. (26.5.1998) 3701, 3717.
191 H.R. Deb. (24.9.1997) 8340. Standing orders suspended to permit the other proposal to be submitted and discussed forthwith.
192 H.R. Deb. (24.5.1989) 2819, VP 1987–90/1273 (24.5.1989) (proposer suspended from House); H.R. Deb. (31.3.1992) 1480; VP 1990–93/1404 (31.3.1992); VP 2008–10/899 (25.2.2009); VP 2010–13/2387 (6.6.2013); H.R. Deb. (16.7.2014) 8156 (matter withdrawn); VP 2016–18/838–9 (15.6.2017).
193 VP 1920–21/799 (1.12.1921); VP 1929–31/941 (30.10.1931); VP 1954–55/356 (19.10.1955), 365 (25.10.1955); H.R. Deb. (19.8.1993) 356.
194 VP 1962–63/463 (7.5.1963). The Member's plane had been delayed by fog, H.R. Deb. (7.5.1963) 1043.
195 VP 2004–07/214 (8.3.2005).
196 VP 1987–90/527–8 (18.5.1988); *see also* VP 1987–90/1273 (24.5.1989).
197 E.g. H.R. Deb. (12.11.2002) 8785; H.R. Deb. (22.6.2010) 6123.
198 H.R. Deb. (20.9.1977) 1297–8.

part of the matter, is sub judice. Part of a matter has been ruled out of order in the House on this ground on several occasions.[199]

Relevance

The chair may take action under standing order 75(a) on the grounds of irrelevance if a Member's speech strays from the approved topic of discussion. Although standing order 76 refers to 'question under discussion' and there is technically no question before the chair, the action of the House in supporting a proposed discussion of a particular matter in effect confines the discussion to the matter proposed.

Speaking times

One hour is provided for the whole discussion. The proposer and the Member next speaking are each allowed 10 minutes to speak, and any other Members five minutes each.[200] A Member may be granted an extension of time by the House. The proposer of a matter of public importance has no right of reply although a proposer has spoken again by leave[201] and following the suspension of standing orders.[202]

Interruptions

Discussion has been interrupted temporarily, following suspension of standing orders, to enable the Budget and associated bills to be introduced[203] and, by leave, to allow a ministerial statement to be made.[204] A discussion has been interrupted by the motion to call on the business of the day (*see below*) so that Senate amendments to a bill could be considered, after which standing orders were suspended to allow the discussion to be resumed.[205] A discussion has been interrupted by a motion to suspend standing orders to enable a motion to be moved relating to the subject matter under discussion. No such motion has been successful, discussion often continuing after the motion to suspend standing orders has been negatived,[206] but in such circumstances a motion that the business of the day be called on has also been moved.[207] A motion to suspend the standing orders temporarily supersedes discussion of a matter of public importance but the discussion remains as a proceeding still before the House and, as a result, the time taken up by the motion, or any other form of interruption, forms part of a Member's speech time and part of the period allotted for the discussion.[208]

Termination of discussion

The time allowed for discussion of a matter is limited to one hour. At the expiration of this time the discussion is automatically concluded. The House has extended the time for discussion,[209] and further extended the time,[210] by suspending standing orders. The discussion cannot be adjourned and the motion 'That the question be now put' cannot be moved, there being no question before the House (instead the motion to call on the

199 E.g. VP 1962–63/297–8 (15.11.1962); H.R. Deb. (15.11.1962) 2460–74; VP 1974–75/169–70 (18.9.1974); H.R. Deb. (18.9.1974) 1460.
200 S.O. 1.
201 VP 1964–66/139 (1.9.1964).
202 VP 1962–63/298 (15.11.1962).
203 VP 1968–69/489–90, 491 (12.8.1969).
204 VP 1970–72/988 (28.3.1972); VP 1978–80/671 (8.3.1979).
205 VP 2008–10/620–2 (16.10.2008).
206 VP 1974–75/528–30 (5.3.1975); VP 1990–93/1430–2 (28.4.1992).
207 VP 1985–87/198–9 (8.5.1985).
208 VP 1970–72/920–2 (22.2.1972); *and see* Ch. on 'Control and conduct of debate'.
209 VP 1968–69/416 (29.4.1969).
210 VP 1968–69/417 (29.4.1969).

business of the day may be moved—*see below*). The motion that a Member speaking 'be no longer heard' may however be moved.[211]

Discussion may be concluded prior to the time limit if no Member rises to speak on the matter. Discussion may be interrupted by the automatic adjournment provisions.[212]

Motion to call on business of the day

At any time during the discussion any Member may move a motion 'That the business of the day be called on', which question is put immediately and decided without amendment or debate.[213] The term 'business of the day' has been given a wide interpretation to include ministerial statements, announcements of messages from the Senate and the Governor-General, and so on—the motion is in effect a closure. Such motions are, from time to time, moved immediately the proposer has been called by the Chair to open the discussion. The Leader of the House or another Minister may take this action following occasions when the House has spent time earlier in the day on unscheduled opposition initiated debate (for example, censure motion, motion to suspend standing orders to debate a matter, or motion of dissent from ruling of the Chair).

Suspension of MPI procedure

As well as the premature termination of the discussion by use of the motion to call on the business of the day, priority to other business may be provided by the suspension of standing orders. Standing orders have been suspended to enable matters to be discussed at a later hour[214] and the standing order providing for the MPI has itself been suspended until a certain bill has been disposed of.[215]

In 1993 the House suspended the standing order providing for the MPI for several weeks to allow more time for the debate of legislation (in the context of a Senate deadline for the receipt of bills for consideration during the same period of sittings).[216]

211 VP 1996–98/532–3 (19.9.1996); VP 2010–13/1001 (13.10.2011).
212 E.g. VP 2002–04/1129 (21.8.2003); VP 2010–13/1892 (11.10.2012); VP 2013–16/403 (20.3.2014).
213 S.O. 46(e).
214 VP 1976–77/565 (9.12.1976); VP 1993–96/456 (16.11.1993).
215 VP 1974–75/639–40 (15.5.1975).
216 VP 1993–96/191–2 (31.8.1993); H.R. Deb. (31.8.1993) 524–7 (suspended until 28.10.1993).

17
Documents

DOCUMENTS PRESENTED TO THE HOUSE

In order to exercise effectively its responsibility to oversight the activities of the Executive Government, the Parliament needs to be kept informed of the activities of government departments and bodies under the control of government. The presentation of documents and reports by Ministers is very important to Parliament in fulfilling its critical role. It demonstrates the accountability of the Government to the Parliament and, through it, to the community. Documents presented to the House are important primary sources of information from which a Member may draw in asking questions and in making a useful contribution to debate. The presentation of a document to the House places it on the public record.

The fundamental right of Parliament of access to information concerning the activities of government is often given expression in legislation where, for example, Acts of Parliament require government departments and statutory bodies to present reports, including financial reports, of their activities to the Parliament. Information is also provided in other ways, principally through answers to questions in writing and without notice, in the course of debate, and by means of statements by Ministers on government policy or activities. The House itself has a right, expressed in the standing orders,[1] to seek information in documentary form.

Annual reports for virtually all federal government departments and agencies are presented to the Parliament. While this situation is now a legislative requirement,[2] it was arrived at after pressure and recommendations from within Parliament.[3]

Before the revised standing orders were adopted in 2004, the traditional term 'paper' extended in practice to documents presented to the House in electronic form, such as computer disk or videotape.[4] The term used in the current standing orders is 'document', which is now defined as meaning a paper or any record of information, including:

(i) anything on which there is writing;
(ii) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
(iii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
(iv) a map, plans, drawing or photograph.[5]

1 S.O. 200.
2 *Public Governance, Performance and Accountability Act 2013*, s. 46(1).
3 E.g. Joint Committee on Publications, *Inquiry into the purpose, scope and distribution of the Parliamentary Papers Series*, PP 216 (1977) 14, H.R. Deb. (24.11.1978) 3456–7.
4 E.g. VP 1996–98/619 (15.10.1996); VP 1998–2001/296–7 (10.2.1999); VP 1998–2001/853 (20.9.1999); VP 2004–07/1349 (4.9.2006).
5 S.O. 2. This aligns with the definition of a document in the *Acts Interpretation Act 1901*.

However, only printed documents can be included in the Parliamentary Papers Series and it is a government requirement for printed versions of government reports to be presented in addition to any electronic version.

There is no requirement for documents to be in English. Unusual documents presented in recent years have included a 'message and signatures written on fabric' (i.e. a bed sheet), and a 13 metre long banner containing signatures.[6]

The traditional phrase 'table a paper' and the more recently preferred phrase 'present a document' are synonymous.

Method of presentation

Documents are presented to the House in a number of ways. They can be presented pursuant to statute, at government initiative, pursuant to standing orders,[7] by order of the House and by leave of the House. Documents may be presented by the Speaker, by Ministers and, in restricted circumstances, by private Members. There are special provisions for the presentation of petitions and committee and delegation reports. Various documents are presented by the Clerk. As well as being presented by Ministers, government documents may be delivered to the Clerk and be deemed to be presented. Documents may be presented in the Federation Chamber.[8] A document presented to the Federation Chamber is taken to have been presented to the House.[9]

Time of presentation

The more important ministerial documents are usually presented during the period of time set aside in the order of business following Question Time on each sitting day.[10] However, a Minister may present a document at any time when other business is not before the House.[11] With some exceptions, leave is required for a document to be presented at any other time (*see* page 605). It is the practice of the House that the Speaker may present a document at any time, but not so as to interrupt a Member who is speaking.

Documents presented at the time provided in the order of business are generally presented together according to a previously circulated list. A schedule of documents to be presented is made available to the Manager of Opposition Business by 12 noon on the day of presentation, and circulated to Members in the Chamber at the first opportunity. Following Question Time a Minister presents the documents as listed, and the documents so listed are recorded in the Votes and Proceedings and Hansard. Documents are presented individually if a schedule has not been circulated, if they are not listed on a schedule or if a statement is to be made in connection with a document.[12]

By the Speaker

The standing orders provide that documents may be presented to the House by the Speaker.[13] The reports of those committees of which the Speaker is chair, or joint chair, are presented by the Speaker.[14] The Speaker presents the reports of parliamentary

6 VP 2004–07/602 (12.9.2005), 1216 (19.6.2006).
7 S.O.s 199–200.
8 E.g. VP 1993–96/2516 (19.10.1995); VP 1996–98/457 (11.9.1996); VP 2008–10/942 (16.3.2009).
9 S.O. 2.
10 S.O. 34.
11 S.O. 199(b).
12 Resolution of the House effective March 1988. VP 1987–90/302–3 (9.12.1987).
13 S.O. 199(a).
14 E.g. VP 1993–96/965 (12.5.1994); VP 2010–13/71 (18.10.2010).

delegations of which he or she is leader.[15] The Speaker also presents documents dealing with parliamentary activities,[16] and, pursuant to the Parliamentary Service Act, the annual reports of the Parliamentary Service Commissioner and the Department of the House of Representatives; and the Department of Parliamentary Services and the Parliamentary Budget Office (the parliamentary departments under the joint authority of the Speaker and the President).[17]

The Auditor-General Act requires the Auditor-General to transmit to each House of the Parliament reports prepared under that Act.[18] Having furnished information to the Prime Minister in relation to an investigation, the Commonwealth Ombudsman may also forward copies of a report concerning the investigation to the President and the Speaker for presentation to Parliament.[19] These reports are presented to the House by the Speaker in his or her role as the representative of the House in its relations with authorities outside the Parliament.[20]

The Speaker may also communicate to the House letters and documents addressed to the Speaker, such as replies to expressions of congratulation or condolence made by the House,[21] or messages of the same kind from foreign countries and other legislatures,[22] letters acknowledging a motion of thanks of the House,[23] or relating to the rights and privileges of the House or its Members, such as communications notifying the House of the arrest or imprisonment of a Member.[24] In 1988 the Acting Speaker presented a copy of a letter from a Deputy President of the Conciliation and Arbitration Commission seeking the appointment of a joint select committee to inquire into his situation. Another letter from the same person was presented in 1989.[25] The Speaker has presented a letter from a High Court Judge, and read a statement from the judge, received following criticism of the judge in Parliament.[26] In 2003 the Speaker presented a resolution of the Queensland Parliament which, in part, requested the Commonwealth Parliament to establish an inquiry.[27] A document communicated to the House by the Speaker may be read and entered in the Votes and Proceedings or simply recorded as being received. Unless presented by specific action of the Speaker,[28] documents of this kind are not regarded as having been formally presented to the House.

15 E.g. VP 1993–96/1613 (5.12.1994); VP 1998–2001/1115 (6.12.1999); VP 2010–13/239 (24.11.2010).

16 *See* for example, *History of Hansard*, VP 1970–72/1236 (11.10.1972); *Radio broadcasting of parliamentary proceedings—papers*, VP 1993–96/1327 (22.9.1994); VP 1996–98/95 (9.5.1996), 160 (27.5.1996); VP 2010–13/260 (25.11.2010) (response to committee report).

17 *Parliamentary Service Act 1999*, ss. 42, 65. Note that a report or other document presented by both Presiding Officers may be presented to the two Houses on different days.

18 *Auditor-General Act 1997*, ss. 15, 16, 17, 18, 25, 28.

19 *Ombudsman Act 1976*, s. 17; VP 1985–87/392 (10.9.1985).

20 *See* Ch. on 'The Speaker, Deputy Speakers and officers'.

21 E.g. VP 1978–80/981 (12.9.1979); VP 2002–04/1061–2 (12.8.2003).

22 E.g. VP 1978–80/930 (21.8.1979), 977 (11.9.1979); VP 1996–98/366 (20.8.1996); VP 2002–04/1318 (25.11.2003); VP 2008–10/750 (27.11.2008).

23 VP 1932–34/583 (23.3.1933).

24 E.g. VP 1970–72/517 (20.4.1971); VP 1990–93/1633 (18.8.1992) (letter of apology).

25 VP 1987–90/811 (1.11.1988), 1025 (28.2.1989).

26 VP 2002–04/122–3 (19.3.2002).

27 In response to a question the Speaker later indicated that he intended to take no action on the matter unless instructed by the House. H.R. Deb. (25.11.2003) 22719–20; H.R. Deb. (2.12.1903) 23432.

28 VP 1967–68/10 (21.2.1967).

Pursuant to statute

Documents presented pursuant to statute are those documents required to be presented to the Parliament by virtue of provisions in Acts of Parliament. They may be presented by the Speaker (*see above*), by Ministers, or delivered to the Clerk for deemed presentation (*see* page 605).

Various types of document are covered by the term 'statutory document'. For example, an agency is usually required by its enabling legislation to present a report on its operations each financial year, and the report required to be accompanied by financial statements and the report of the Auditor-General on those statements.[29]

Agencies may be permitted or required to investigate and report on specific matters and to present their reports to the Parliament.[30] A number of statutes require that the Minister responsible for the administration of an Act present a report to the Parliament on the operations of that Act,[31] and Acts providing for grants or financial assistance to the States have required that statements of guarantees and payments, and financial agreements, be presented to the Parliament.[32] Since 1986 annual reports of government departments have been presented pursuant to statute. This followed amendments to the Public Service Act providing that reports should be prepared and presented to Parliament each year, in accordance with guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.[33]

There is a statutory requirement that where any Act confers the power to make regulations, those regulations shall be laid before each House of the Parliament. There are also statutory requirements for presentation of many other instruments of a similar nature.[34]

At government initiative

Many reports and other documents, not required by statute to be presented, are considered by the Government as important enough to present to the House for the information of Members. In many cases it is an exercise in the accountability of the Executive to the Parliament. For example, the annual reports of Public Service departments were presented in this way before there was a statutory requirement to do so. In other cases it is an acknowledgment of the fundamental right of access of Members to information concerning government policy or activity, and within this framework documents presented to the House cover a virtually unlimited range of subject matters. They include reports of royal commissions, treaties,[35] agreements and exchanges of notes with foreign countries, reports of committees of inquiry established by the Government, and ministerial statements. These documents are usually presented by Ministers, although in some cases they are forwarded to the Clerk for recording in the Votes and Proceedings as documents deemed to have been presented (*see below*). The

29 An authority could report for a 12 month period other than the financial year; for example, *see* reports of joint fisheries authorities under the *Fisheries Act 1952* (now repealed), VP 1993–96/949 (10.5.1994), 1983 (28.3.1995).

30 E.g. *Automotive Industry Act 1984*, s. 10.

31 E.g. *Housing Assistance Act 1996*, s. 14; *Air Navigation Act 1920*, s. 29.

32 E.g. *Urban and Regional Development (Financial Assistance) Act 1974*, s. 8.

33 *Public Service Act 1999*, ss. 63, 73. *Requirements for Annual reports — for departments, executive agencies and other non-corporate Commonwealth entities,* Department of the Prime Minister and Cabinet, June 2015.

34 *And see* 'Delegated legislation' in Ch. on 'Legislation'.

35 New arrangements for treaties were announced in May 1996: the Government undertook to table treaties at least 15 sitting days before taking binding action (except in cases of urgency, under the now so-called 'national interest exemption'); treaties were to be tabled with a national interest analysis, to facilitate community and parliamentary scrutiny; and a Joint Standing Committee on Treaties was created to consider tabled treaties and related matters. H.R. Deb. (2.5.1996) 231–5. A period of 20 sitting days is now provided for some categories of treaties.

Government has issued guidelines for departments on the presentation of government documents to the Parliament.[36]

In the past such documents were presented nominally 'by command of the Governor-General',[37] and referred to as command papers. This term in relation to documents presented to the Australian Parliament did not have the same significance as the term used in the United Kingdom Parliament where such documents are printed as a separate Command Paper series. The term in Australia was purely technical, referring to the manner of presentation, and is no longer current usage.

Deemed to have been presented

In 1962, to save the time of the House, the Standing Orders Committee recommended an amendment to the standing orders providing that a miscellany of papers (mainly statutory documents) may be deemed to have been presented if they are delivered to the Clerk and recorded in the Votes and Proceedings.[38] The recommendation was adopted and in 1963 the Acts Interpretation Act was amended to make the proposed new procedures for the presentation of documents legally effective.[39]

Current standing orders provide that documents may be delivered to the Clerk who shall record them in the Votes and Proceedings. Documents delivered to the Clerk are deemed to have been presented to the House on the day on which they are recorded in the Votes and Proceedings.[40] Documents received on a sitting day before 5 p.m. (3 p.m. on Thursday) are recorded in the Votes and Proceedings of the day of receipt. In other circumstances they are recorded in the Votes and Proceedings of the next sitting day. Government departments are advised to consider the time limit in cases where the day of presentation may be significant.

The main types of document delivered to the Clerk for recording in the Votes and Proceedings are the documents presented pursuant to statute described above, including, in particular, delegated legislation.

By leave

Leave of the House is required to enable the presentation of a document in circumstances not provided for in the standing orders or established practice of the House. It is expected that a Member or Minister seeking leave to present a document will first show it to the Minister at the Table or to the Member leading for the Opposition, as the case may be, and leave may be refused if this courtesy is not complied with.[41]

BY PRIVATE MEMBERS

Other than providing for the presentation of committee and delegation reports, and petitions, the standing orders make no provision for private Members to present documents. Any private Member (unless presenting a parliamentary committee report or a delegation report during the time allotted on Mondays, or unless the document relates to a matter of privilege raised by the Member[42]) wishing to present a document must

36 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017.

37 Former S.O. 319. Documents were recorded in the Votes and Proceedings as being presented by command until 1983.

38 Standing Orders Committee, *Report*, H of R 1 (1962–63) 57.

39 *Acts Interpretation Act 1963*, s. 34B; H.R. Deb. (7.5.1963) 1066–7.

40 S.O. 199(b).

41 H.R. Deb. (9.10.1979) 1724; H.R. Deb. (3.6.1999) 5947.

42 VP 1998–2001/1350 (4.4.2000); *and see* S.O. 53.

obtain leave of the House to do so,[43] and leave may be granted only if no Member present objects.[44] Leave is not required to present an explanatory memorandum to a private Member's bill, or to present a petition pursuant during specified periods.[45] The Leader of the Opposition does not require leave to present details of the Shadow Ministry.[46]

MINISTERS

The requirement for leave also applies to Ministers when other business is before the House.[47] Other business is defined as any question before the House (or Federation Chamber) for decision. Ministers therefore do not require leave to present documents between items of business, during Question Time,[48] while making a ministerial statement or personal explanation, during a discussion of a matter of public importance, or during the period for Members' three minute statements in the Federation Chamber. Conversely, leave is required during adjournment and grievance debates, when there is a question before the House. As in other procedural matters, the same rules apply to Parliamentary Secretaries. Ministers do not require leave to present an explanatory memorandum or other documents connected to a bill before the House. Leave has been required for a newly appointed Minister to present a report of a parliamentary delegation of which he had been a member while a private Member.[49]

Pursuant to standing order 201

Standing order 201 provides that if a Minister quotes from a document relating to public affairs, a Member may ask for it to be presented to the House. The document must be presented unless the Minister states that it is of a confidential nature.[50] The rule has been said to be akin to the rule of evidence in the courts where evidence not placed before the court may not be cited by counsel.[51]

Speaker Snedden laid down steps to be followed when a request for presentation is made under this standing order. The Chair will first ask the question 'Has the Minister read from the document?'. If the answer is 'no', the Chair accepts the Minister's word. If the answer is 'yes', then the Chair will ask the further question 'Is it a confidential document?'. If the Minister replies that it is confidential, then it is not required to be presented. If it is not a confidential document, and the Minister has read from it, he or she is then required to present the document. The Speaker also said that if a Minister states that he is only referring to notes, then that is the end of the matter—the Chair would not require the tabling of the document.[52]

It is not always easy for the Chair to determine the status of documents. The provisions of the standing order do not apply to personal letters quoted from by a

43 VP 1978–80/1597 (28.8.1980); VP 1996–98/162 (27.5.1996). Speaker Hawker held that a request from a private Member for leave to present a document during Question Time would not be put to the House where the document was already on the public record, H.R. Deb. (17.11.2004) 73. Speaker Jenkins would not permit private Members, other than the questioner, to seek to table a document during Question Time, H.R. Deb. (22.2.2011) 913; H.R. Deb. (24.3.2011) 3206. Speaker Bishop stated she would uphold these earlier rulings, and that a request to table by a private Member would not be permitted when used as a disruptive device, H.R. Deb. (26.5.2014) 4105–6.

44 S.O. 63.

45 S.O. 207(b), *see* page 636.

46 VP 2010–13/1825.

47 S.O. 199(b). VP 1976–77/183 (19.5.1976); VP 1978–80/178 (4.5.1978); VP 1996–98/276 (20.6.1996).

48 VP 2004–07/63 (1.12.2004).

49 H.R. Deb. (20.3.2002) 1702.

50 VP 1993–96/1972 (27.3.1995); VP 1996–98/491 (16.9.1996).

51 Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, London, MacMillan, 1958, p. 197.

52 H.R. Deb. (1.4.1976) 1239. In most cases Speakers have accepted the Minister's word as to a document's confidentiality. Speaker Sinclair insisted that documents should be marked confidential, H.R. Deb. (9.3.1998) 736, but subsequent Speakers have not continued this approach.

Minister,[53] nor to private documents.[54] A Minister who summarises correspondence, but does not actually quote from it, is not bound to lay it on the Table.[55] The standing order also applied in the former committee of the whole[56] and legislation committees, and by extension of these precedents would apply in the Federation Chamber.

It has been held that when public interest immunity (*see* page 625) is claimed by the Government in court proceedings it is the duty of the court, and not the right of the Executive Government, to decide whether a document would be produced or withheld.[57] In 1978 a Member raised as a matter of privilege the possible application of these principles to the tabling of documents under the standing order. The Member suggested that the Speaker should stand in a similar position to the court and when a document relating to public affairs was quoted from by a Minister any claim by the Minister that the document was confidential should be judged by the Speaker and not the Minister. The Speaker stated that the cases were significantly different and that the clear course of the standing order must be followed.[58]

Presented by the Clerk

RETURNS TO ORDER

The House itself can order documents to be presented. Upon the House agreeing to a resolution that documents should be presented, the Clerk refers the order to the Minister concerned. When the documents are received, they are presented by the Clerk.[59]

Although the standing order only contemplates orders in relation to documents to be produced by Ministers, the House has the power to order other persons or bodies to produce documents. However, generally only documents which are of a public or official character would be ordered to be presented to the House. The power to require the production of papers by private bodies or individuals is in practice more likely to be exercised by committees.[60]

In 1999 a private Member was ordered to produce a document. However, the Member did not comply with the order, stating that the document was no longer in his possession, and no further action was taken by the House.[61]

The procedure of calling for documents was frequently followed during the early years of the House, but it fell into disuse.[62] Much of the information previously sought in this way is now presented to the House pursuant to statute or at government initiative. However, this power has continuing importance and it may be delegated to committees,

53 H.R. Deb. (28.8.1913) 646–7.
54 H.R. Deb. (23.2.1949) 612.
55 H.R. Deb. (23.2.1972) 110; *and see May*, 24th edn, pp. 445–7.
56 H.R. Deb. (20.9.1973) 1385.
57 *Sankey v. Whitlam and others* (1978) 142 CLR 1.
58 VP 1978–80/529 (14.11.1978), 541 (15.11.1978); H.R. Deb. (14.11.1978) 2715; H.R. Deb. (15.11.1978) 2867 (references to former S.O. 321).
59 S.O. 200.
60 *See also May*, 24th edn, p. 133.
61 The order was by way of a government amendment to a motion censuring a Minister. The document involved was apparently a 'leaked' copy of a cabinet submission, the content of which was the ground of the attempted censure. The Member stated that he did not acknowledge the right of the House to order him to produce the document. The Speaker later stated that the comments, although contemptuous, did not constitute a prima facie case of contempt, and that the House might be best advised to consult its own dignity and not take any further action in the matter. VP 1998–2001/957–63 (13.10.1999), H.R. Deb (13.10.1999) 11479–510. The Speaker had earlier been asked to rule the amendment out of order on the grounds that the House did not have the power to order a private Member to produce documents. The Speaker's response was that it was not his intention to limit the power of the House to determine what could or could not be produced.
62 The last return to order was laid on the Table of the House on 25 July 1917, VP 1917–19/20 (25.7.1917).

thus enabling them to send for documents and records.[63] In the Senate orders have been made more recently for the presentation of documents.[64]

An order for documents to be laid before the House may give rise to a claim of public interest immunity. In other words, in respect of certain documents, the Executive may claim an immunity in respect of their production (*see* page 625).

ELECTION PETITIONS

The validity of any election or return may be disputed by petition addressed to the High Court acting as the Court of Disputed Returns.[65] Although there are no presentation provisions under the standing orders or under statute, it has been the practice for the Clerk to present for the information of the House copies of election petitions,[66] and copies of orders[67] (and related documents[68]) of the Court of Disputed Returns on the petitions, forwarded in accordance with the Commonwealth Electoral Act.[69]

RETURNS TO WRITS

The standing orders provide that at the first meeting of a new Parliament the Clerk shall present the return to writs following the general election.[70]

Parliamentary committee and delegation reports

The standing orders provide that the reports of committees or delegations may be presented at any time when other business is not before the House. In addition, special set periods are provided on Mondays in the House and Federation Chamber for committee and delegation business and private Members' business.[71] During these periods Members can present reports and make statements in relation to reports presented (subject to Selection Committee determinations). When a report is presented at other times, leave is required to make a statement, and there can be no assurance that time will be made available.

Committee reports must be presented by a member of the committee[72] and are normally presented by the committee chair or, in the case of a joint committee where the chair is a Senator and the deputy a Member of the House, by the deputy chair.[73] Another member of a committee may, when asked to do so, present a committee report on behalf of the chair.[74]

In the case of committee reports, the Speaker (or Deputy Speaker if the Speaker is unavailable) is authorised to give directions for the printing and circulation of a report if the House is not sitting when the committee has completed its inquiry, and the committee must then present the report to the House as soon as possible.[75]

63 S.O. 236; *and see* Ch. on 'Committees'.
64 *Odgers*, 14th edn, pp. 581–6.
65 *Commonwealth Electoral Act 1918*, s. 353(1); *and see* Ch. on 'Elections and the electoral system'.
66 E.g. VP 1996–98/72 (8.5.1996), 109 (20.5.1996); VP 1998–2001/205 (9.12.1998); VP 2002–04/17 (13.2.2002); VP 2004–07/130 (9.12.2004), 143 (8.2.2005); VP 2010–13/174–5 (15.11.2010).
67 E.g. VP 1993–96/176 (19.8.1993), 1106 (27.6.1994); VP 1996–98/428–30 (11.9.1996); VP 1998–2001/717 (9.8.1999); VP 2002–04/328 (19.8.2002).
68 E.g. VP 2008–10/133 (11.3.2008).
69 *Commonwealth Electoral Act 1918*, s. 369.
70 S.O. 4(e); E.g. VP 2004–07/2–6 (16.11.2004); VP 2010–13/2–6 (28.9.2010).
71 S.O. 39. For a detailed discussion of committee reports *see* Ch. on 'Committee inquiries'.
72 S.O. 247(a).
73 E.g. VP 1978–80/1584 (27.8.1980).
74 E.g. VP 1977/367–9 (27.10.1977); VP 1996–98/535 (19.9.1996); VP 1998–2001/1625 (14.8.2000).
75 S.O. 247(c), *see* page 612 and Ch. on 'Committee inquiries'.

Ministerial statements

Ministerial statements are made to the House by Ministers on behalf of the Government and are a means by which the Government's domestic and foreign policies and decisions are announced to the House. A place is provided in the order of business for ministerial statements on each sitting day, following questions and the presentation of documents.[76] However, they may also be made at other times.

In all cases leave of the House is required to make a ministerial statement. The granting of leave to the Minister is deemed to grant leave to the Leader of the Opposition or Member representing (i.e. the shadow minister) to speak in response to the statement for an equivalent amount of time.[77] If leave to make a statement is refused, it is open to the Minister, or another Member, to move a motion to suspend the standing orders to enable the statement to be made or, alternatively, the Minister may present the statement, move 'That the House take note of the document' and speak to that question.

Having concluded a statement made by leave, a Minister may present a copy of the statement. If this is done, the Minister or another Minister may then move a motion 'That the House take note of the document'.[78] Debate on this motion enables the contents of the statement to be debated immediately or at a later time (*see below*).

Government guidelines for departments in relation to the making of ministerial statements include a formal approval process.[79] House processes for the making of ministerial statements are discussed in more detail under 'Statements by leave' in the chapter on 'Control and conduct of debate'.

ORDERS AND RESOLUTIONS IN RELATION TO DOCUMENTS

Motion that a document be made a Parliamentary Paper

The motion 'That the document be made a Parliamentary Paper' is moved to enable the House to print the document separately for the Parliamentary Papers Series (*see* page 613). Debate on this motion is possible.[80] Standing order 202 provides that, on any document being presented to the House, a Minister may move without notice 'That the document be made a Parliamentary Paper' and/or 'That the House take note of the document'. Unless otherwise ordered, a committee report is automatically made a parliamentary paper on presentation;[81] no motion is necessary in this case.

The publication of documents ordered to be made a parliamentary paper is protected under the Parliamentary Papers Act (*see* page 623). However, this consideration is no longer critical, as all documents presented to the House are now automatically authorised for publication by standing order 203.

Before November 2004 the motion 'That the paper be printed' was used. The effect was exactly the same as the current motion to make a document a parliamentary paper.

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76 S.O. 34.
77 S.O. 63A.
78 S.O. 202(a).
79 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, pp. 12–13.
80 E.g. H.R. Deb. (10.5.2000) 16187; H.R. Deb. (7.2.2006) 37–8; H.R. Deb. (2.2.2016) 57–60.
81 S.O. 39(e).

Motion to take note of document

A motion 'That the House take note of the document' is a procedure employed in cases where the House may wish to debate the subject matter of a document, whether it is a ministerial statement that has been presented or any other document presented to the House, without coming to any positive decision concerning the document.[82] If the motion is not moved by a Minister at the time of presentation of the document, it may be moved by any Member later on notice,[83] or by leave.[84] This motion is used only in relation to a document that has been presented to the House, and thus is not possible in relation to a statement if a copy has not been presented.[85]

A motion to take note of a ministerial statement may be debated immediately, shadow ministers having been given advance copies of the statements. However, in the case of the majority of motions to take note of a presented document such as a report, debate is immediately adjourned (customarily on the motion of an opposition Member) and the adjourned debate made an order of the day for the next sitting. The timing of the resumption of debate (possibly in the Federation Chamber) is a matter for negotiation between the parties.

Before the establishment of the Main Committee (now renamed Federation Chamber) a large proportion of these orders of the day were later discharged from the Notice Paper, or lapsed on dissolution, not having been debated. Motions have been moved to take note of documents presented for the specific purpose of enabling a matter to be referred to the Federation Chamber for debate or further debate—for example, copies of motions already passed in the House.[86] Orders of the day referred to the Federation Chamber may be returned to the House after debate.[87]

When documents are presented together according to a previously circulated list (*see* page 602), a single motion may be moved that the House take note of certain documents presented, and the resumption of debate on the motion to take note of each of the documents is made a separate order of the day on the Notice Paper.[88]

A motion to take note is open to amendment. Amendments generally take the form 'That all words after "That" be omitted with a view to substituting the following words: . . .'. The terms of such amendments have proposed action relating to the document presented,[89] or expressed opinion on the subject of the document.[90] It is unusual for a vote to be taken on a motion to take note.[91] Normally, debate is adjourned and the order of the day remains on the Notice Paper, thus enabling further debate on the matter if this is desired.

82 For procedures applying to the presentation of committee and delegation reports *see* Chs on 'Non-government business' and 'Committees'.

83 S.O. 202(c).

84 VP 2008–10/495 (2.9.2008).

85 H.R. Deb. (10.3.2010) 2166.

86 E.g. VP 2002–04/691 (4.2.2003), 1064 (12.8.2003), 1233–4 (9.10.2003). Another example is a copy of an announcement of the death of a former Member, providing, in effect, the opportunity for a condolence debate, VP 2002–04/1401 (10.2.2004), 1428 (12.2.2004) (Main Committee).

87 VP 1993–96/2427 (27.9.1995) (Main Committee).

88 S.O. 202(b). This 'single motion' procedure has not been routinely used since the 44th Parliament.

89 E.g. VP 1985–87/882 (29.4.1986)—amendment to disallow regulations that were the subject of the ministerial statement.

90 E.g. VP 2002–04/400 (17.9.2002), 709 (6.2.2003), 725–6 (11.2.2003) (amendment to proposed amendment)—amendments critical of government position given in ministerial statements, and expressing alternative views.

91 Examples of a 'take note' being agreed to: VP 1970–72/667 (23.8.1971) (Privileges Committee report); VP 1993–96/2293–4 (30.6.1995) (ministerial statement on 'An Australian Republic'); VP 2004–07/475 (23.6.2005) (copies of three condolence motions, already agreed to, referred for debate in the Main Committee); VP 2016–18/320 (9.11.2016) (Prime Minister's statement on the death of an international figure).

Resolutions authorising the production of documents and attendance of House employees in court or other proceedings

Only if the House grants permission, may an employee of the House, or other staff employed to record evidence before the House or one of its committees, give evidence relating to proceedings or give evidence relating to the examination of a witness.[92] This requirement has been extended in practice to cover the production of documents and records. Those who desire to produce evidence of parliamentary proceedings or any document in the custody of the Clerk of the House of Representatives have been required, by the traditional practice of the House, to petition the House for leave of the House to be given for the production of the documents and, if necessary, for the attendance of an appropriate employee in court.[93] On receipt of the petition it has been the practice of the Clerk to refer it to the Leader of the House, who is the appropriate Minister to move a motion for the granting of leave of the House.[94] In some cases motions to grant leave have been moved without a petition having been presented[95] or following the presentation by the Speaker of a less formal communication.[96] All sides of the House have been involved in the consideration of such a matter.[97]

During a period when the House is not sitting, the Speaker, in order to prevent delays in the administration of justice, may allow the production of documents and the attendance of employees in response to a request.[98] However, should any question of privilege be involved, or should the production of a document appear, on other grounds, to be a subject for the discretion of the House itself, the request would probably be declined and the matter referred to the House.

This practice and the issues involved are covered in detail in the Chapter on 'Parliamentary privilege'. Further information of a historical nature is contained in Chapter 17 of the first edition.

DISTRIBUTION AND PRINTING OF DOCUMENTS

After documents have been presented, copies are available to Members from the Table Office. Members can order their requirements on the intranet-based Daily Documents Ordering System.

92 S.O. 253.

93 *See* Committee of Privileges, *The use of or reference to the records of proceedings of the House in the courts*, PP 154 (1980) 6. Leave of the Senate is not required in these circumstances (resolution of 25.2.88, J 1987–90/525 (24.2.1988), 536 (25.2.1988)). In 1980 the UK House of Commons dispensed with the requirement that leave be granted in respect of the production of parliamentary records.

94 E.g. VP 1985–87/1355 (26.11.1986).

95 E.g. VP 1983–84/881 (2.10.1984).

96 H.R. Deb. (25.2.1992) 27 (faxed letter to the Speaker); VP 1996–98/514 (18.9.1996), 525 (19.9.1996) (following statement of committee chair); VP 1998–2001/823 (31.8.1999), 827 (1.9.1999) (faxed letter to the Speaker).

97 In a 1992 case the matter was referred also to the Manager of Opposition Business and the (sole) independent Member, who each spoke to the motion moved on behalf of the Leader of the House, H.R. Deb. (25.2.1992) 390–92.

98 VP 1996–98/408 (9.9.1996) (House informed of Speaker's decision).

Custody and availability of original documents

Under the direction of the Speaker, the Clerk has custody of all documents presented to the House.[99] All documents presented to the House are considered to be public and, by arrangement, may be inspected at the offices of the House.

Although documents held by the House are Commonwealth records for the purposes of the Archives Act, the requirements of the Act relating to the disposal of and access to such records do not apply unless provided for by regulation.[100] The relevant regulations acknowledge the position of the Parliament within the Commonwealth, the special recognition and treatment that should be given to particular parliamentary records, and the different powers and functions of the Parliament and the Executive Government.[101] The regulations recognise Parliament's control over the records of proceedings of the Houses, presented documents and certain committee documents ('class A records'). Other records, for example, administrative records of the parliamentary departments ('class B records') are subject to the provisions of the Archives Act applying to similar records of executive departments.

In 1980 the House agreed to a resolution delegating to the Speaker the authority to release for public scrutiny committee records (other than in camera or confidential evidence) which have been in the custody of the House for at least 10 years. Similar authority was given to the Speaker and the President in respect of joint committee records.[102] A further resolution in 1984 permits in camera evidence to be disclosed after 30 years, if in the Speaker's opinion, disclosure is appropriate.[103]

See also 'Publication of evidence' in the Chapter on 'Committee inquiries' .

Release prior to presentation

It has always been considered a matter of impropriety to make documents publicly available before they are presented to the Parliament. Guidelines for government departments and agencies issued by the Department of the Prime Minister and Cabinet advise that every effort should be made to ensure a document is tabled in Parliament prior to, or to coincide with, its public release.[104]

Presentation when Parliament not sitting

The House has no provision for documents to be presented when the House is not sitting. However, if the House is not sitting when a committee has completed a report of an inquiry, the report may be sent to the Speaker prior to presentation to the House. When the Speaker receives the report, it may be published and he or she may give directions for printing and circulation. The committee must then present the report to the House as soon as possible.[105]

In 1984 the House agreed to a motion authorising the Speaker, notwithstanding the pending dissolution of the House, to provide to all Members copies of the final report of the Royal Commission of Inquiry into the Federated Ship Painters and Dockers' Union.

99 S.O. 28.

100 *Archives Act 1983*, ss. 3, 18, 20.

101 Archives (Records of Parliament) Regulations 1995, s. 2 (SR 91 of 1995).

102 VP 1978–80/1539–40 (22.5.1980); H.R. Deb. (22.5.1980) 3133–4.

103 VP 1983–84/988–9 (11.10.1984).

104 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, p. 7.

105 S.O. 247(c)—*see* Ch. on 'Committee inquiries'.

The Speaker stated that he had received an assurance of indemnity from the Government if the motion was carried and he acted in accordance with it.[106]

The Senate has provision for documents to be presented when the Senate is not sitting. Under Senate standing order 166(2), if the President of the Senate certifies that a document is to be presented to the Senate, or a Minister or the Auditor-General provides a document to the President to be presented, the document is deemed to be presented and its publication is authorised. The President must then present the document at the next sitting of the Senate. The Prime Minister and Cabinet guidelines referred to above advise departments to consider this option if there is a statutory or urgent and compelling need to have documents presented at a time when Parliament is not sitting.

Senate standing order 38(7) provides for the deemed presentation of a committee report when the Senate is not sitting, on the provision of the report to the President.

Parliamentary Papers Series

Historically all documents and petitions ordered to be printed or made a parliamentary paper[107] by either House of the Parliament have formed part of the Parliamentary Papers Series. The series was designed to be a comprehensive collection of the documents of a substantial nature presented to the Parliament,[108] and since Federation these documents have served as a useful reference source for information on and research into the role and activities of the Parliament and of the Government for Members and the general public.[109]

The ultimate responsibility for deciding whether documents are of a substantial nature or important enough to form part of the series resides with both or either House of the Parliament. This responsibility has been delegated, by way of the standing orders,[110] to the Publications Committee of each House acting independently or jointly.

The Parliamentary Papers Series consists of reports, returns and statements from departments, authorities, parliamentary and ad hoc committees of inquiry and royal commissions and the like which have been presented to the Parliament and considered appropriate for inclusion. Also included in the series have been other documents of an ad hoc nature, including ministerial statements and petitions, which either House has ordered to be printed or made a parliamentary paper, either through its own action or through the recommendation of the Publications Committee of either House acting independently or jointly. Documents becoming parliamentary papers have been labelled accordingly.

Prior to 1963 certain documents, including committee reports, relating solely to either the House or the Senate were issued in a separate series, designated H of R or S, and (prior to 1961) published in bound form only in the Votes and Proceedings or Journals volumes respectively.

In 1997 the Joint Committee on Publications reported on the future of the Parliamentary Papers Series, in response to a request for advice by the Presiding Officers on a proposal to discontinue it. The committee recommended that the Parliamentary Papers Series should continue in its present form until there was a viable replacement either in electronic or printed form (or both), but that proposals for the replacement of

106 VP 1983–84/989 (11.10.1984); H.R. Deb. (11.10.1984) 2200.
107 The order to print was the traditional term and is still used by the Senate.
108 Joint Select Committee on Parliamentary and Government Publications, *Report,* PP 32 (1964–66) 28.
109 PP 216 (1977) 1.
110 S.O. 219; Senate S.O. 22.

the series should be explored further.[111] In its 2006 report into the distribution of the Parliamentary Papers Series the committee recommended, inter alia, that any digital versions of the series augment the hard copy series, and that the development of an online digital repository for the series be investigated.[112] In 2010 the committee recommended that the parliamentary departments develop a digital repository for the Parliamentary Papers Series, and that author departments and agencies be required to provide electronic copies of documents at the same time that print copies are provided for tabling in the Parliament.[113] These recommendations have been progressively implemented and it is now a government requirement that documents tabled in Parliament must also be available electronically.[114] Parliamentary papers from 2013 are available through a digital repository that can be accessed from the Parliament of Australia website.

Printed as well as electronic copies are still required for the Parliamentary Papers Series. However, in 2016 the Presiding Officers agreed to a recommendation[115] by the Joint Committee on Publications that the distribution of printed parliamentary papers cease after 2016.

Role of the Publications Committee

The Publications Committee consists of seven members and has the power to confer with a similar committee of the Senate.[116] Apart from initial meetings, the committees usually meet as a joint committee. The Publications Committee has two functions, namely, a parliamentary paper function and an investigatory function.

The parliamentary paper function

In performing its parliamentary paper function the committee considers all documents presented to the Parliament and not ordered to be printed or made a parliamentary paper by either House. The committee may report when it sees fit, and may recommend a document be made a parliamentary paper, in whole or in part.[117] Since March 2018 the number of documents in this category that the committee needs to consider has been minimal—*see below*.

It is open to any Member to seek in the House to move that a document be made a parliamentary paper even though the Publications Committee has not recommended it. If such a motion is before either House, the document is not considered by the Publications Committee, but would be considered later if the motion were subsequently withdrawn or if it lapsed.

Pursuant to the resolution of the House of 28 March 2018,[118] unless otherwise ordered, and provided that they conform to the printing standards, the following documents are automatically made parliamentary papers upon their presentation to the House:

(a) substantive reports of parliamentary committees;
(b) annual reports of Commonwealth entities;

111 Joint Committee on Publications, *The future of the Parliamentary Papers Series.* PP 416 (1997). The Presiding Officers' response accepted these recommendations, S. Deb. (10.11.1998) 32–3; Government response, S. Deb. (11.3.1999) 2773.
112 Joint Committee on Publications, *The distribution of the Parliamentary Papers Series.* PP 114 (2006).
113 Joint Committee on Publications, *Inquiry into the development of a digital depository and electronic distribution of the Parliamentary Papers Series*, PP 160 (2010).
114 Department of the Prime Minister and Cabinet, *Guidelines for the presentation of documents to the Parliament*, 2017.
115 Conveyed by correspondence.
116 S.O. 219.
117 S.O. 219(a).
118 VP 2016–18/1484 (28.3.2018).

(c) a report of a royal commission;
(d) a report of the Productivity Commission;
(e) a report of the Auditor-General;
(f) a report of the Australian Human Rights Commission;
(g) a report of the Australia Law Reform Commission;
(h) a report of the Australian Electoral Commission on the redistribution of electoral division boundaries;
(i) Australian Government white papers;
(j) a report in a series that has previously been included in the Parliamentary Papers Series on the recommendation of a Publications Committee; and
(k) budget papers and ministerial statements presented following the presentation of the appropriation bills.

The investigatory function

The committee, when conferring with a similar committee of the Senate (as the Joint Committee on Publications), has the power to inquire into and report on the publication and distribution of parliamentary and government publications and on matters referred to it by a Minister.[119] The joint committee has completed 14 inquiries, of which two were matters referred by a Minister.

Reports

In undertaking its parliamentary paper function the House Publications Committee reports (normally stating that it has met in conference with the Senate Publications Committee) that the committee, having considered documents presented to the Parliament since a certain date, recommends that specified documents be made parliamentary papers. The report is presented to the House by the House committee (and to the Senate by its committee) and reproduced in full in the Votes and Proceedings (and the Senate Journals).[120] The chair, by leave, moves that the report be agreed to.[121] Reports of the Joint Committee on Publications on inquiries are dealt with in the same manner as reports from other joint select and standing committees.

HOUSE DOCUMENTS—AGENDA AND RECORD

Notice Paper

The Notice Paper is an official document of the House, published by authority of the Clerk, showing all the business before the House and the Federation Chamber on the particular sitting day for which the Notice Paper is issued. The business includes notices and orders of the day which have been set down for a particular date. Standing order 36 provides that business before the House shall be published on the Notice Paper for each sitting, in accordance with standing and sessional orders. The Notice Paper is prepared by the Table Office and, with the exception of the first sitting day of a session, is issued for every day of sitting. The Notice Paper is available electronically on the House's web site.[122]

119 S.O. 219(c).

120 The report covering the same documents will be numbered differently by each House, e.g. the 28th report of the House committee presented on 30.11.95 equated to the 25th report of the Senate committee presented the same day. VP 1993–96/2696 (30.11.1995); J 1993–96/4304 (30.11.1995).

121 E.g. VP 1978–80/608–11 (24.11.1978); VP 1996–98/535–6 (19.9.1996); J 1978–80/436–8 (26.10.1978); VP 2010–13/151–4 (28.10.2010). Leave has been refused, e.g. VP 2004–07/585 (7.9.2005); H.R. Deb. (21.3.2013) 2919.

122 <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents/>

The Notice Paper has three distinct sections, namely, the business section, questions in writing and, after the Clerk's signature block, an information section.

Items of business

Business before the House is listed in the Notice Paper under the headings 'Government Business', 'Committee and Delegation Business', and 'Private Members' Business', and within each category divided, where relevant,[123] into 'Notices' and 'Orders of the day'. Occasionally, if proceedings on a bill or another item of business have been by completed in the Federation Chamber but not reported to the House the same day (the usual practice), there is an additional heading 'Matters to be reported from the Federation Chamber'.[124] When business has been accorded priority by the Selection Committee for the next sitting Monday,[125] including committee and delegation reports for presentation and debate as well as the selected items of private Members' business, this is listed separately under the heading 'Business accorded priority—Federation Chamber' and 'Business accorded priority—House of Representatives Chamber'. When, occasionally, items of business are sponsored by the Speaker, these are listed separately as 'Business of the House'.[126]

Business which has been referred to the Federation Chamber is listed separately under the heading 'Business of the Federation Chamber'—subdivided if necessary into 'Government Business', 'Committee and Delegation Business' and 'Private Members' Business'.

NOTICES

'Notices' are new proposed business—that is, business that has not yet come before the House. A notice of motion[127] is entered on the Notice Paper after a Member has delivered a copy of its terms to the Clerk.[128] A notice of intention to present a bill is treated as if it were a notice of motion.[129] A notice becomes effective only when it appears on the Notice Paper.[130] Subject to the ability of the Leader of the House to rearrange the order of government business[131] (prior to each sitting) and of the Selection Committee to arrange the order of private Members' business on Mondays,[132] notices are entered on the Notice Paper in the order in which they are received by the Clerk, and before orders of the day.[133] Private Members' notices not called on for eight consecutive sitting Mondays are removed from the Notice Paper.[134]

ORDERS OF THE DAY

Orders of the day are items of business which have already been before the House and which the House has ordered to be taken into consideration at a future time (in the House or the Federation Chamber).

The standing orders provide that the Notice Paper shall state the sequence in which orders of the day are called on.[135] Orders of the day are entered on the Notice Paper in

123 Notice is not necessary for presentation of a committee or delegation report.
124 E.g. NP (22.2.2008) 20 (Main Committee).
125 Pursuant to S.O. 222, *see* Ch. on 'Non-government business'.
126 E.g. NP 61 (23.5.1988) 2483; NP 50 (29.6.1999) 17.
127 *See* 'Notice' in Ch. on 'Motions' for full details.
128 S.O. 106.
129 S.O. 139(c); *and see* Ch. on 'Legislation'.
130 S.O. 108.
131 S.O. 45.
132 S.O. 222.
133 S.O. 108.
134 S.O. 42.
135 S.O. 37(a).

accordance with the order in which the notices of motion were given.[136] However, where an order of the day is set down for a day other than the next day of sitting, it is entered on the Notice Paper under a heading showing that day.[137] At the adjournment of the House those orders of the day which have not been called on are set down on the Notice Paper for the next sitting day at the end of the orders set down for that day.[138] As with notices, this sequence is subject to the ability of the Leader of the House to rearrange the order of government business[139] (prior to each sitting) and of the Selection Committee to arrange the order of private Members' and committee business on Mondays.[140]

Orders of the day relating to committee and delegation business and private Members' business which have not been called on for eight consecutive sitting Mondays are removed from the Notice Paper.[141]

CONTINGENT NOTICES OF MOTION

Contingent notices are in practice normally given only by Ministers and appear under a separate heading following orders of the day, government business.[142]

Questions in writing

Questions in writing are numbered consecutively in order of receipt by the Table Office[143] and remain on the Notice Paper until written replies are received by the Clerk. On the first sitting day of each sitting fortnight all unanswered questions are printed. On the remaining sitting days only those questions in writing which appear for the first time that day are printed and a list is included identifying by number the unanswered questions not printed.[144] An electronic 'questions paper' on the House website, updated daily, gives the full text of all unanswered questions.[145]

In 1980 a question which had been lodged was inadvertently not printed on the Notice Paper. As the Notice Paper concerned was the last for the Autumn sittings, and the next would not be printed for some months, the Speaker directed that the question be printed in Hansard and treated as a question placed in writing.[146]

General information

The final section of the Notice Paper appears after the Clerk's signature. This section is for the information of Members and the public generally and is not directly connected with the business of the House. It contains a current listing of occupants of the Chair, the membership of all parliamentary committees on which Members of the House are serving, and a list of the current inquiries being undertaken by those committees. The appointments of Members to statutory bodies are also included. The first Notice Paper of each sitting period (fortnight or single week) includes a list of House and joint committee reports awaiting government response.

136 *See* Chs on 'Order of business and the sitting day' and 'Motions'.
137 NP 42 (2.12.1974) 4503.
138 S.O. 37(d).
139 S.O. 45.
140 S.O. 222.
141 S.O. 42.
142 NP 176 (19.8.1980) 10851; NP 34 (8.10.1996) 1231. *See* Ch. on 'Motions'.
143 Before 13 August 1963 questions were renumbered each sitting day, *see* NP 89 (13.8.1963), NP 90 (14.8.1963). The practice is to list consecutively all questions received from an individual Member, and to list these in order of the seniority of the Ministers to whom they are addressed, even though they may not have been received in that exact order.
144 Until 1977 all unanswered questions were printed in every Notice Paper—changes since then have been to save printing costs.
145 <http://www.aph.gov.au/Parliamentary_Business/Chamber_documents>
146 H.R. Deb. (22.5.1980) 3105, 3142.

Votes and Proceedings

The Votes and Proceedings are the official record of the proceedings of the House of Representatives. This record contains the proceedings and decisions of the House and the Federation Chamber; and the attendance of Members in the House, including any leave.[147]

It is the purpose of the Votes and Proceedings to record all that is, or is deemed to be, done by the House, but to ignore everything that is said apart from the words of motions, amendments, and so on, unless it is especially ordered to be entered. The Votes and Proceedings are, in effect, the minutes of the House and should not be confused with Hansard, which is a verbatim report of the debates of the House.

The entries are compiled, on the authority of the Clerk, in the Table Office and are printed and circulated the next day in proof form. This proof is checked against the notes kept by the Clerk and Deputy Clerk and the original documents of the House. The Votes and Proceedings are then printed and distributed in final form and are issued for each session in bound volumes. The Votes and Proceedings are available electronically on the House's web site.[148]

The standing orders require that Members' attendance,[149] divisions,[150] and any reason stated by the Chair for its casting vote,[151] be recorded in the Votes and Proceedings. The standing orders also provide that a Member may, if he or she wishes, have dissent to any question recorded if he or she is the only Member calling for a division.[152] The names of Members voting for or against the question are recorded for each division.[153]

The Votes and Proceedings record the items of business considered by the House. Depending on the sequence of business on the particular sitting, they also record that questions without notice were asked,[154] the documents presented by Ministers, ministerial statements made, any committee reports presented, the matter of public importance discussed, and legislation presented or considered, and they conclude with a reference to the adjournment, a list of documents deemed to have been presented and the record of Members' attendance (the names of absent Members are recorded).

In respect of notices called on and orders of the day, the record in the Votes and Proceedings is, broadly speaking, an account of what actually takes place in the House. The decisions of the House on all questions before it are recorded irrespective of whether or not a division is called for, as are the terms of every motion proposed in the House. If debate takes place on any question, that fact is also recorded.

On the days on which the Federation Chamber meets, the Minutes of Proceedings of the Federation Chamber, under the name of the Deputy Clerk in his or her capacity as Clerk of the Federation Chamber, are included as a supplement to the Votes and Proceedings.[155] During the trial, under sessional orders, of legislation committees and estimates committees in 1978 and 1979, it was the practice to record the minutes of these committees in the Votes and Proceedings as a supplement.[156]

147 S.O. 27.

148 <http://www.aph.gov.au/votes>; electronic copies of all Votes since 1901 are available. The draft Votes (Live Minutes) for the current sitting can be accessed at <http://www.aph.gov.au/LiveMinutes>, and for the Federation Chamber at <http://www.aph.gov.au/LiveMinutes-FC>; this site is updated every five minutes when the House is sitting.

149 S.O. 27(c).

150 S.O. 135(a).

151 S.O. 135(c).

152 S.O.s 126. On one occasion the dissent of the Opposition was recorded, by leave, VP 1978–80/686 (22.3.1979).

153 Except if there are four or fewer Members on a side only the names of the minority are recorded, S.O. 127.

154 This entry was first included in 1962, VP 1962–63/15 (21.2.1962).

155 S.O.s 27(b), 189.

156 VP 1978–80/427–8 (27.9.1978), 1109–32 (23.10.1979).

The Votes and Proceedings also record the substance of statements by the Speaker on matters of privilege and important procedural and administrative matters. Some matters not formally being business of the House in a technical sense are also recorded because of the importance attached to them by the House. These include announcements concerning ministerial arrangements,[157] the absence of the Governor-General[158] (on occasions), and references to the deaths of persons that are not the subject of motions of condolence.[159]

The standing orders provide that motions and amendments not seconded shall not be recorded in the Votes and Proceedings.[160] These are the only specific exclusions mentioned in the standing orders. However, it has been the practice to exclude from the Votes and Proceedings certain matters which are not considered to be part of the business of the House. Proceedings which are not recorded include:

- **New notices**. These are listed on the next day's Notice Paper;[161]
- **Personal explanations**. These are not formally part of the business of the House; they arise mainly from what is reported about a Member in the media and through what is said in debate, and are therefore not normally recorded. When a personal explanation gives rise to some further proceedings then it may be recorded;[162]
- **Points of order**. These are not normally recorded unless they give rise to some further procedural action;[163] and
- **Rulings of the Chair**. These are not normally recorded unless they are of a significant nature[164] or there is a motion of dissent from the ruling moved.[165]

As it is the purpose of the Votes and Proceedings to record those things done by the House and not what has been said in the House, no record is made of debates other than to record that debate took place on a particular question.

Accuracy and alterations

The accuracy of the Votes and Proceedings has been challenged in the House on only three occasions. On 25 July 1901 a Member directed the attention of the Speaker to an alleged omission from the Votes and Proceedings of some of the proceedings of the House. The Speaker ruled that, as the proceedings omitted were proceedings which were out of order, under the standing orders the entry had to appear in that form.[166]

In March 1944 a question was asked of the Speaker as to what procedures were available to Members to challenge the accuracy of the Votes and Proceedings. The Speaker suggested that the matter ought to be raised with him and he would discuss it with the Clerks. The Speaker ruled that such questions were not questions of order, and that a substantive motion, of which notice had been given, would be necessary if the matter were to be dealt with otherwise. The Speaker went on to say that the submission of such a motion might have far reaching consequences and warned Members of the danger of establishing a precedent of moving for the alteration of the records of the

157 E.g. VP 1978–80/1662 (16.9.1980); VP 1996–98/241 (17.6.1996).
158 E.g. VP 1978–80/966 (29.8.1979).
159 E.g. VP 1978–80/213 (10.5.1978); VP 2010–13/89 (19.10.2010).
160 S.O.s 116(a), 121(b); *but see* VP 1978–80/700–1 (27.3.1979) where a motion to suspend standing orders, although not seconded, was recorded as it led to further proceedings.
161 S.O. 108.
162 E.g. VP 1978–80/848 (31.5.1979), 913–4 (6.6.1979).
163 E.g. VP 1978–80/153 (13.4.1978); VP 2008–10/666 (23.10.2008).
164 E.g. VP 1974–75/169 (18.9.1974).
165 E.g. VP 1978–80/1182–3 (13.11.1979); VP 1996–98/462 (12.9.1996); VP 2008–10/666 (23.10.2008).
166 H.R. Deb. (25.7.1901) 3056–7.

House.[167] A specific matter was then raised, as a point of order, concerning an alleged inaccuracy in the Votes and Proceedings of 15 March 1944. The Speaker reiterated his earlier ruling and undertook to consult with the Clerks, Hansard and the Chairman of Committees.[168] Subsequently, a motion to suspend standing orders was unsuccessfully moved seeking a debate on the accuracy of the Votes and Proceedings.[169] The Speaker later reported to the House that, having investigated the allegation of inaccuracy, he was satisfied that the Votes and Proceedings of 15 March 1944 presented a correct record of the proceedings.[170]

On 22 November 1979 a Member sought the indulgence of the Speaker to bring to his attention an alleged anomaly in the Votes and Proceedings of 20 November 1979. The Speaker indicated that the record would be checked and, if found to be inaccurate, corrected.[171] As the record was found to be accurate, no alteration was made.

On 24 November 1988, although the accuracy of the record in the Votes and Proceedings was not challenged per se, there was some confusion as to decisions taken during consideration of a bill at the previous sitting and, following the suspension of standing and sessional orders, the House resolved that the recorded decisions of the committee of the whole, and the House itself, on the bill be rescinded and the committee and remaining stages be considered again. This happened immediately.[172]

There have been two occasions on which the House has considered motions to expunge entries from the Votes and Proceedings. On 28 July 1909, during the debate on the election of the Speaker, a motion was moved that the debate be adjourned. The ensuing division resulted in an equality of voting and the Clerk, who was acting as Chair during the election, purported to exercise a casting vote against the motion for the adjournment of the debate. On a point of order being raised that the Clerk could not vote, the Clerk ruled that, if he did not have a casting vote as Chair, the motion nevertheless had not been agreed to, as it had not received a majority of votes.[173] On 29 July 1909, a Member raised the matter as one of privilege and unsuccessfully moved for the expunging of those entries from the Votes and Proceedings which recorded the exercise of a casting vote by the Clerk.[174]

On 29 April 1915 a Member moved that a resolution of the House in the previous Parliament, which had suspended a Member from the service of the House, be expunged from the Votes and Proceedings, as the resolution was subversive of the right of a Member to freely address his constituents. The motion was agreed to without a division[175] and the entry in the printed volumes held by the Clerk was inked out.

If a Member complains to the House that a division has been wrongly recorded, the Speaker may direct the record to be corrected.[176] The Votes and Proceedings are also altered on other occasions to correct minor errors, without reference to the House. On such occasions either an erratum slip or a substitute copy of the Votes and Proceedings[177] is issued.

167 H.R. Deb. (16.3.1944) 1472–3.
168 H.R. Deb. (16.3.1944) 1474; VP 1943–44/99 (16.3.1944).
169 VP 1943–44/101 (17.3.1944).
170 H.R. Deb. (21.3.1944) 1640.
171 H.R. Deb. (22.11.1979) 3369.
172 VP 1987–90/925–7 (24.11.1988); H.R. Deb. (24.11.1988 a.m.) 3312.
173 VP 1909/62 (28.7.1909); *and see* Ch. on 'The Speaker, Deputy Speakers and officers'.
174 VP 1909/67 (29.7.1909).
175 VP 1914–17/181 (29.4.1915); *see also* Ch. on 'Members'.
176 S.O. 135(b); *see* VP 1940/105 (21.6.1940); *and* H.R. Deb. (7.4.1978) 1239–40.
177 E.g. VP 1978–80/547 (16.11.1978).

Hansard—the parliamentary debates

The parliamentary debates are the full reports of the speeches of Members of the House. The debates are substantially the verbatim reports, with no unnecessary additions, with repetitions and redundancies omitted and with obvious mistakes corrected, but on the other hand leaving out nothing that adds to the meaning of a speech or illustrates an argument. The debates are better known as Hansard, which is a name derived from the printing firm which began printing the UK House of Commons debates in the early 19th century. The term Hansard did not appear on the title pages of the Australian parliamentary debates until 1946, when it was added in parentheses.[178]

The parliamentary debates, as well as containing the verbatim report of Members' speeches, contain the full text of petitions presented and any responses from Ministers, notices of motion, questions in writing and the answers thereto, results of divisions and requests for detailed information asked of the Speaker. Also included, pursuant to standing order 222, are reports of Selection Committee determinations. The report of the debates does not constitute the official record of the proceedings of the House; that is the purpose of the Votes and Proceedings.

Hansard is issued in two editions. There is a daily proof traditionally available the day after the proceedings to which it refers. The Official Hansard contains the reports of proceedings for each sitting period. Hansard is available electronically and may be accessed by Members and other users.

The production of Hansard is the responsibility of the Department of Parliamentary Services.[179] For privilege in relation to Hansard *see* page 624.

Control of publication

Control over the published content of the Hansard reports of the House resides in the House itself. Speakers have consistently ruled that, ultimately, only the House itself can exercise this control.[180] However, in 1977 the Speaker ruled that if the House passed a resolution ordering the incorporation of a document in Hansard, the Speaker still had a discretionary power to refuse that incorporation on the basis of the size of the document and the inconvenience it might cause in the production of the daily Hansard.[181]

Correction, deletion and incorporation of material

Prior to the subedited transcript being forwarded for publication, each Member is given an opportunity to read the transcript prepared of what he or she has said and, if necessary, to make minor corrections. The right of Members to peruse and revise the drafts of their speeches was a well-established practice long before the Commonwealth Parliament first met.[182] Although Members have this right to make corrections to their remarks, emendations which alter the sense of words used in debate or introduce new matter are not admissible.[183] In some instances of error or inaccuracy in the Hansard reports, the position is better clarified by a personal explanation.[184] Draft reports of speeches delivered to Members are also available electronically to other Members and Senators on the Senators and Members Services Portal on the day of sitting.

178 For a full account of the history of Hansard *see* PP 286 (1972).
179 For further discussion of the functions of the department *see* Ch. on 'The Speaker, Deputy Speakers and officers'.
180 H.R. Deb. (29.4.1915) 2724; H.R. Deb. (21.5.1915) 3344; H.R. Deb. (28.11.1918) 8511; H.R. Deb. (1.5.1940) 416; H.R. Deb. (8.5.1942) 1030; H.R. Deb. (27.9.1951) 164.
181 H.R. Deb. (21.9.1977) 1390–2, 1418–9.
182 PP 286 (1972) 74.
183 H.R. Deb. (26.6.1906) 745; H.R. Deb. (12.10.1971) 2160; H.R. Deb. (10.4.1978) 1299.
184 H.R. Deb. (10.4.1978) 1299; H.R. Deb. (3.12.1996) 7510.

As well as having an opportunity to make corrections before the subedited transcript is forwarded for inclusion in the daily proof issue, Members also have one week in which to suggest corrections for the Official Hansard.

Although only the House itself can exercise control over the content of the Hansard reports, in practice this responsibility has devolved to the Speaker. Rulings of the Chair form the guidelines for what is to be deleted from the debates and what is to be incorporated.

Since 1904 the practice has been followed that interjections to which the Member addressing the Chair does not reply ought not to be included in the Hansard record.[185] The Chair has ruled that questions ruled out of order should not be included in Hansard,[186] however, in more recent years they have been published. The Chair has a responsibility to ensure that no objectionable material is included in the debates.[187] Exceptionally, offensive remarks ordered to be withdrawn have been deleted from the records,[188] as have names of persons for reasons of privacy.[189] The Chair has ruled that the remarks made by a Member after his time has expired are not to be recorded[190] and that the remarks of a Member who has not received the call are not to be entered in the record.[191]

Although Hansard is basically a record of the spoken word, the House has always had procedures for the incorporation of unread material. The final decision on incorporating material rests with the Speaker and occupants of the Chair are guided in this matter by guidelines issued by the Speaker (*see* Chapter on 'Control and conduct of debate').

During both World War I and World War II the House acted to censor its own debates and at both times the Chair reiterated that only the House itself could exercise this form of control over its own debates.[192]

Copyright

The issue of copyright has arisen in connection with parliamentary publications, principally in relation to bills. Parliament has taken the position that it is important that it facilitate access by interested persons to its proceedings and publications. As is to be expected, requests have often been made for the use of various items, and permission has been given on many occasions. To ensure that the administrative arrangements are as straightforward and clear as possible on these matters, especially from the point of view of persons making inquiries, parliamentary authorities have agreed that the responsible area of the Executive[193] may serve as a single contact point for persons or organisations with copyright queries. Under the arrangements any relevant matter concerning Parliament must then be referred to the appropriate parliamentary department. The Parliament has been careful to ensure that, whilst agreeing to certain administrative arrangements for reasons of practicality, it has never countenanced the concept that

185 H.R. Deb. (11.11.1904) 6885; PP 286 (1972) 84.
186 H.R. Deb. (10.5.1940) 697.
187 H.R. Deb. (13.11.1913) 3118.
188 H.R. Deb. (13.10.1933) 3540; H.R. Deb. (9.5.1950) 2235; H.R. Deb. (21.9.1977) 1432; H.R. Deb. (15.5.2002) 2228; H.R. Deb. (16.5.2002) 2379; H.R. Deb. (28.5.2002) 2480.
189 H.R. Deb. (25.11.1998) 637–8, 679 (deletion of name mentioned in personal explanation); VP 2016–18/801 (31.5.2017) (deletion of name mentioned in question without notice some years earlier—by resolution of the House).
190 H.R. Deb. (25.2.1969) 32.
191 H.R. Deb. (2.4.1974) 804.
192 H.R. Deb. (21.5.1915) 3344; H.R. Deb. (1.5.1940) 416.
193 Currently the Department of Communications and the Arts.

parliamentary publications, such as bills, should in any sense be regarded as the 'property' of the Executive.[194]

A legal opinion given in respect of the Yirrkala bark petitions (*see* page 632) indicated that the fact that the petitions had been presented to the House did not extinguish the copyright interest of the persons who had created them. Special arrangements were made in respect of requests to publish images of these items, in recognition of their unique status and significance, but it was considered that the Houses of the Parliament, and committees, had undoubted rights in respect of the publication of documents presented to them or in their possession.[195]

PARLIAMENTARY PRIVILEGE RELATING TO DOCUMENTS

Subsection 16(2) of the *Parliamentary Privileges Act 1987* provides inter alia that the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee, and the document so formulated, made or published, is included in the term 'proceedings in Parliament'— that is, it is absolutely privileged.

Section 2 of the *Parliamentary Papers Act 1908* empowers the Senate, the House of Representatives, a joint sitting or a committee to authorise the publication of any document laid before it or any evidence given before it. Under section 3 (now redundant), when one of the above bodies has ordered a document or evidence to be printed, it is deemed, unless the contrary intention appears in the order, to have authorised the Government Printer[196] to publish the document or evidence. Section 4 of the Act provides inter alia that no action or proceeding, civil or criminal, shall lie against any person for publishing any document under an authority given in pursuance of section 2 (or deemed by section 3 to have been given). Section 4 of the Act also provides that the production of a certificate, verified by affidavit, stating that a document has been published by authority of either House shall immediately stay any proceedings, criminal or civil.

Documents presented to the House

All documents presented to the House are authorised for publication by standing order 203 and their publication is thus absolutely privileged.

This automatic authorisation was inserted into the standing orders (by amending former S.O. 320) in 1997. Previously, where a document was ordered to be printed, the protection of the Parliamentary Papers Act was considered to apply only to the document printed by the Government Printer pursuant to the order to print (that is, the parliamentary paper copy) and not to the document's prior publication.[197] If a wider protection was sought, for example, for a document printed other than by the Government Printer, publication was separately authorised. The publication to Members by parliamentary staff of presented documents not ordered to be printed or authorised for publication was specifically protected by section 11 of the Parliamentary Privileges Act. For further details of the former practice and status of documents not ordered to be printed or authorised for publication *see* pages 575–6 and 577–8 of the 3rd edition.

194 *See* for example correspondence between Presiding Officers and Attorneys-General. In the United Kingdom the Copyright, Designs and Patents Act 1988 gives statutory recognition to the principle of 'parliamentary copyright'.

195 *And see* H.R. Deb. (7.12.2000) 23810.

196 The office of Government Printer ceased with the privatisation of the Australian Government Publishing Service in 1997.

197 Advice of Attorney-General's Department, 1 November 1967.

Committee documents

Privilege in relation to committee documents is discussed in more detail in the Chapter on 'Committees'. In brief, publication of a document is absolutely privileged if its publication has been authorised by a parliamentary committee. Such authorisation is given by a motion of the committee, and is not automatic.

Hansard

During the second reading debate on the Parliamentary Papers Bill in 1908 the Attorney-General, in answer to queries regarding statutory protection for the publication of Hansard, informed the House that the publication of Hansard was protected at common law.[198] However, during the following 27 years questions regarding the authority for publication of Hansard and the protection of those who published it were consistently raised.[199] As a result the Act was amended in 1935 to establish the legal basis for the official character of Hansard, and to place beyond cavil its privileged position, with a provision that each House shall be deemed to have authorised the Government Printer to publish the reports of its debates and proceedings.[200]

In 1993 the House and the Senate passed resolutions, with continuing effect, authorising the publication of the Hansard record of their respective proceedings. This action removed any doubt that might have applied to the status of the Hansard report when published by anyone other than the Government Printer (a particular consideration being distribution in electronic form).[201]

Votes and Proceedings

Although the Clerk had always been required under the standing orders to record all the proceedings of the House, explicit authority for the publication of the Votes and Proceedings came only with the resolution of 1994 declaring the Votes and Proceedings to be the record of the proceedings of the House of Representatives.[202] Current standing order 27 now contains similar words, stating that 'The Clerk shall keep and sign the official record of the proceedings of the House, the Votes and Proceedings'.

It is considered that the actions of the Clerk of the House and others responsible for the preparation and publication of the Votes and Proceedings would be protected by parliamentary privilege, as these actions would fall within the ambit of section 16 of the Parliamentary Privileges Act. Before the enactment of that law, it had been considered that the Votes and Proceedings of the House of Representatives was probably a publication within the meaning of the Parliamentary Papers Act and that therefore the Clerk of the House and the printer would probably have the complete protection of parliamentary privilege in respect of the publication of the Votes and Proceedings.[203]

198 H.R. Deb. (28.5.1908) 11673.
199 *Commonwealth Hansard—Its establishment and development, 1901 to 1972*, PP 286 (1972) 4–8.
200 *Parliamentary Papers Act 1908*, ss. 3, 4; H.R. Deb. (6.12.1935) 2829.
201 H.R. Deb. (5.5.1993) 89–90; VP 1993–96/25 (5.5.1993); J 1993–96/123 (12.5.1993).
202 VP 1993–96/1620 (5.12.1994).
203 Advice of Attorney-General's Department, dated 24 July 1964.

Notice Paper

Although the standing orders acknowledged the existence of the Notice Paper and provided for what may be entered on it, there was until recently no explicit authority for its publication. However, as the Notice Paper is an essential part of the proceedings of the House, the Clerk of the House and the printer, in arranging for the printing and distribution of the Notice Paper to Members and others concerned with the business of Parliament, are performing an essential function of the House and, consequently, protection was afforded them by virtue of Article 9 of the Bill of Rights. In so far as the wider distribution of the Notice Paper was concerned, the Clerk and the Government Printer would have had at least qualified privilege.[204] It is also likely that section 16 of the Parliamentary Privileges Act has removed any residual doubts in this matter. The position was further strengthened on 1 May 1996 when a standing order was agreed to providing that 'All business before the House shall be set down on the Notice Paper . . . and the Notice Paper shall be published'. In explaining the new standing order the Leader of the House stated 'This will ensure that all matters in the Notice Paper, including questions on notice, whether in printed or electronic form, are covered by parliamentary privilege'.[205] Current standing order 36 gives similar authority by stating that 'Business before the House shall be published on the Notice Paper for each sitting'.

PUBLIC INTEREST IMMUNITY

Under the doctrine of 'public interest immunity', historically described as 'Crown privilege', the Executive Government may seek to claim immunity from requests or orders, by a court or by Parliament, for the production of documents on the grounds that public disclosure of the documents in question would be prejudicial to the public interest.

The courts

The approach taken by the courts in relation to claims of crown privilege or public interest immunity has developed over the years. The general view following the 1942 decision of the United Kingdom House of Lords in *Duncan v. Cammell Laird & Co*., was that if a Minister certified that it was contrary to the public interest for documents under subpoena to be produced, the certificate was conclusive and the courts would not go behind that certificate.[206] This position was to some extent relaxed in 1968, when in *Conway v. Rimmer* the House of Lords held the Minister's certificate was not conclusive in all cases, and that it was the court's duty to balance the public interest as expressed by the Minister and the public interest in ensuring the proper administration of justice. Nevertheless, it was also held that there was a class of document such as Cabinet minutes and minutes of discussions between heads of departments which was entitled to Crown privilege and the court would not order disclosure of such documents, irrespective of their contents.[207]

204 Advice of Attorney-General's Department, dated 24 July 1964.
205 H.R. Deb. (1.5.1996) 87 (former S.O. 100A).
206 *Duncan v. Cammell Laird & Co.* (1942) AC 624.
207 *Conway v. Rimmer* (1968) AC 910.

In the judgment of the High Court of Australia in *Sankey v. Whitlam* it was held that the public interest in the administration of justice outweighed any public interest in withholding documents which belonged to a class of documents which may be protected from disclosure irrespective of their contents. The court held that such documents should be inspected by the court which should then itself determine whether the public interest rendered their non-disclosure necessary. The court held that a claim of Crown privilege has no automatic operation; it always remains the function of the court to determine upon that claim. Accordingly a class claim supported by reference to the need to encourage candour on the part of public servants in their advice to Ministers was not a tenable claim of Crown privilege.[208]

Subsequent court decisions[209] have supported the principle that no class of document is entitled to absolute immunity from disclosure and that all cases may be resolved by the courts on the balance of the competing aspects of the public interest.[210]

A court may consider that the competing public interests would best be served by the limited, rather than public, disclosure of documents for which immunity is claimed.[211]

The Parliament

By the end of the 19th century each House of the United Kingdom Parliament was invested with the power of ordering all documents to be laid before it which were necessary for its information. Despite the powers of each House to enforce the production of documents, a sufficient cause had to be shown for the exercise of that power.[212] This unquestioned power of the House of Commons is extended to the Australian Parliament by way of section 49 of the Constitution.

On a number of occasions questions have been raised as to the limits of the power of the Parliament in Australia to call for documents from the Executive, giving rise to conflict between public interest immunity and parliamentary privilege. These issues are most likely to arise in connection with parliamentary committee inquiries, and are covered in the Chapter on 'Committee inquiries'. Because of the majority of government Members in the House, disputes over such matters between the Government and the House are less likely to arise and when they do, it is likely that a compromise may be reached, for example, by agreement to produce documents on a confidential basis.

The political situation has been different in the Senate, where the Government often has not had a majority. Instances where the government of the day has come into conflict with the Senate or a Senate committee over claims of executive privilege or public interest immunity are outlined in *Odgers*.[213] In brief summary, it would seem that the Senate has not conceded its right to determine Executive claims of public interest immunity but, on the other hand, it has usually not taken steps to enforce production of documents when immunity has been claimed, 'other than exacting a political penalty'.[214]

208 *Sankey v. Whitlam and others* (1978) 142 CLR 1 at 62–4.

209 *See* in particular the judgement of the Federal Court of Australia in *Harbours Corporation of Queensland v. Vessey Chemicals Pty Ltd* (1986) 67 ALR 100, which analysed *Sankey v. Whitlam* and subsequent judgements. The court found against the proposition that there was a presumption in favour of immunity from disclosure attaching to Cabinet documents.

210 However this common law position was overridden by statute in New South Wales by that State's *Evidence Amendment Act 1979*, which made the certificate of the Attorney-General conclusive.

211 For example, the Federal Court has ordered confidential Foreign Investment Review Board documents to be made available to an applicant's legal representatives, *INP Consortium Limited and ors v. John Fairfax Holdings Limited (formerly Tourang Limited) and ors* (1994) .

212 *May*, 10th edn, pp. 507–11.

213 *See Odgers*, 14th edn, pp. 643–75.

214 *Odgers*, 14th edn, pp. 657.

Ministers (including a Minister in the House) have been censured for contempt of the Senate for not responding to Senate orders to produce documents.[215]

The powers of the New South Wales Legislative Council to order the production of executive government documents and to sanction a Minister for not complying with the order have been upheld by the New South Wales Court of Appeal and by the High Court.[216] In a related case, the Court of Appeal further ruled that the Council's power extended to the production of documents (Cabinet documents excepted) to which claims of legal professional privilege and public interest immunity could be made.[217]

In 1972 the question of Crown privilege was given serious consideration by the Attorney-General (Senator Greenwood) and the Solicitor-General (Mr Ellicott) in a paper entitled 'Parliamentary Committees—Powers over and protection afforded to witnesses'.[218] In the paper the Law Officers expressed the view that the power of each House of the Australian Parliament to call for documents from the Executive is as wide as that of the 1901 House of Commons, whose power was, at least in theory, unlimited. The Law Officers believed that, because of the unlimited nature of this power, the extent to which it is used must necessarily rest on convention. Prior to the decision of the House of Lords in *Conway v. Rimmer*, the parliamentary practice of accepting as conclusive a certificate of a Minister regarding a claim of Crown privilege was consistent with the practice of the courts. Given the change in practice by the courts, the Law Officers raised the question as to whether the Parliament should accept as conclusive the certificate of a Minister or adopt a system similar to that adopted by the courts. The Law Officers were of the opinion that, given a parliamentary system based on party government and ministerial responsibility to the Parliament, the preferred course would be to continue the practice of treating a Minister's certificate as conclusive. However, in an addendum to the report of the Senate Committee of Privileges on matters referred by Senate resolution of 17 July 1975,[219] Senator Greenwood expressed the view that 'The conclusiveness of the Minister's certificate is for the Senate to determine'. The Senator also pointed out that where this view conflicted with that given by him earlier as Attorney-General in the paper referred to above he preferred the later view.[220]

A substantial claim of Crown privilege was made by the Prime Minister and three other Ministers in 1975. In this instance public servants were summoned to the Bar of the Senate to answer questions and produce documents relating to certain government overseas loans negotiations. The Prime Minister and the other Ministers (the Minister for Minerals and Energy, the Treasurer and the Attorney-General) each wrote to the President of the Senate making a claim of privilege on the grounds that for departmental officers to answer questions and to produce documents, as required by the Senate resolution of 9 July 1975,[221] would be detrimental to the proper functioning of the Public Service and its relationship to Government, and would be injurious to the public interest.[222] The three Ministers wrote further to the President advising him that they had given instructions to their officers summoned to attend before the Senate, to the effect that, should the Senate reject the claim of Crown privilege, the officers were to decline to

215 E.g. J 1993–96/1641 (10.5.1994). The censure did not result in the production of documents. *And see Odgers*, 14th edn, p. 640.
216 *Egan v. Willis and Cahill* (1996) 40 NSWLR 650, *Egan v. Willis* (1998) HCA 71, 158 ALR 527.
217 *Egan v. Chadwick and others* (1999) 46 NSWLR 563.
218 PP 168 (1972).
219 J 1974–75/836–7 (17.7.1975).
220 Senate Committee of Privileges, *Matters referred by Senate resolution of 17 July 1975*, PP 215 (1975) 58.
221 J 1974–75/824–5 (9.7.1975).
222 PP 215 (1975) 16–20.

answer questions, except of a formal nature, and to decline to produce documents.[223] The Solicitor-General, also summoned to the Bar of the Senate, wrote to the President pointing out that as the Crown had already made a claim of privilege he, as second Law Officer of the Crown, could not, consistent with his constitutional duty, intentionally act in opposition to the Crown's claim. Therefore, he concluded, he must object to answering any questions relating to the Senate resolution of 9 July 1975.[224] The Committee of Privileges, which was directed to inquire into the Crown's claims of privilege, presented its report to the Senate on 7 October 1975.[225] The report, agreed to by a majority—that is, by four government Senators—had no doubt that the directions given by the Ministers were valid and lawful directions.[226] The dissenting report, by three opposition Senators, held the view that a Minister's certificate of a claim of privilege was not conclusive; it was entitled to consideration, but the conclusiveness of the certificate was for the Senate to decide.[227] The report of the committee was not considered by the Senate before both Houses of Parliament were dissolved on 11 November 1975.

The final report of the Joint Select Committee on Parliamentary Privilege (1984)[228] addressed these matters. The committee noted the trend in respect of court proceedings and considered it possible that an analogous evolution in thinking might develop in Parliament to help resolve cases where disputes arose between committees requesting information and Executives resisting their requests; however, it could not be presumed that this would happen. Observing that the Parliament had never conceded that any authority other than its Houses should be the ultimate judge of whether or not a document should be produced or information given, the committee rejected the adoption of any mechanism for the resolution of disputes over the production of executive documents which involved concessions to executive authority.[229] The committee further reasoned that it was inherent in the different functions and interests of the Parliament and the Executive that there be areas of contention between them on such matters, that it was impossible to devise any means of eliminating contention between the two without one making major and unacceptable concessions to the other, and that adjudication by a third party would be acceptable to neither 'in this quintessentially political field'. In effect, the committee's conclusion was that matters should be allowed to stand as they were.

In 1994, following a dispute between the Government and a Senate select committee over the production of documents concerning Foreign Investment Review Board decisions, a private Senator introduced a bill giving the Federal Court the power to determine whether documents in dispute in such circumstances could be withheld from a House or committee on public interest grounds.[230] The bill was referred to the Senate Privileges Committee, which recommended that the bill not be proceeded with and that claims of public interest immunity should continue to be dealt with by the House concerned.[231] The House also referred the matter of the appropriateness of such legislation to its Privileges Committee.[232] The committee concluded that the evidence

223 PP 215 (1975) 23–8.
224 J 1974–75/824–5 (9.7.1975); PP 215 (1975) 21–2.
225 J 1974–75/936 (7.10.1975); PP 215 (1975).
226 PP 215 (1975) 11–12.
227 PP 215 (1975) 51.
228 PP 219 (1984).
229 Examples referred to were arbitration by the Head of State (Papua New Guinea) or Administrator (Northern Territory).
230 Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994.
231 *Odgers*, 14th edn, p. 651.
232 VP 1993–96/1107 (27.6.1994).

available did not establish that it would be desirable for legislation to be enacted to transfer to the Court the responsibility to adjudicate in these matters.[233]

In any consideration of this question it is important to bear in mind that, because different aspects of the public interest are involved—that is, the proper functioning of the Parliament as against the due administration of justice—the question of disclosure of documents to the Parliament is not the same question as disclosure of documents to the courts.[234]

PETITIONS

In the Westminster tradition the right of petitioning the Crown and Parliament for redress of grievances dates back to the reign of King Edward I in the 13th century. It was from petitions that legislation by bill was gradually derived. Petitions have indeed been described as 'the oldest of all parliamentary forms, the fertile seed of all the proceedings of the House of Commons'.[235]

The form and purpose of petitions changed over the centuries, the present form having developed in the 17th century. The rights of petitioners and the power of the UK House of Commons to deal with petitions were affirmed by the following resolutions in 1669:

> That it is an inherent right of every Commoner of England to prepare and present petitions to the House in case of grievance; and of the House of Commons to receive them.
>
> That it is the undoubted right and privilege of the House of Commons to adjudge and determine, touching the nature and matter of such Petitions, how far they are fit and unfit to be received.[236]

In Australia the right of petitioning Parliament remains a fundamental right of the citizen. It is the only means by which the individual can directly place grievances before the Parliament. Petitions may be received by the House on public or individual grievances provided that they relate to matters over which the House has jurisdiction. Petitions may ask the House to introduce legislation, or repeal or change existing legislation; to take action for a certain purpose or for the benefit of particular persons; or to redress a personal grievance, for example by the correction of an administrative error. However, most petitions concern public issues.

The practice of accepting petitions has been viewed from time to time in the past as an ineffective anachronism which makes excessive demands on the time of the House. Individual grievances can often be dealt with by more direct non-public action by Members, by the Commonwealth Ombudsman and by such bodies as the Administrative Appeals Tribunal. Public grievances may be more effectively brought to public attention through other parliamentary forms such as questions, debate and committee inquiries, and through direct communication with Members and Ministers.

233 H.R. Deb. (8.12.1994) 4375. PP 408 (1994).

234 PP 168 (1972) 40.

235 J. Redlich, *The procedure of the House of Commons: a study of its history and its present form*, Constable, London, 1918, vol. II, p. 239.

236 J. Hatsell, *Precedents of proceedings in the House of Commons with observations*, 4th edn, Hansard, London, 1818, vol. III, p. 240.

About 300 petitions are presented each year.[237] In 1993 a petition was presented from an estimated 513 445 citizens (concerning health care funding).[238] In 2000 a petition was presented from 792 985 citizens (concerning taxation and beer prices).[239] A new record was set in 2014 when a petition was presented from 1 210 471 citizens (concerning funding for community pharmacies).[240] It would seem from these figures that the many people who organise petitions and the thousands who sign them consider their efforts to be worthwhile. An important effect of the petitioning process is that Members and the Government are informed, in a formal and public way, of the views of sections of the community on public issues. Even if no action is immediately taken on a petition, it and others like it may assist in the creation of a climate of opinion which can influence or result in action. The petition usually forms part of a broader attempt by individual groups within the community to draw public attention to grievances. Petitions also provide a focal point for individuals and groups attempting to organise campaigns on various issues—for example, public meetings are sometimes organised around the signing of petitions. Major changes were made to the standing orders concerning petitions in 2008, following an inquiry by the Procedure Committee. The committee's report *Making a difference: Petitioning the House of Representatives*[241] made recommendations aimed at enhancing the status of petitions and making the petitioning process more effective, including the establishment of the Standing Committee on Petitions. Soon after its establishment the Petitions Committee recommended the adoption of electronic petitioning,[242] and such a system was introduced in 2016 at the start of the 45th Parliament. The following text outlines current procedures; additional historical information may be found in earlier editions.

Definition of a petition

Standing order 2 defines a petition as 'a formal request (in paper or electronic form) to the House to take action that is within its power to take', and states that a petition for presentation to the House must comply with the standing orders. An electronic petition (e-petition) is further defined as a petition that persons may sign through the House of Representatives e-petition website (House website). A paper petition includes any petition that is not an electronic petition.

The request must be to the House—that is, not to the Parliament, nor to the Government or an individual Minister. Any legislative or administrative action requested must concern a matter on which the House, as part of the Commonwealth Parliament, has the power to legislate.[243] If the House has the power to grant the request of a petition, the impracticality of the request is no objection, in itself, to the receiving of the petition.[244]

237 For statistics of petitions presented since 1901 *see* Appendix 20.
238 VP 1993–96/71 (13.5.1993).
239 H.R. Deb. (4.12.2000) 23253–4. Note that the number of signatures has been recorded only since 1988.
240 VP 2013–16/325 (26.2.2014).
241 PP 189 (2007).
242 Standing Committee on Petitions, *Electronic petitioning to the House of Representatives*, PP 389 (2009).
243 *See* sections 51 and 52 of the Constitution.
244 *May*, 24th edn, p. 486. A petition may be received even if the matter complained of has passed, e.g. VP 1993–96/1790 (6.2.1995).

Form of a petition

TO THE HONOURABLE THE SPEAKER AND MEMBERS OF THE HOUSE OF REPRESENTATIVES

This petition of . . . . . (*e.g. certain citizens of Australia*) . . . . . .

draws to the attention of the House:

. . . . . (*i.e. reasons for the petition*) . . . . . .

We therefore ask the House to:

. . . . . (*i.e. request for action*) . . . . . .

PRINCIPAL PETITIONER

(The Principal Petitioner's details are only needed on the first page of the petition)

Name: _____ Signature: _____

Address: _____

_____ Postcode: _____

Email (if available): _____ Telephone: _____

NAME AND SIGNATURE

1.
2.
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Rules for the form and content of petitions

The rules associated with the form and content of petitions are designed to ensure that the authenticity of petitions is established and hence provide protection to the petitioner and the House alike. It is important that those involved in drawing up petitions follow a suitable format and familiarise themselves with the rules governing petitions before taking steps to collect signatures. This will avoid the possibility of the petition being found to be out of order and not presented to the House.

The standing orders do not impose any particular style of expression,[245] but a recommended form of a petition to the House of Representatives, in contemporary language, is shown at page 631.

Standing order 204 provides that:

(a) A petition must:
  (i) be addressed to the House of Representatives;
  (ii) refer to a matter on which the House has the power to act;
  (iii) state the reasons for petitioning the House; and
  (iv) contain a request for action by the House.

(b) The terms of the petition must not contain any alterations and must not exceed 250 words. The terms must be placed at the top of the first page of the petition and the request of the petition must be at the top of every other page. The terms of an e-petition must be available through the House website.

(c) The terms of the petition must not be illegal or promote illegal acts. The language used must be moderate.

(d) An e-petition must be in English. A paper petition must be in English or be accompanied by a translation certified to be correct. The person certifying the translation must place his or her name and address on the translation.

(e) No letters, affidavits or other documents should be attached to the petition. Any such attachments will be removed before presentation to the House.

(f) A petition from a corporation must be made under its common seal. Otherwise it will be received as the petition of the individuals who signed it.

The terms of the petition consist of the reasons for the petition and the request for action by the House.[246]

Attachments

Although not permitted under the standing orders, on rare occasions petitions have been received with attachments to them.[247] While no comment was made in the House on their acceptability and the attachments were not mentioned in the Votes and Proceedings, they were probably kept because they were important for a full understanding of the petition itself. For example, a petitioner requested the House to appoint a select committee to inquire into his plans for altering the law of legal tender and his plans were appended to the petition.[248] Petitions consisting of a typed sheet of paper pasted to a bark sheet with surrounds decorated in a traditional Aboriginal manner were presented to the House in 1963 and 1968 on behalf of the Yirrkala Aboriginal community.[249] A translation was submitted with these petitions.

245 H.R. Deb. (19.8.1982) 693–4.
246 S.O. 2.
247 VP 1907–08/41 (6.8.1907); VP 1909/83 (11.8.1909); VP 1917–19/197 (24.4.1918).
248 VP 1907–08/41 (6.8.1907).
249 VP 1962–63/515 (14.8.1963), 531 (28.8.1963); VP 1968–69/223 (8.10.1968).

Moderate language

Standing order 204(c) requires the language used in a petition to be moderate. Relevant criteria include the rules concerning offensive words and personal reflections which apply to debate in the House.[250]

Reflections must not be cast upon the Queen, members of the Royal Family, the Governor-General, members of the judiciary, or Members and Senators. The Clerk of the House has declined to certify a petition criticising the conduct of a judge of the Family Court of Australia and praying for the judge's removal from office, and a petition which reflected on a named Senator. Petitions calling for the censure of certain unnamed judges have been received.[251] In 1979 the Clerk certified, and the House received, a petition which asked the House to take action to receive the resignation of certain unnamed Members for allegedly not having honoured an election undertaking.[252] It was considered acceptable because it was not disrespectful and, in seeking the resignation of several Members collectively, it did not breach the spirit of the standing orders. A petition, also not disrespectful, calling for the resignation of a Minister has been received.[253] The rule has also been held to apply in respect of a prospective Governor-General. In August 1988 a petition, although it did not identify a prospective Governor-General explicitly, was not accepted, as it was considered to impugn his character. In 1976 petitions praying that the House call on the Governor-General to resign were certified by the Clerk and received by the House. The petitions complied with standing orders and made no express criticism of the character or conduct of the Governor-General.[254] According to *May*, petitions should not impugn the character or conduct of Parliament, the courts or any other tribunal or constituted authority.[255] However, it is considered that a petition is acceptable if its language is courteous and moderate, provided it conforms with the standing orders in other respects. In 1977 the Clerk certified petitions which were critical of individual members of the Australian Broadcasting Tribunal and the Schools Commission. A petition asking that boisterous behaviour by Members be dealt with harshly has been received.[256]

Rules for signatures—paper petitions

Standing order 205 requires that:

(a) Every petition must contain the signature and full name and address of a principal petitioner [*see* page 634] on the first page of the petition.

(b) All the signatures on a paper petition must meet the following requirements:

  (i) Each signature must be made by the person signing in his or her own handwriting. Only a petitioner incapable of signing may ask another person to sign on his or her behalf.

  (ii) Signatures must not be copied, pasted or transferred on to the petition or placed on a blank page on the reverse of a sheet containing the terms of the petition.

(c) A Member must not be a principal petitioner or signatory to a paper petition.

250 S.O.s 88–90.
251 H.R. Deb. (3.6.2002) 2933.
252 VP 1978–80/662 (6.3.1979); H.R. Deb. (6.3.1979) 601.
253 H.R. Deb. (6.11.2000) 22168.
254 VP 1976–77/315 (9.9.1976).
255 *May*, 24th edn, p. 485.
256 VP 1996–98/404 (9.9.1996).

Petitioners, other than the principal petitioner, are not required to supply addresses.[257]

Rules for e-petitions

Standing order 205A requires that:

(a) A principal petitioner for an e-petition must provide the petitioner's full name and address.
(b) The posted period for an e-petition is to be four weeks from the date of publication on the House website.
(c) Once published on the House website the terms of an e-petition cannot be altered.
(d) Once the posted period for an e-petition has elapsed, the petition shall be presented to the House in accordance with standing order 207.
(e) Names must not be copied, pasted or transferred on to an e-petition.
(f) A Member must not be a principal petitioner or signatory to an e-petition.

Forgery of signatures

It is long established practice that a whole petition is not invalidated because of a signature that seems to be false. In 1907, in voting to receive a petition, Members took the view that a petition should not be invalidated, and the persons who signed the petition should not be disadvantaged, because of some individual's improper conduct. It was also considered that neither Members nor the House could ensure that every signature on every petition was genuine. The petition was referred to the Printing Committee to investigate alleged forgery. The committee concluded that specified signatures were forgeries and that available evidence pointed to an unnamed individual as the perpetrator. The committee recommended that the Crown Law authorities be requested to take action with a view to a criminal prosecution of the offender and that the evidence gathered by the committee be placed at their disposal for that purpose. The House adopted the report and was subsequently informed that the Crown Solicitor had advised that, in his opinion, a prosecution for forgery would be unsuccessful.[258]

There are precedents in the UK House of Commons for the forgery of signatures to petitions, the subscribing of fictitious signatures to and tampering with petitions being regarded as contempts.[259]

Principal petitioner

The requirement for a principal petitioner was introduced in 2008, along with the establishment of the Petitions Committee (*see below*), in order to improve the ability of the House to respond to petitions. A principal petitioner is needed even where a group of people sponsor a petition. This person, who initiates, sponsors or organises a petition, must provide his or her full name and address and, in the case of a paper petition, signature. This enables the Petitions Committee to contact him or her regarding any response or follow-up to the petition.

257 The inclusion of the addresses of signatories was a requirement between 1988 and 2007.
258 VP 1907–08/91–2 (18.9.1907), 165 (15.11.1907), 267 (13.12.1907); H.R. Deb. (18.9.1907) 3408–19; H.R. Deb. (13.12.1907) 7457–8.
259 *May*, 24th edn, p. 485, *but see also Parliamentary Privileges Act 1987*, s. 4.

The House's website contains information for potential petitioners.[260] Principal petitioners are encouraged to refer to this information and to contact the Petitions Committee before submitting an e-petition or distributing a paper petition for signature, to ensure that the form of the petition is correct and that it will be able to be accepted by the committee on behalf of the House.

Petitions Committee

The Standing Committee on Petitions was established in 2008 to receive and process petitions, and to inquire into and report to the House on any matter relating to petitions and the petitions system. The committee consists of eight members—five government and three non-government members.[261]

The committee checks that each petition submitted for presentation complies with the standing orders, and if the petition complies the committee approves it for presentation to the House.[262] The committee has taken the view that it is required to approve a petition for presentation if it complies with the standing orders in terms of its form, content and language. Approval of a petition for presentation does not indicate that the committee agrees with its content.[263]

The committee is also able to recommend action to be taken on a petition. The committee will advise principal petitioners when their petition has been presented to the House and inform them of any action the committee has recommended. In some cases the committee may choose to seek further information on the subject of a petition, through meetings with the principal petitioner and other relevant individuals and groups. Petitions from individuals or small numbers of people go through the same process as petitions with many signatures.

All petitions presented are listed on the committee's website, which shows (with petitions grouped by portfolio area): the text of each petition; presentation details; number of signatures; and any further action, including responses from Ministers and relevant transcripts from public hearings of the committee.[264]

Submitting a petition

All petitions must be submitted to the Standing Committee on Petitions. The committee checks that each petition submitted for presentation complies with the standing orders, and if it does so, approves it for presentation to the House. Petitioners may send paper petitions directly to the committee or via a Member. In the latter case, a petition that a Member wishes to present personally is returned to the Member concerned after approval by the committee. A petition to be presented must be submitted in sufficient time for committee consideration.

E-petitions are checked by the committee after their creation through the e-petitions website. If a petition complies with the standing orders it is posted online for the collection of signatures for a four week period, after which it is ready for presentation to the House.[265] There is no provision for extending this period.

260 <http://www.aph.gov.au/house/petitions>
261 S.O. 220.
262 S.O. 206.
263 *See* statement by committee chair, H.R. Deb. (7.9.2009) 8747.
264 Linked from <http://www.aph.gov.au/house/petitions>
265 Normally by the chair of the Petitions Committee, e.g. H.R. Deb. (7.11.2016) 2849–53 (first e-petitions presented). If a Member has agreed with a petitioner to present an e-petition, the committee will forward the petition to the Member.

Presentation

While most petitions are presented by the chair of the Petitions Committee at the scheduled time on Monday, they may also be presented by any Member.

Presentation by the Petitions Committee

On Mondays the first 10 minutes of the period provided for committee and delegation reports and private Members' business is reserved for Petitions Committee business.[266] The chair of the Petitions Committee presents the petitions submitted for presentation, indicating in the case of each petition, the number of petitioners and the subject matter of the petition. If petitions in the same terms are submitted, they are grouped together for the purposes of the announcement. The announcement includes ministerial responses to petitions previously presented. Reports by the Petitions Committee are also presented during this period. The chair and one other member of the committee may make statements concerning petitions and reports presented.[267] Apart from these statements, discussion on the subject matter of a petition presented is not allowed at this time.[268] The full terms of the petitions and responses are printed in Hansard and published on the House's website.[269]

Presentation by a Member

A Member may present a petition during:

- the period for Members' 90 second statements in the House or Federation Chamber, in accordance with standing order 43;
- the periods for Members' constituency statements in the Federation Chamber, in accordance with standing order 193;[270]
- the adjournment debate in the House in accordance with standing order 31, and in the Federation Chamber in accordance with standing order 191; and
- the grievance debate in accordance with standing order 192B.[271]

Members presenting a petition during these periods may discuss the petition.[272]

The fact that a Member presents a petition or submits one for presentation does not mean that he or she necessarily agrees with its content.

Before being presented, every petition must be approved by the Petitions Committee as complying with the standing orders. If a Member purports to present a petition which has not been approved by the Petitions Committee it is treated as an ordinary document rather than as a petition[273] (*see below*). If on examination by the committee it turns out to be in order it is presented by the committee as a petition on a subsequent day.

266 Initially, standing orders adopted on 13.2.2008 provided for presentation by the Speaker. The current provisions were introduced by sessional order on 24.6.2008 and adopted permanently in the 43rd Parliament.
267 S.O. 207(a).
268 S.O. 208(a).
269 S.O.s 208(d), 209(c); <http://www.aph.gov.au/house/petitions> (Petitions Committee link).
270 A constituency statement would provide the appropriate occasion should the Speaker wish to present a petition. Traditional practice (pre 2008, before the establishment of the Petitions Committee) was that the Speaker did not lodge petitions for presentation.
271 S.O. 207(b).
272 S.O. 208(a).
273 E.g. H.R. Deb. (17.11.2009) 11970.

Presentation of out of order petitions

The Petitions Committee cannot present to the House petitions which are out of order. However, staff of the committee liaise with principal petitioners to ensure as far as possible that petitions are in order before they are formally received.

Before the establishment of the Petitions Committee it had become the practice for petitions which were out of order to nevertheless be presented to the House as 'ordinary' documents by the Leader of the House.[274] Similarly, if a Member now purports to present a petition which has not been approved by the Petitions Committee as complying with the standing orders and it is subsequently found to be out of order, it remains treated as a document rather than as a petition. Such documents are not formally announced in the House nor recorded in House records as petitions received; they are not referred to a Minister for response, and no further action is taken.

Motion at time of presentation

Each petition presented is received by the House, unless a motion that it not be received is moved immediately and agreed to.[275] As petitions which do not conform with the standing orders are not presented to the House (that is, as petitions—*see above*), it is unlikely that a motion that a petition be not received would be moved on procedural grounds.[276]

No other motion can be moved at the time of presentation.[277] Formerly a Member could move 'That the petition be printed' if intending to take action on the petition. Such action was rare, but is noted here as background to the cases cited below of petitions being referred to select committees. Although such action is in practice unlikely, all petitions, as documents presented to the House, are referred to the Publications Committee, which may recommend that a petition be made a parliamentary paper. In 1909 the House agreed to a motion, moved by leave, that a petition be printed (that is, as a parliamentary paper), even though the then Printing Committee had considered it and had not recommended its printing.[278]

Action taken on petitions

Referral to a Minister

The Petitions Committee may choose to forward a petition to the Minister responsible for the administration of the matter raised in the petition.[279] If this is the case, there is an expectation that the Minister will provide a written response to the committee within 90 days.[280] Details of ministerial responses are tabled, recorded in Hansard and published on the Petitions Committee's web site.[281]

Before 2008 all petitions presented were automatically referred to the relevant Minister and Ministers could respond to a petition by lodging a written response with the Clerk. However, as noted by the Procedure Committee in 1999, few such responses were

274 Generally on the last Thursday of a sitting block, e.g. VP 2004–07/2167 (20.9.2007).
275 S.O. 208(b).
276 The House has rarely debated the question that a petition be received; VP 1907–08/91 (18.9.1907).
277 S.O. 208(c).
278 VP 1909/39 (9.7.1909); H.R. Deb. (8.7.1909) 983; H.R. Deb. (9.7.1909) 1058–61.
279 S.O. 209(a).
280 S.O. 209(b).
281 S.O. 209(c).

provided.[282] Since 2008, under the new procedures, almost all petitions presented to date have been referred to Ministers,[283] and almost all have been responded to.[284]

Public hearing by Petitions Committee

In the case of selected petitions, the Petitions Committee may hold public hearings at which the committee may seek further information from petitioners regarding their petition and from government departments in relation to a ministerial response.[285]

Referral to another committee

Apart from the motion that a petition not be received, the only motion relating to a petition that may be moved is a motion *on notice* that the petition be referred to a particular committee.[286]

General purpose standing committees are empowered to inquire into and report on any petition referred by either the House or a Minister.[287] However, to date none have been so referred. In 1999 the Procedure Committee recommended that all petitions be automatically referred to the relevant general purpose standing committee for any inquiry the committee may wish to make,[288] but this recommendation was not adopted.

All petitions are now received by the Standing Committee on Petitions. A possible course of action open to the Petitions Committee could be to recommend to the House that a petition be referred to another committee for inquiry.[289]

In 1963 a Member presented a petition from the Aboriginal people of Yirrkala praying that the House, inter alia, appoint a committee to hear their views before permitting the excision of any land from the Aboriginal Reserve in Arnhem Land. The Member indicated his intention to submit a notice of motion in connection with the petition and moved that the petition be printed. The motion for printing was agreed to.[290] The Member's subsequent motion for the appointment of a select committee was also agreed to.[291] In 1970 a similar sequence of events followed the presentation of a petition praying that the export of all kangaroo products be banned. The House subsequently agreed to a motion, which had been foreshadowed by the Member presenting the petition, appointing the Select Committee on Wildlife Conservation to examine, inter alia, the issues raised in the petition.[292]

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282 Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*. PP 363 (1999) 16–17. The committee reported 18 responses to that time. By the end of 2007 there had been 3 more.

283 Petitions in the same or very similar terms to a petition that has already been responded to are not referred again.

284 *See* H.R. Deb. (7.9.2009) 8746.

285 *See* H.R. Deb. (7.9.2009) 8747.

286 S.O. 208(c).

287 S.O. 215(b).

288 Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*. PP 363 (1999) 17–18.

289 In 2010 the Petitions Committee recommended that standing orders be amended to enable the Petitions Committee to refer a petition to a House committee for inquiry and report (should that committee choose to undertake the inquiry). Standing Committee on Petitions, *The work of the first Petitions Committee: 2008–2010.* PP 141 (2010) 28.

290 VP 1962–63/531 (28.8.1963); H.R. Deb. (28.8.1963) 561. (One of the 'bark petitions' referred to at p. 632.)

291 VP 1962–63/549 (12.9.1963); H.R. Deb. (12.9.1963) 927–39. *See also* Select Committee on Grievances of Yirrkala Aborigines, Arnhem Land Reserve, *Report*, PP 311 (1963).

292 VP 1970–72/133 (12.5.1970), 147–8 (14.5.1970); *and see* Select Committee on Wildlife Conservation, *Conservation and commercial exploitation of kangaroos, Interim report*, PP 219 (1971).

Petitions from unusual sources

The standing orders specifically provide for petitions from a company or corporation.[293] Petitions from individual citizens[294] and from minors[295] may be received. Receipt by the House of petitions from Australian citizens abroad is permitted, but the House does not normally receive petitions from foreign citizens abroad.[296] An exception was a petition signed by citizens of the United States of America which was presented by a Member by leave of the House.[297] Petitions sent directly to the Speaker from foreign citizens abroad have normally been referred to the relevant Minister for information and the petitioners have been informed.

In 1962 a Member presented a petition from certain Members of the Northern Territory Legislative Council praying that the House debate and redress the grievances set out in a remonstrance earlier made by the Council.[298] In 1975 a petition was presented from the Northern Territory Legislative Assembly praying that the recommendations of the Parliament's Joint Committee on the Northern Territory on the transfer of executive powers and administrative functions to the Territory be implemented.[299] In 2015 the Speaker presented a remonstrance from the Legislative Assembly of Norfolk Island which petitioned the Commonwealth Parliament to re-examine aspects of the Norfolk Island Legislation Amendment Bill 2015 that would result in the removal of the Assembly.[300]

Abuse of the right of petition

Various abuses of the right of petition have been dealt with as contempts in the United Kingdom. The following are examples cited by *May*:[301]

- frivolously, vexatiously, or maliciously submitting a petition containing false, scandalous or groundless allegations against any person, whether a Member of the House or not, or contriving, promoting or presenting such petitions;
- presenting a petition containing gross misrepresentations;
- inducing parties to sign a petition by false representations;
- threatening a Member that a petition would be submitted to the House unless he took certain action;
- tampering with a petition; and
- forgery or fraud in the preparation of petitions or in the signatures attached, or being privy to, or cognizant of, such forgery or fraud.

293 S.O. 204(f), e.g. petition from Roche Products Pty Ltd, VP 1983–84/886 (2.10.1984).

294 VP 1970–72/475 (16.3.1971); H.R. Deb. (9.8.1999) 8103.

295 VP 1970–72/681 (26.8.1971); *see also* S. Deb. (14.5.1968) 943.

296 This practice reflects House of Commons practice, *see May*, 24th edn, p. 486.

297 VP 1970–72/357 (14.10.1970).

298 VP 1962–63/203 (29.8.1962). A remonstrance is a document in which grievances are stated and remedial action is sought. The Speaker later announced that he had received the remonstrance and that it had been placed in the Parliamentary Library for the information of Members, H.R. Deb. (29.8.1962) 793; *and see* H.R. Deb. (23.8.1962) 656–7. On 28 October 1996 the Speaker reported receiving a remonstrance from the N. T. Legislative Assembly praying that the Commonwealth Parliament not proceed with the Euthanasia Laws Bill 1996. The Speaker also reported a letter and an accompanying resolution adopted by the Norfolk Island Legislative Assembly on the same matter. VP 1996–98/714 (28.10.1996). The documents were included in the records of the House and copies circulated in the Chamber. The texts of the documents (also received and reported by the President of the Senate) were incorporated in the Senate Hansard.

299 VP 1974–75/1085 (4.11.1975).

300 VP 2013–16/1320–1 (27.5.2015).

301 *May*, 24th edn, pp. 253–4, 485.

The House of Representatives has only once taken action on an alleged abuse of the right to petition. The case concerned allegations that signatures had been forged (*see* page 634). With the enactment of the *Parliamentary Privileges Act 1987* any action proposed in such matters needs to be considered, inter alia, in terms of section 4 of the Act which provides, in effect, that conduct does not constitute an offence against a House unless it amounts or is intended to amount to an improper interference with the House, its committees or its members.

Privilege attaching to petitions

Under the Parliamentary Privileges Act the presentation or submission of a document (including a petition) to the House, and the preparation of such a document, is absolutely privileged.[302]

May notes that petitioners are considered as under the protection of Parliament and that obstruction of or interference with such persons, or conduct calculated to deter them from preferring or prosecuting petitions, may be treated as a contempt.[303] *May* gives as an instance of this kind of offence bringing an action against petitioners for a libel alleged to be contained in a petition presented by them to the House.[304]

302 *Parliamentary Privileges Act 1987*, s. 16.
303 *But see* also Senate Committee of Privileges, *The circulation of petitions*, PP 46 (1988).
304 *May*, 24th edn, pp. 269–70.

18
Parliamentary committees

The principal purpose of parliamentary committees is to conduct inquiries, performing functions which the Houses themselves are not well fitted to perform. They find out the facts of a case or issue, examine witnesses, sift evidence, and draw up reasoned conclusions. Because of their composition and method of procedure, which is structured but relatively informal compared with that of the Houses, committees are well suited to the gathering of evidence from expert groups or individuals. In a sense they 'take Parliament to the people' and allow direct contact between members of the public and representative groups of Members of the House. Not only do committee inquiries enable Members to be better informed about community views but, by simply undertaking an inquiry, committees may promote public debate on the subject at issue. The all-party composition of most committees and their propensity to operate across party lines are important features. This bipartisan approach generally manifests itself throughout the conduct of inquiries and the drawing up of conclusions. Committees oversee and scrutinise the Executive and are able to contribute towards better government. They also assist in ensuring a more informed administration and policy-making process, in working with the Executive on proposed legislation and other government initiatives. In respect of their formal proceedings committees are microcosms and extensions of the Houses themselves, limited in their power of inquiry by the extent of the authority delegated to them and governed for the most part in their proceedings by procedures and practice which reflect those which prevail in the House by which they were appointed.[1]

AUTHORITY FOR THE APPOINTMENT OF COMMITTEES

The power of the House to appoint committees is not in doubt but the source of this power, particularly in regard to investigatory committees, cannot be stated precisely. The following three sources have been suggested:

- section 49 of the Constitution on the basis that the power to appoint committees of inquiry was one of the 'powers' or 'privileges' of the United Kingdom House of Commons as at 1901 within the meaning of that section;
- section 50 of the Constitution on the basis that to provide by standing orders for the setting up of committees of inquiry is to regulate the conduct of the business and proceedings of the House; and
- that by virtue of the common law, the establishment of a legislative chamber carried with it, by implication, powers which are necessary to the proper exercise of the functions given to it.

1 However, joint committees operate under Senate procedures when the procedures of the two Houses differ, *see* p. 648. Any instruction to a joint committee can only be effected by resolution agreed to by both Houses. This should be remembered when reference is made in this chapter to resolutions affecting committees and to the responsibility of committees to report. Unless otherwise indicated it can be assumed that in any instance in which the House would be involved in the case of House committees, both Houses would be involved in the case of joint committees. Further, where the Speaker may be required to be involved, the President may also be involved where joint committees are concerned. For a list of committees since 1901 *see* Appendix 24.

As there is no doubt about the power of the House of Commons to appoint committees,[2] section 49 of the Constitution appears to be a clear source of power, with extensive ambit, for the Houses of the Parliament to appoint committees of inquiry. The other sources 'could be called in aid to extend its breadth or to sustain what otherwise might be uncertain about it'.[3]

TYPES OF COMMITTEES AND TERMINOLOGY

Parliamentary committees

Committees appointed by the House, or by both Houses, can be categorised as follows (a particular committee may fall into more than one category):

Standing committees are committees created for the life of a Parliament and are usually re-established in successive Parliaments. They have a continuing role.

General purpose standing committees are a specific type of standing committee. They are investigatory or scrutiny committees, established by the House at the commencement of each Parliament to inquire into and report upon any matters referred to them, including legislation. These committees specialise by subject area, between them covering most areas of federal government activity (*see* page 643).

Select committees are created as the need arises, for a specific purpose, and thus have a more limited life which is normally specified in the resolution of appointment. Once a select committee has carried out its investigation and presented its final report, it ceases to exist.

Joint committees draw their membership from, and report to, both Houses of Parliament, enabling Members and Senators to work together (*see* page 648). Joint committees may be standing or select, and may be statutory committees.

Statutory committees are those established by Act of Parliament, that is, by statute. All existing statutory committees are joint committees (*see* page 650).

Domestic or internal committees are those whose functions are concerned with the powers and procedures of the House or the administration of Parliament (*see* page 644).

The Federation Chamber (until 2012 named the Main Committee) is a committee of the House established to be an alternative venue to the Chamber for debate of a restricted range of business. It is not an investigatory committee and does not hear witnesses or take evidence. (*See* Chapter on 'The Federation Chamber' for more detail)

Different definitions of standing and select committees

In contrast to the Australian usage, until recently in the United Kingdom the distinguishing feature of a *standing committee* was that it proceeded by debate, as opposed to a *select committee*, which proceeded by taking evidence, deliberation and report.[4] Since 2006 the former House of Commons standing committees have been known as general committees.[5] These committees (public bills committees and other general committees) 'proceed in the same way as the House by debating and deciding

2 The term 'committee' originally signified an individual (i.e. to whom a bill had been committed). Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, p. 26.

3 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 3.

4 *May*, 23rd edn, p. 794.

5 For history of the use of the term 'standing committee' in the House of Commons, and recommendation that it be discontinued, *see* Select Committee on Modernisation of the House of Commons, *First report: The legislative process,* HC 1097 (2005–06), paras 63–6.

upon questions'.[6] The House of Representatives does not have committees which 'proceed by debate' (other than the Federation Chamber), but has used them in the past for the detail stages of legislation—that is, legislation committees and estimates committees between 1978 and 1981 (*see* first edition).

Unofficial committees

In addition to the parliamentary committees described above there are further categories of committees consisting of Members and Senators which operate within the Parliament. However, although their members are Members of Parliament, these committees are not appointed by either House. They are therefore not committees of the Parliament, and do not enjoy the special powers and privileges of such committees, nor do they necessarily operate in accordance with parliamentary procedures and practice.

In the early years after Federation unofficial committees consisting of Members and Senators were appointed by the Government of the day. Membership included members of the Opposition. The committees' reports were submitted to the Government and subsequently presented to one or both Houses. The practice of appointing such committees was not continued with the establishment by the House of formal committees and a formal committee structure.

Informal committees consisting of Members and Senators have been established to advise the Presiding Officers in respect of accommodation matters in the provisional Parliament House and, in more recent years, in respect of the information systems needs of Members and Senators and in respect of the Parliamentary Education Office. In the 36th and 37th Parliaments a group of Members and Senators, including the Presiding Officers, formed a working group to consider issues relating to standards of conduct for Members of Parliament, including Ministers (*see* Chapter on 'Members').

The chairs and deputy chairs of the investigatory committees supported by the Department of the House of Representatives meet together as an informal Liaison Committee of Committee Chairs and Deputy Chairs to discuss matters of mutual concern and advise the Speaker on matters affecting committees. The Deputy Speaker chairs the group.

The government and opposition parties each have committees of private Members to assist them in the consideration of legislative proposals and other issues of political significance allied to each committee's function. These party committees are referred to in the Chapter on 'House, Government and Opposition'.

HOUSE STANDING COMMITTEES

General purpose standing committees

In 1987 the House established a comprehensive committee system by setting up eight general purpose standing committees. At the same time, the functions of the Joint Committee on Foreign Affairs and Defence were extended, thus giving the House the capacity to monitor or to 'shadow' the work of all federal government departments and instrumentalities.

6 *May*, 24th edn, p. 859.

The committees are appointed at the beginning of each Parliament pursuant to standing order 215. The numbers,[7] names and subject areas of the committees have varied. In the 45th Parliament the following were appointed:

- Standing Committee on Agriculture and Water Resources;
- Standing Committee on Communications and the Arts;
- Standing Committee on Economics;
- Standing Committee on Employment, Education and Training;
- Standing Committee on the Environment and Energy;
- Standing Committee on Health, Aged Care and Sport;
- Standing Committee on Indigenous Affairs;
- Standing Committee on Industry, Innovation, Science and Resources
- Standing Committee on Infrastructure, Transport and Cities;
- Standing Committee on Social Policy and Legal Affairs; and
- Standing Committee on Tax and Revenue.

The general purpose standing committees are so called because they are established (or stand) for the duration of the Parliament and have the power to inquire into and report on any matter referred to them by the House or a Minister. Matters referred may include any pre-legislation proposal, bill, motion, petition, vote or expenditure, other financial matter, report or document.

In addition, annual reports of government departments and authorities and reports of the Auditor-General presented to the House are automatically referred to the committees for any inquiry they may wish to make.[8] Reports are referred to particular committees in accordance with a schedule presented by the Speaker recording the areas of responsibilities of each committee. The Speaker is empowered to determine any question should responsibility be unclear or disputed in respect of a report or a part of a report. The period during which an inquiry concerning an annual report can be commenced ends on the day on which the next annual report of the department or authority is presented to the House.[9]

Committees concerned with the operations of the House

The standing orders provide for the appointment of the following committees at the beginning of each Parliament:

Committee of Privileges and Members' Interests (S.O. 216)

The formerly separate Committee of Privileges and Committee of Members' Interests were amalgamated in 2008.

The Committee of Privileges and Members' Interests is appointed to inquire into and report on complaints of breach of privilege or contempt or on any other matters which may be referred to it. The committee has no power to initiate inquiries. The House has referred to the committee matters of a general nature, such as the use of House records in the courts, the issue of public interest immunity, and the legal status of the records and

7 Nine from 1996; thirteen from 2002; twelve from 2008; nine from 2010 following a Procedure Committee recommendation to reduce the number of committees—*see* Standing Committee on Procedure, *Building a modern committee system: an inquiry into the effectiveness of the House committee system*, PP 144 (2010) 80–85; ten from 2015; eleven from 2016.

8 The Joint Committee of Public Accounts and Audit must be notified in writing of any inquiry into an Auditor-General's report—S.O. 215(c)(iv).

9 S.O. 215(c).

correspondence of Members.[10] The committee also considers applications from citizens for the publication of responses to statements in the House referring to them.

The procedure for raising and dealing with questions of privilege and details of the functions and procedures of the committee are discussed in detail in the Chapter on 'Parliamentary privilege'.

The other function of the committee concerns the arrangements for the compilation, maintenance and accessibility of a Register of Members' Interests, and various related matters. In 2017 the committee was given responsibility for a Members' Citizenship Register. These functions are discussed in more detail in the Chapter on 'Members'.

House Committee (S.O. 218)

The House Committee is concerned with the provision of services and amenities to Members in Parliament House. The Speaker is a member of the committee. This committee has an advisory role only—executive responsibility rests with the Speaker and the President, who have not been bound by the decisions of their respective committees.

The House Committee usually deliberates by conferring with the similar committee of the Senate. When the two House committees are sitting together as the Joint House Committee, they should, generally speaking, only consider those matters which affect joint services, as each House is responsible for its own affairs. Recommendations affecting only one House should properly be made by the appropriate House Committee independently. In 1956 and in 1959 the House of Representatives House Committee considered and reported informally on Members' accommodation. Reports are seldom made to the House.[11]

Publications Committee (S.O. 219)

The Publications Committee of each House when conferring together form the Joint Committee on Publications which has the dual role:

- to recommend to the Houses from time to time as to which documents presented, that have not been ordered to be made a Parliamentary Paper by either House, ought to be made a Parliamentary Paper;[12] and
- to inquire into and report on the publication and distribution of parliamentary and government publications, and on matters referred to it by a Minister.

The committee is discussed in more detail in the Chapter on 'Documents'.

Petitions Committee (S.O. 220)

The Standing Committee on Petitions is appointed to receive and process petitions and to inquire into and report to the House on any matter relating to petitions and the petitions system. The committee's functions are discussed in more detail under 'Petitions' in the Chapter on 'Documents'.

Procedure Committee (S.O. 221)

The Standing Committee on Procedure is appointed to inquire into and report on the practices and procedures of the House and its committees. As a result of reports of the

10 VP 1978–80/975 (11.9.1979); VP 1993–96/1107 (27.6.1994); VP 1998–2001/483 (31.3.1999).

11 *But see* report by Joint House Committee on accommodation for Members of Parliament at Canberra, VP 1926–28/181 (16.6.1926); *see also* reports by the Senate House Committee concerning Senators' dress in the Senate Chamber, PP 235 (1971), and provision of staff and other facilities for Members of Parliament, PP 34 (1972), and the Joint House Department.

12 Senate standing orders (and former House standing orders) use the term 'ordered to be printed' instead of 'ordered to be made a Parliamentary Paper'—the two terms may be treated as synonymous.

Procedure Committee a number of initiatives have been taken relating to the business of the House, including significant developments relating to private Members' business and procedures for the consideration of legislation, including the establishment of the Main Committee (renamed Federation Chamber in 2012). In 1998 the committee undertook a review of the House of Representatives committee system, resulting in extensive changes to the standing orders relating to committees.[13] In the 40th Parliament the committee undertook a complete review of House standing orders with a view to making them more logical, intelligible and readable. The committee's recommendations for revised standing orders were adopted by the House with effect from the first day of the 41st Parliament.[14]

Selection Committee (S.O. 222)

The Selection Committee arranges the timetable and order of committee and delegation and private Members' business on Mondays; selects private Members' and committee and delegation business for referral to the Federation Chamber or return to the House, and selects bills for referral to committees.[15] The committee's functions are discussed in detail in the Chapter on 'Non-government business'.

House Appropriations and Administration Committee (S.O. 222A)

The committee considers estimates of the funding required for the Department of the House of Representatives and reports to the Speaker or the House on matters referred to it. It also considers proposals for works in the parliamentary precincts that are subject to parliamentary approval. The committee's functions are discussed in detail in the Chapter on 'The Speaker, Deputy Speaker and officers'.

HOUSE SELECT COMMITTEES

Select committees are appointed, as the need arises, by a resolution of the House.[16] Select committees, in Australian practice, have a limited life which should be defined in the resolution of appointment. The creation of a select committee is seen as a measure to meet a particular and perhaps short-term need. After the establishment of the general purpose standing committees in 1987 the House has not established select committees on a regular basis. Since then there have been only four House select committees—Print Media (1991), Televising of the House of Representatives (1991), Recent Australian Bushfires (2003), and Regional Development and Decentralisation (2017).

The House appoints select committees by motion, and must set a day for the reporting of the proceedings of a committee to the House. A member of the committee must present a report of the committee on or before the set day, unless the House grants an extension of time.[17] However, practice has not always accorded with this provision as select committees have been appointed with the provision to report 'as soon as possible'.[18] This occurs when a committee undertakes an inquiry which can be seen to be longer-term, perhaps even extending over the life of more than one Parliament. When a select committee is directed to report by a specific date or as soon as possible, its corporate existence comes to an end as soon as it does so.

13 Standing Committee on Procedure, *10 years on: A review of the House of Representatives committee system*, May 1998.
14 Standing Committee on Procedure, *Revised standing orders*, November 2003.
15 S.O. 222.
16 S.O. 223.
17 S.O. 223.
18 E.g. Select Committees on Pharmaceutical Benefits, VP 1970–72/304 (16.9.1970); Road Safety, VP 1970–72/1030 (27.4.1972); and on Tourism, VP 1976–77/510 (1.12.1976).

The standing orders also give committees leave to report from time to time.[19] This authorisation means that a committee is at liberty to make progress reports during the course of the consideration of the matter referred to it.[20] The following provision, or a similar one, has been included in the resolution of appointment of some select committees:

> That the committee have leave to report from time to time but that it present its final report no later than [date].[21]

On presenting its final report the committee ceases to exist.

If a select committee finds it difficult or impossible to present a satisfactory final report by the specified date, it may be given an extension of time by the House, prior to, or on, the specified reporting date, by amendment of its resolution of appointment.[22]

The terms of reference of select committees tend to be narrow and specific and have traditionally been based on the assumption of a single inquiry and report. Nevertheless, the resolutions of appointment of some select committees have given the relevant Minister power to refer additional matters to them—that is, before they report and cease to exist.[23] A select committee with an unqualified power to report from time to time could elect to present a series of reports on particular aspects of its terms of reference.

CONFERRAL WITH COMMITTEES OF THE SENATE

All committees of the House are now empowered to confer with a similar committee of the Senate.[24] In earlier times this authorisation was granted to individual committees on a case by case basis, with the general rule being that committees had no power to confer with committees of the Senate without leave of the House.[25] Senate standing orders still contain similar provisions. These provide that a committee of the Senate may not confer or sit with a committee of the House except by order of the Senate; that committees permitted or directed to confer with House committees may confer by writing or orally and that proceedings of a conference or joint sitting with a House committee must be reported to the Senate by its committee.[26]

The House and Publications Committees rely on their power to confer with their Senate counterparts to operate in practice as joint committees.[27] Other committees of the House do not sit as joint committees with their Senate counterparts, although this has happened in the past in special circumstances following authorising resolutions from both Houses.

A procedure was followed in the early years of the Parliament in respect of some committees which were established by resolution by each House independently but which in the conduct of inquiries became in effect joint committees. For example, the House, having appointed a Select Committee in relation to Procedure in Cases of

19 S.O. 243.

20 The Select Committees on Aboriginal Education and Aircraft Noise had power to report from time to time, VP 1985–87/59–60 (27.2.1985).

21 Select Committee on Recent Australian Bushfires, VP 2002–04/833 (26.3.2003).

22 Select Committee on Specific Learning Difficulties, VP 1976–77/273 (19.8.1976); Joint Select Committee on an Australia Card, VP 1985–87/764 (14.3.1986), 886 (29.4.1986); Joint Select Committee on Certain Family Law Issues, VP 1993–96/2058 (11.5.1995).

23 Joint Select Committees on Aboriginal Land Rights in the Northern Territory (VP 1977/12 (10.3.1977) and on the Family Law Act (VP 1978–80/354–5 (17.8.1978)).

24 S.O. 238.

25 Former S.O. 350.

26 Senate S.O. 40.

27 Senate standing orders 21 and 22 provide for these committees to confer *and sit as a joint committee* with a similar committee of the House of Representatives.

Privilege, sent a message to the Senate 'requesting it to appoint a similar Committee empowered to act conjointly with the Committee of this House' to which the Senate agreed; the joint select committee reported as a single entity.[28]

In 1994 the House authorised the Standing Committee on Legal and Constitutional Affairs to meet concurrently with its Senate counterpart for the purposes of examining and taking evidence in connection with inquiries being held by each committee into aspects of section 53 of the Constitution. The resolution provided for meetings to be jointly chaired and for the procedures of the Senate as set out in its privilege resolution 1 of February 1988 to be followed to the extent that they were applicable.[29] The Senate, by resolution, noted that its standing committee had power to confer with its counterpart, and directed its committee to confer accordingly.[30] In the event no formal meetings were held between the two committees, although two informal meetings took place between their members.[31]

When a Joint Committee on the Australian Capital Territory was not appointed in the 35th Parliament, agreement was reached between the Senate and House for a joint process for the consideration of proposals to modify or vary the plan of layout of the city of Canberra and its environs, a function previously carried out by the former joint committee. The Senate[32] and the House[33] resolved to refer such proposed variations to their respective Standing Committees on Infrastructure (later renamed Transport, Communications and Infrastructure), and empowered their committees to consider and make use of the evidence and records of the Joint Committees on the Australian Capital Territory appointed during previous Parliaments. The House resolution provided for its committee to inquire into and report on such proposals when conferring with a similar committee of the Senate. The Senate concurred with the House resolution, empowered its committee to sit with the House committee as a joint committee for that purpose, and also resolved to add particular provisions which were accepted by the House.[34]

JOINT COMMITTEES

As described in further detail below, joint committees are established by resolution or legislation agreed to by both Houses, and membership consists of both Members and Senators. It is essential to an understanding of joint committees to recognise that they are the creatures of both Houses. Neither House may give instructions to a joint committee independently of the other unless both Houses expressly agree to the contrary. However, it is often provided in resolutions appointing joint committees that either House may refer matters for investigation by those committees.[35]

The standing orders of both Houses are largely silent on the procedures to be followed by joint committees. It has become the established practice for such committees to follow Senate committee procedures when such procedures differ from those of the House,[36] subject to any particular variations, necessitated for example by the provisions

28 VP 1907–08/299 (1.4.1908), 302 (2.4.1908), 505 (29.5.1908), 515–6 (4.6.1908); *see also* VP 1907–08/370 (2.4.1908) for order of the House giving extended power to its members on the committee.
29 VP 1993–96/1165 (30.6.1994).
30 J 1993–96/1677 (12.5.1994). Note that the Senate standing orders on this matter changed in 1994.
31 PP 307 (1995).
32 VP 1987–90/155 (27.10.1987).
33 VP 1987–90/181 (2.11.1987).
34 For details *see* VP 1987–90/203–4 (4.11.1987), 212 (5.11.1987).
35 E.g. VP 1993–96/80, 82 (13.5.1993); VP 1998–2001/164, 166 (3.12.1998); VP 2008–10/31–4 (12.2.2008).
36 This practice is based on that of the United Kingdom whereby joint committees follow House of Lords select committee procedures, unless otherwise agreed, *May*, 24th edn, p. 914.

of the resolutions appointing them and any further instructions agreed to by both Houses. However, chairs of joint committees, when seeking procedural advice, may approach the Presiding Officers or the Clerks of either or both Houses.

Joint committees appointed by resolution

Joint committees appointed by resolution may be described as 'joint standing committees' or 'joint select committees'. Like select committees of the House the latter are seen to have an ad hoc role and generally cease to exist upon reporting, while the former have a longer-term role and members hold office for the life of a Parliament. Some committees have simply been called 'joint committees' (for example, the former Joint Committee on the Australian Capital Territory) but could equally have been called joint standing committees.

The number and names of joint standing committees appointed by resolution varies from Parliament to Parliament. The following joint standing committees were appointed by resolution at the start of the 45th Parliament in 2016:

- Joint Standing Committee on Electoral Matters;
- Joint Standing Committee on Foreign Affairs, Defence and Trade;
- Joint Standing Committee on Migration;
- Joint Standing Committee on the National Capital and External Territories;
- Joint Standing Committee on the National Broadband Network;
- Joint Standing Committee on the National Disability Insurance Scheme;
- Joint Standing Committee on Northern Australia;
- Joint Standing Committee on the Parliamentary Library (*see below*);
- Joint Standing Committee on Trade and Investment Growth;
- Joint Standing Committee on Treaties.

Joint select committees may also be appointed for a specific purpose by resolutions of both Houses—for example, the Joint Select Committee on the Australia Fund Establishment and the Joint Select Committee on Trade and Investment Growth (2014); the Joint Select Committee on Government Procurement (2016); the Joint Select Committee on Oversight of the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017); and the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (2018). The functions, membership, powers and procedures of these committees are determined by the resolutions establishing them.

Joint Standing Committee on the Parliamentary Library

The committee was first established by resolution of both Houses in December 2005. The terms of reference of the committee are to:

- consider and report to the President of the Senate and the Speaker of the House of Representatives on any matters relating to the Parliamentary Library referred to it by the President or the Speaker;
- provide advice to the President and the Speaker on matters relating to the Parliamentary Library;
- provide advice to the President and the Speaker on an annual resource agreement between the Parliamentary Librarian and the Secretary of the Department of Parliamentary Services; and

- receive advice and reports, including an annual report, directly from the Parliamentary Librarian on matters relating to the Parliamentary Library.[37]

Joint statutory committees

The joint statutory committees are established by Acts of Parliament at the commencement of each Parliament. In some cases the establishing Acts leave the detail of the membership, powers and procedures of the committees to the Parliament to determine. This is done by resolution of each House at the start of every Parliament.

Joint Committee of Public Accounts and Audit

The Joint Committee of Public Accounts and Audit[38] is established by the *Public Accounts and Audit Committee Act 1951*. The functions of the committee are set out in sections 8 and 8A of the Act. In general terms they are to:

- examine the financial affairs of authorities of the Commonwealth to which the Act applies;
- review all reports of the Auditor-General that are presented to each House of the Parliament;
- consider the operations and resources of the Australian National Audit Office;
- approve or reject the recommendation for appointment of the Auditor-General or Independent Auditor;
- determine the annual audit priorities of the Parliament and advise the Auditor-General of those priorities; and
- increase parliamentary and public awareness of the financial and related operations of government.

The committee also has functions pursuant to the Parliamentary Service Act in relation to the Parliamentary Budget Office, including in relation to the appointment of the Parliamentary Budget Officer.[39] The committee reviews the draft budget estimates for the Australian National Audit Office and the Parliamentary Budget Office each year, and reports on them to the House on Budget day, prior to the presentation of the Budget.[40] The committee is also responsible, under the Public Service Act, for approving annual report requirements of Commonwealth departments.

Responses to 'administrative' matters raised in a report of the committee are made by way of an Executive Minute,[41] which is expected to be provided to the committee by the relevant Minister within six months of the report's presentation. The committee authorises the publication of the Executive Minute as soon as practicable after it has been received and places it on the committee's website. Executive Minutes received over the course of a year are then presented at the same time as the committee's annual report to the Parliament.

Bills dealing with subjects related to the committee's functions—for example, major changes in Commonwealth financial controls, management and audit and bills dealing with taxation law—have been referred to the committee and reported on. In each case

37 VP 2013–16/120 (21.11.2013). The separate Senate and House of Representatives Library Committees were discontinued.
38 Formerly Joint Committee of Public Accounts.
39 *Parliamentary Service Act 1999*, ss. 64Q, 64R, 64S, 64T, 64XA.
40 Pursuant to the *Auditor-General Act 1997*, s. 53 and *Parliamentary Service Act 1999,* s. 64R; e.g. H.R. Deb.(3.5.2016) 4245–6.
41 This replaced the Finance Minute previously prepared by the Department of Finance and Administration in response to all the committee's reports.

the bills were referred by the House, standing orders having been suspended to allow it.[42]

The ability to consider and report on any circumstances connected with reports of the Auditor-General or with the financial accounts and statements of Commonwealth agencies is one of the main sources of the committee's authority—it gives the committee the capacity to initiate its own references and, to a large extent, to determine its own work priorities. This power is unique among parliamentary committees and gives the committee a significant degree of independence from the executive arm of government.

Parliamentary Standing Committee on Public Works

The Parliamentary Standing Committee on Public Works is established by the *Public Works Committee Act 1969*. The committee's function is to consider each public work referred to it, and report to both Houses concerning the expedience of carrying out the work. It may also report on any other matters related to the work where the committee thinks it desirable that its views should be reported to the Houses. In its report the committee may recommend any alterations to the work which it thinks necessary or desirable to ensure that the most effective use is made of public moneys.

A motion may be moved in either House that a public work be referred to the committee for consideration and report.[43] If the Parliament is not in session or the House is adjourned for more than a month or for an indefinite period, the Governor-General (in council) may refer a work to the committee for consideration and report.

If the estimated cost of a public work exceeds a specified amount, that work cannot be commenced unless it has been referred to the committee; or the House of Representatives has resolved that, because of the urgency of the work, it is expedient that the work be carried out without having been referred to the committee;[44] or it is a work of an authority that has been exempted by regulation; or the Governor-General has declared that the work is for defence purposes and reference of it to the committee would be contrary to the public interest; or it has, with the agreement of the committee, been declared to be work of a repetitive nature. A public work referred to the committee cannot be commenced unless, after the report of the committee has been presented to both Houses, the House of Representatives has resolved that it is expedient to carry out the work.[45] Motions to refer works to the committee have been rescinded.[46]

Joint Committee on the Broadcasting of Parliamentary Proceedings

The Joint Committee on the Broadcasting of Parliamentary Proceedings is established pursuant to the *Parliamentary Proceedings Broadcasting Act 1946*. The committee's primary function is to regulate the radio broadcast of the proceedings of the Parliament—*see* Chapter on 'Parliament House and access to proceedings'.

Other statutory committees

At the start of the 45th Parliament five other joint statutory committees operated:

- the Parliamentary Joint Committee on Intelligence and Security established by the *Intelligence Services Act 2001*;

42 E.g. VP 1993–96/1145 (29.6.1994), 1327 (22.9.1994), 2678 (30.11.1995); VP 1996–98/266 (19.6.1996), 389 (22.8.1996).
43 But in practice the motion is moved in the House of Representatives, e.g. VP 2002–04/1336 (27.11.2003).
44 E.g. VP 2002–04/1319 (25.11.2003); VP 2004–07/2085 (16.8.2007) (2); VP 2010–13/240 (24.11.2010), 2503 (27.6.2013).
45 VP 1987–90/985 (1.12.1988); VP 1998–2001/1140 (8.12.1999).
46 VP 1922/93 (25.8.1922) (on notice); VP 1974–75/521 (4.3.1975) (by leave); VP 1976–77/389 (12.10.1976) (on notice); VP 2002–04/1748 (24.6.2004) (by leave—combined rescission and expediency motion). *See* S.O. 120 and 'Resolution or vote of the House rescinded or varied' in Chapter on 'Motions'.

- the Parliamentary Joint Committee on Corporations and Financial Services established by the *Australian Securities and Investments Commission Act 2001*;
- the Parliamentary Joint Committee on Law Enforcement established by the *Parliamentary Joint Committee on Law Enforcement Act 2010*;[47]
- the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, established by the *Law Enforcement Integrity Commissioner Act 2006*; and
- the Parliamentary Joint Committee on Human Rights, established by the *Human Rights* (*Parliamentary Scrutiny) Act 2011*.

APPOINTMENT AND DURATION

Committees of the House

A standing committee may be appointed by sessional or standing orders or by resolution of the House. It has not been the practice to require a resolution for the appointment of the standing committees appointed under the standing orders. They commence to operate when Members are appointed to them and cease to exist only upon dissolution or expiry of the House. A select committee is appointed by resolution of the House. Unless otherwise provided in its resolution of appointment, the committee ceases to exist on the presentation of its final report. The standing orders do not prevent any Member moving a motion for the appointment of a committee, but most motions brought to a successful vote are moved by a Minister.[48]

Joint committees appointed by resolution

A joint committee appointed by resolution is established by a motion originating in one House and agreed to in the same terms by the other House. A proposal for a joint committee may originate in either House.

A resolution by the House proposing the establishment of a joint committee defines the nature and limits of the authority delegated to the committee in the same way as a resolution appointing a committee of the House. However, it also includes a paragraph stating:

> That a message be sent to the Senate acquainting it of this resolution and requesting that it concur and take action accordingly.[49]

The Senate considers the resolution and may agree to its provisions, suggest modifications or reject the proposal altogether. Its decision is conveyed to the House by message. Where modifications are proposed, the House may choose to:

- accept them;[50]
- accept them and add modifications of its own;
- reject them;
- reject them and request the Senate to reconsider them;[51] or

47 Replaced the Parliamentary Joint Committee on the Australian Crime Commission on 25.11.2010.

48 E.g. VP 1998–2001/164–74 (3.12.1998); VP 2010–13/47–58 (29.9.2010). The Select Committee on Specific Learning Difficulties was appointed on motion moved by the Leader of the Opposition, VP 1974–75/286 (31.10.1974). *See also* VP 1970–72/147–8 (14.5.1970); VP 1962–63/549 (12.9.1963).

49 E.g. VP 1998–2001/164 (3.12.1998); VP 2008–10/31–2 (12.2.2008).

50 VP 1987–90/150 (26.10.1987). In 2004, at the commencement of the 41st Parliament, the Senate sent the House a message seeking modifications in respect of the Parliamentary Joint Committee on Corporations and Financial Services. However, in a later message it agreed to the original terms, VP 2004–07/46 (29.11.2004), 65 (1.12.2004).

51 VP 1974–75/828–9 (19.8.1975), 870 (26.8.1975).

- reject them and suggest an alternative.[52]

In the case of a total rejection, or a failure to respond to a message, the House may choose to appoint a committee of the House with the same purposes instead.[53]

Joint committees may be standing committees, usually established at the start of a Parliament, or select committees established for a specific short term purpose. Unless otherwise provided in its resolution of appointment,[54] the committee ceases to exist on the presentation of its final report.

Joint committees established by legislation

A committee established under an Act of Parliament is required to be appointed as soon as practicable after the commencement of each Parliament. In practice this action is usually taken within the first few sitting days of the opening of the Parliament, when a motion appointing members to the committee is moved by a Minister in each House. If provided for by the relevant Act, a motion relating to the powers and procedures of the committee may also be moved. The committee continues in existence until the House of Representatives is dissolved or expires.

Effects of dissolution and prorogation on committees

Dissolution

Upon dissolution of the House all House and joint committees cease to exist. Even if a committee is appointed in the next Parliament with the same terms of reference, powers and title, it is in fact a different committee. Consequently, committees need authorisation from the House to have access to the records of and evidence taken by the previous committee. Standing authorisation is now provided by S.O. 237.[55] Any inquiries not completed at the dissolution lapse and must be referred to the new committee if they are to be completed.

The provisions of the Acts establishing each of the joint statutory committees determine that the committees are to be appointed at the commencement of each Parliament, and that their members may hold office until the House of Representatives expires by dissolution or effluxion of time.

Prorogation

Committees of the House and joint committees appointed by standing order or by resolution for the life of the Parliament continue in existence and their membership continues, but they may not meet or transact business following prorogation. They may meet again in the new session of the same Parliament. Inquiries commenced in the previous session are resumed without action by the House, except that if the inquiry was referred to the committee by the House in the previous session, the inquiry is again

52 VP 1973–74/139 (2.5.1973), 149 (3.5.1973).

53 In 1973 a Joint Committee on Environment and Conservation was proposed by the House, rejected by the Senate, and a House Standing Committee on Environment and Conservation established, VP 1973–74/124–5 (12.4.1973), 247 (30.5.1973); J 1973–74/216.

54 E.g. the resolution of appointment of the Joint Select Committee on Northern Australia was amended to give it a continuing monitoring role and the ability to (further) report from time to time, VP 2013–16/761 (27.8.2014); that of the Joint Select Committee on Gambling Reform included that the committee inquire into and report on 'Such other matters relating to gambling referred by either House', VP 2010–13/52 (29.9.2010).

55 Since 3.12.1998 (former S.O. 341).

referred by resolution of the House.[56] References by Ministers do not need to be re-referred.

A committee which is appointed on a sessional basis—that is, not for the life of a Parliament—ceases to exist upon prorogation. If the committee is to continue its activities in the new session, the committee and its membership must be re-appointed by resolution and its terms of reference renewed.[57] Standing order 237 authorises the new committee to use the minutes of evidence and records of the previous committee.

The Acts establishing each of the joint statutory committees provide that the committees are able to meet and transact business notwithstanding any prorogation of the Parliament.[58]

Different positions taken by the two Houses

The effect of prorogation on committees has been a matter of some debate, and as noted below, the position traditionally taken by the House has not been adopted by the Senate. The practice of the House is reinforced by the following parliamentary authorities:

> The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again.[59]
>
> Committees appointed by standing order for a Parliament are terminated by a dissolution. In the case of committees appointed on a sessional basis, orders appointing them cease to have effect at prorogation.[60]
>
> . . . a committee only exists, and only has power to act, so far as expressly directed by the order of the House which brings it into being. This order of reference is a firm bond, subjecting the committee to the will of the House; the reference is always treated with exactness and must be strictly interpreted . . . The House may at any time dissolve a committee or recall its mandate, and it follows from the principle laid down that the work of every committee comes to an absolute end with the close of the session.[61]

Even though the standing orders appointing the Library and House Committees until 1998 contained the words 'shall have power to act during recess', it is considered that the House alone has no authority to grant such power. There have been a number of instances where a resolution appointing a committee has purportedly empowered the committee to sit during any recess. However, as the resolution of appointment in each case lapsed at prorogation, the purported power was not valid.

On 18 February 1954 the chairman of the Joint Committee on Foreign Affairs was advised by the Minister for External Affairs by letter:

> I have had the matter you raised in your letter of the 2nd February looked into—that is, the status of the Joint Committee on Foreign Affairs following on the prorogation of Parliament.
>
> I find that the Solicitor-General's view is that the Foreign Affairs Committee ceases to exist when Parliament is prorogued.

Despite this view of the Solicitor-General, the committee was given the power to act during recess when it was appointed for the life of the Parliament in 1959.[62]

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56 The effect of the motion of referral is considered to cease on prorogation. E.g. Standing Committee on Aboriginal Affairs: initial reference, VP 1976–77/512 (1.12.1976); re-referred, VP 1977/13 (10.3.1977). Committee of Privileges: initial reference, VP 1973–74/619 (6.12.1973); re-referred, VP 1974/34 (7.3.1974).

57 *See* VP 1977/10–11 (10.3.1977), 16 (15.3.1977), for the re-appointment of the Select Committee on Tourism, and VP 1977/12 (10.3.1977), 16 (15.3.1977), for the re-appointment of the Joint Select Committee on Aboriginal Land Rights in the Northern Territory.

58 This meant, for example, that the Public Works Committee was able to report in the second session of the 44th Parliament on inquiries into works referred during the first session, without the works having to be re-referred by the House.

59 *May*, 24th edn, p. 145.

60 *May*, 24th edn, p. 835. Since 1975 the House of Commons has adopted the practice of appointing the members of many of its committees for the life of the Parliament but they may not meet after prorogation, 'Dissolution and prorogation: answers to questionnaire', *The Table* XLIII, 1975, p. 76.

61 Josef Redlich, *The procedure of the House of Commons*, vol. II, Archibald Constable, London, 1908, p. 196.

62 VP 1959–60/25 (25.2.1959).

When the Joint Committee on the Australian Capital Territory was first established as a sessional committee in 1956, it was given power to sit during recess,[63] but the power was not included in the terms of the resolution when it was re-appointed in the new session in 1957.[64] It was once again given the power to sit during recess when it was appointed for the life of the Parliament in 1959.[65]

In 1957 the House agreed to a Senate modification to the resolution re-appointing the Joint Committee on Constitution Review, which empowered the committee to sit during any recess. In speaking to the modification the Leader of the House, while acknowledging the correct constitutional position, made the following observation:

> . . . We having decided that henceforth we shall have a session of the Parliament annually, and it being the desire, I think, of all members of the Parliament that committees such as the Constitution Review Committee, which has a valuable public service to perform, should continue to function in any period of recess between the prorogation of one session of the Parliament and the formal opening of another, there is sound practical sense in the suggestion that these committees be enabled to continue during any such recess.[66]

The power to sit during any recess was renewed on the re-appointment of the committee in 1958, but not in 1959.[67]

In considering the question of whether the Senate and its committees have the power to meet after a dissolution of the House of Representatives,[68] a Solicitor-General's opinion of 23 October 1972 stated, in part:

> During a session each House can control its own proceedings, exercise its powers and privileges and adjourn from time to time. However, once the Parliament is prorogued, I think each House would be effected [*sic*] in the same way as the House of Commons. Section 49 of the Constitution, in my view, has this effect, because it provides (there being no legislation of the Commonwealth Parliament on the subject) that the powers, privileges and immunities of the Senate and the House of Representatives and the members and the committees of each House shall be those of the Commons House of Parliament of the United Kingdom and of its members and committees, at the establishment of the Commonwealth. However, quite apart from s. 49, I think support for this view is found in ss. 1 and 5 of the Constitution and the constitutional theory which underlies them. The Houses are called together to exercise their functions as part of the Federal Parliament. At the discretion of the Crown and subject to certain constitutional safeguards the Crown can terminate the session. With the termination of the session, this power to deliberate and pass bills and their ability to exercise these powers as part of the Parliament ceases until they are called together again. It is consistent with this clear position, that between sessions neither they nor their committees should be able to exercise any powers. This could be found inconvenient to the work of committees but I think it is the effect of the provisions of the Commonwealth Constitution.

The same opinion drew attention to possible consequences of committees meeting without having the constitutional authority to do so:

> . . . witnesses who gave evidence would not be entitled to the protection of the House and their evidence could be actionable at the suit of third parties or could be used to incriminate them. Likewise statements by [committee members] during hearings would lack the protection which the privileges of the House normally afford to [Members]. In camera hearings may be no protection. Witnesses who were summoned to give evidence would, of course, be well advised to refuse to do so. If they did, the [House] clearly could not meet to punish them. When ultimately it did meet there may be little purpose served in committing them for contempt because by then the [House's] authority and protection would be available and they would, no doubt, willingly answer questions.

63 VP 1956–57/368–9 (8.11.1956).
64 VP 1957–58/12–3 (20.3.1957).
65 VP 1959–60/27–8 (26.2.1959).
66 VP 1957–58/24 (28.3.1957); H.R. Deb. (28.3.1957) 339–40.
67 VP 1958/9–11 (27.2.1958); VP 1959–60/111–2 (30.4.1959).
68 The opinion concluded that they do not have this power. It argued that 'the effect of dissolution [of the House], is in substance, to dissolve the Parliament even though two of the constituent bodies remain'.

Other legal authorities have agreed with this view of the effect of prorogation on committees.[69] However, the Senate, supported by other legal opinion, has taken a different position.[70]

A number of opinions relevant to this matter were presented to the Senate on 19 and 22 October 1984 when the Senate passed a resolution concerning meetings of the Senate or its committees after dissolution of the House.[71] *Odgers* reflects the position that Senate committees appointed for the life of a Parliament continue in existence until the day before the first meeting of the next Parliament, and Senate standing orders and resolutions of appointment give most Senate committees the power to meet during recess or following dissolution of the House,[72] and they have done so.[73]

MEMBERSHIP

Eligibility to serve on committees

Committee service is considered to be one of the parliamentary duties of private Members. Office holders and Ministers have not normally served on committees except in an ex officio capacity on committees concerned with the operations of the House or the Parliament (*see below*).[74] It has been considered inappropriate for Ministers to serve on investigatory committees, given the committees' role of scrutinising the Executive, and the standing orders now provide that any Member appointed as a Minister (by definition including Parliamentary Secretary or Assistant Minister) immediately ceases to be a member of all committees.[75] It is also considered that a Member may not participate in committee proceedings until he or she has been sworn in, even though the Member may have been appointed to the committee.[76]

Except with their consent, or as specified in a standing or other order, the Speaker, the Deputy Speaker or the Second Deputy Speaker may not be appointed to serve on any committee.[77] In the case of some statutory committees, for example the Public Works Committee, the Acts establishing them provide that certain office holders, such as the Speaker or the Deputy Speaker, or a Minister, are not able to be appointed to the committee.

Pecuniary and personal interest

A Member may not sit on a committee if he or she has a particular direct pecuniary interest in a matter under inquiry by the committee.[78] The interest concerned has been interpreted in the very narrow sense of an interest peculiar to a particular person. If, for example, a Member were an owner of bank shares he or she would not, for that reason

69 *See* Geoffrey Lindell, 'Parliamentary inquiries and government witnesses', *Melbourne University Law Review*, vol. 20, 1995, p. 399, expressing agreement with a conclusion by Commonwealth Law Officers to the effect that prorogation (and dissolution) means that committees should not continue to operate.

70 *See Odgers*, 6th edn, pp. 972–82 and 14th edn, pp. 502–3, 608–10.

71 *See Odgers*, 14th edn, pp. 610–14.

72 *Odgers*, 14th edn, p. 502–3 (except in the case of a double dissolution).

73 *See* for example, hearings of the Senate Select Committee on the Scrafton Evidence, 1 September 2004 (committee established 30 August, dissolution of House 31 August).

74 The Chairman of Committees was chair of the Joint Committee on the Parliamentary Committee System and was a member of several general purpose standing committees in the 35th Parliament.

75 S.O. 229(d). Before 2016 practice was not so strict, *see* previous editions.

76 E.g. case of Mr Katter at commencement of 41st Parliament (appointed to Industry and Resources Committee 2.12.2004, sworn in 8.3.2005, VP 2004–07/77 (2.12.2004), 213 (8.3.2005)).

77 S.O. 230. E.g. VP 2002–04/843 (27.3.2003).

78 S.O. 231. Between 1984 and 1988 an obligation was imposed on Members to declare 'relevant interests' at the beginning of a speech in the House or in a committee, or after a division in which the Member proposed to vote was called.

alone, be under any obligation to disqualify himself or herself from serving on a committee inquiring into the banking industry, as the interest would be one held in common with many other people in the community. In the first instance it is a matter for individual committee members to judge whether they may have a conflict of interest in an inquiry.

Before 1998 the relevant standing order prevented a Member from serving on a committee 'if personally interested in its inquiry'. The former provision was observed in 1955 when a member of the Committee of Privileges took no active part during an inquiry in which he was personally interested in that he was the Member who had raised the complaint. The House has resolved that a member of the Committee of Privileges be discharged from attendance on the committee during its consideration of particular matters. Another Member has been appointed to the committee in such cases.[79] In the 37th Parliament a member of the Committee of Privileges did not participate in an inquiry concerning the unauthorised disclosure of information from another committee on which he served.[80] In another inquiry by the committee in the same Parliament a Member who had spoken in the House when the matter was raised withdrew from the committee for the duration of the inquiry.[81]

On the appointment of members to the Select Committee on Grievances of Yirrkala Aborigines, a Minister on a point of order asked whether a Member who had been nominated to serve on the committee should be excluded from the committee because the Member was a litigant in related court proceedings. The Speaker stated:

> . . . the Chair is not able to determine whether or not a member is personally interested in a committee's inquiry and cannot properly be called upon to so decide. A member must be guided by his own feelings in the matter and by the dictates of respect due to the House and to himself. Having regard to the existence of the standing order and its terms, it is likely that if a matter of this kind is brought to issue it will be one for the House to decide.[82]

The Member served on the committee.

In other instances members of committees have decided not to participate in an inquiry or a facet of an inquiry because of conflict of interest considerations. In 1977 a member of the Joint Committee on the Australian Capital Territory chose not to take part in proceedings of the committee whilst items in which that member had an investment interest were under discussion. In 1981 a member of the Joint Committee of Public Accounts did not take part in that part of an inquiry dealing with the ACT Schools Authority because the member had chaired the Authority in the past.[83]

Where there may be the possibility of a conflict of interest of some kind, or of the perception of such a conflict, Members have made an oral declaration in the form of a statement or a written statement on the matter at a meeting of the committee at an early stage of the particular inquiry, even though, technically, there may have been no question of an infringement of the standing order.[84]

If the right of a Member to sit on a committee is challenged, the committee may report the matter to the House for resolution.[85]

79 VP 1978–80/35 (1.3.1978); *see also* H.R. Deb. (7.4.1959) 903; H.R. Deb. (18.3.1959) 772–3.
80 VP 1993–96/546 (24.11.1993).
81 VP 1993–96/605 (16.12.1993). *And see* 'Committee of Privileges' in Ch. on 'Parliamentary privilege'.
82 VP 1962–63/559 (19.9.1963); H.R. Deb. (19.9.1963) 1176–9.
83 Joint Committee of Public Accounts, *Report 193*, PP 84 (1982) vii.
84 E.g. Committee of Privileges, minutes, 5.5.1994, PP 136 (1994); Standing Committee on Finance and Public Administration, minutes, 18.2.1991; Standing Committee on Primary Industries and Regional Services, minutes, 13.10.1999.
85 S.O. 231.

Suspension from the House

A Member suspended from the service of the House may take part in committee proceedings (other than of the Federation Chamber) during the period of suspension.[86]

Ex officio members

The Speaker is ex officio a member and chair of the Selection Committee and of the House Appropriations and Administration Committee, and a member of the House Committee. The Deputy Speaker is ex officio a member of the Selection Committee in the Speaker's absence. The Speaker (together with the President of the Senate) is ex officio a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings. The Deputy Speaker (together with the Deputy Senate President) is ex officio a member of the Joint Standing Committee on the National Capital and External Territories. Ex officio members of the Joint Standing Committee on the New Parliament House included the Speaker and President of the Senate and the Minister responsible for administering the Parliament House Construction Authority Act.[87]

The Chief Government and Opposition Whips and the Third Party Whip, or their nominees, are ex officio members of the Selection Committee. The Leader of the House and the Deputy Leader of the Opposition, or their nominees, are ex officio members of the Committee of Privileges and Members' Interests.

Provision is rarely made for ex officio membership of committees other than committees concerned with the operations of the House or the Parliament. However, the chair of the Standing Committee on Expenditure (1976) was an ex officio member of the Joint Committee of Public Accounts and vice versa.[88] This arrangement was intended to ensure adequate liaison between the two committees.[89]

Number of members and party composition

The number of members of a committee is determined by the membership provisions of the relevant standing orders, or by the resolution or Act establishing the committee.

In some cases provision may be made for numbers to be supplemented for individual inquiries, or for members to be substituted, to allow Members with particular expertise or interests to participate. Supplementary members have all the participatory rights of committee members; however they may not vote. A general purpose standing committee may be supplemented with up to four other Members for an inquiry.[90] For the purposes of the consideration of a bill referred to a committee for an advisory report under the provisions of standing order 143(b), one or more members of the committee may be replaced by other Members by motion moved on notice.[91]

From time to time the number of members of a committee may be increased. In the case of committees appointed by standing or sessional order it is necessary to suspend (or amend) standing (and sessional) orders to enable this to be done.[92]

In most cases the standing order or resolution establishing a committee of the House will also determine the party composition of its membership—that is, by specifying the

86 *See* Ch. on 'Control and conduct of debate'.
87 VP 1987–90/39–40 (17.9.1987).
88 The chair of the Joint Committee of Public Accounts could nominate in his place a member of that committee who was a Member of the House of Representatives.
89 H.R. Deb. (27.6.1976) 2613.
90 S.O. 215(d)—a maximum of two extra government and two extra non-government or non-aligned Members.
91 S.O. 229(c).
92 E.g. VP 1962–63/39 (7.3.1962); VP 1954–55/202 (12.5.1955).

numbers of Members to be drawn from government and from non-government parties. In practice each party's representation on a committee is equated as nearly as possible to its numerical strength in the House, and consequently the relevant standing orders may change from Parliament to Parliament to reflect election results. Special provision has sometimes been made for independent Members.[93]

In the 45th Parliament the general purpose standing committees consisted of either eight or ten members. Eight member committees had five government Members and three non-government Members. Ten member committees had six government Members, three opposition Members and one non-aligned Member.

Appointment of Members

The Members to be appointed are normally elected or selected within their respective parties. The process is organised by the whips. Independent Members liaise with the opposition whips in respect of non-government positions, or may nominate themselves. Shadow ministers and shadow parliamentary secretaries often nominate for committees relevant to their shadow portfolios.

Members are formally appointed to or discharged from all committees on motion moved on notice or by leave.[94] When the House is not sitting, and not expected to meet for at least two weeks, party whips may write to the Speaker nominating the appointment or discharge of a member. The change operates from the time the nomination is received by the Speaker. The Speaker reports the change to the House at the next sitting when it is confirmed by resolution.[95]

An unusual situation arose in 1952 because of the Opposition's declared intention not to nominate members to serve on the proposed Joint Committee on Foreign Affairs. The resolution of appointment transmitted from the House was amended by the Senate to provide:

> That the persons appointed for the time being to serve on the Committee shall constitute the Committee notwithstanding any failure by the Senate or the House of Representatives to appoint the full number of Senators or Members referred to in these resolutions.

The House agreed to the modification.[96]

On several occasions a resolution of appointment of a committee has specified that the membership be identical to that of its predecessor in the previous Parliament.[97]

Vacancies

A vacancy on a committee may occur for the following reasons:

- resignation for personal reasons;
- appointment of a Member as a Minister or Parliamentary Secretary/Assistant Minister;[98]
- resignation on appointment to any other office that may preclude membership of a committee—for example, election to the office of Speaker or Deputy Speaker;
- resignation due to personal interest in an inquiry;
- resignation as a way of expressing dissent;

93 E.g. VP 1996–98/65 (7.5.1996) (Selection Committee).
94 S.O. 229(a).
95 S.O. 229(b).
96 J 1951–53/145–6 (27.2.1952); VP 1951–53/273 (27.2.1952), 278 (28.2.1952).
97 E.g. Joint Select Committee on Parliamentary and Government Publications, VP 1964–66/25–6, 27 (5.3.1964).
98 S.O. 229(d). The vacancy is now immediate and automatic.

- resignation from the House; or
- death.

If a Member no longer wishes to serve on a committee, the Member informs the whip of his or her party and should advise the chair of the committee in writing. A motion is then moved in the House by a Minister to discharge the Member from attendance on the committee. A replacement is also appointed by motion. Normally, both the discharge and the appointment are moved simultaneously in the one motion.[99] A Member may not simply resign; the Member must be discharged by a motion moved in the House.[100]

In 2004 all opposition members of the Standing Committee on Constitutional and Legal Affairs were discharged (at their initiative) together, without replacement members being appointed.[101] It was considered that as the committee had been properly constituted, it continued to be properly constituted despite the subsequent absence of members or a class of members specified in its membership provisions.

In 2010 the House suspended standing orders to make special provision for the first meeting of the Selection Committee in the 43rd Parliament; one of the effects of the suspension was that the committee was properly constituted despite a vacancy in its membership (due to a delayed nomination) at its first meeting.[102]

CHAIR

Election or appointment

Chair elected

While chairs of House committees are now appointed (*see below*), resolutions of appointment of joint committees generally provide for a chair to be elected by each committee. In conducting the election of the chair, the committee secretary, having drawn attention to any special provision in the standing orders or resolution of appointment (such as a requirement that the committee elect a government member as chair), should call for nominations, each of which must be seconded. If only one member is nominated, as is usually the case, the secretary declares the member elected as chair and invites that member to take the chair. If more than one member is nominated, the election is conducted by secret ballot in accordance with the procedures set down by the standing orders for the election of Speaker, Deputy Speaker and Second Deputy Speaker, as far as they are applicable.[103]

A Member may be elected chair in absentia. It is considered that the requirements for election of chair of a committee should not be more stringent than those applying to election of the chair of the Federation Chamber (that is, the Deputy Speaker).[104]

In the case of joint standing committees, the resolutions of appointment[105] or the resolutions supplementing statutory provisions[106] usually provide that committees elect either a government member or a member nominated by the Government Whip or

99 E.g. VP 2002–04/1452 (19.2.2004).
100 H.R. Deb. (5.9.1905) 1919.
101 H.R. Deb. (3.8.2004) 31815, 31817, 31892–3; VP 2002–04/1764–5 (3.8.2004).
102 VP 2010–13/68 (30.9.2010).
103 S.O. 11. *See* Ch. on 'The Speaker, Deputy Speakers and officers'. In the 32nd Parliament a ballot was conducted for the chairs of the Standing Committee on Expenditure and the Joint Select Committee on Parliamentary Privilege. In the 41st Parliament a ballot was held for the chair of a House standing committee when two government members were nominated.
104 Under S.O. 14(a) nominees for Deputy Speaker and Second Deputy Speaker are not required to be present or formally accept nomination.
105 VP 1998–2001/164–74 (3.12.1998).
106 VP 1998–2001/160–4 (3.12.1998).

Leader of the Government in the Senate as chair, but this practice has not always been followed. For example, the Joint Select Committee on Parliamentary Privilege had such a provision in its first resolution of appointment in 1982. The provision was omitted when the committee was re-established in 1983 following a change of government, thus allowing the previous chair, by then an opposition Member, to be re-elected.[107]

Chair appointed

Chairs of House committees are appointed by the Prime Minister.[108] Prior to the 44th Parliament, chairs were elected, although normally required to be government members. In practice this meant that the Prime Minister's nominee would usually be elected.

In 1941 the chairs of several joint committees were appointed by name in the resolution establishing the committees.[109] In some instances the House requested the Senate to appoint a Senator as chair of a joint committee, which it did.[110] Such a request was again made and agreed to in 1957 in relation to the Joint Committee on Constitutional Review.[111]

In some cases the chair of a committee is appointed ex officio; for example, the Speaker is ex officio chair of the Selection Committee[112] and the House Appropriations and Administration Committee.[113] In respect of the Joint Standing Committee on the New Parliament House, the resolution provided for the Speaker and President to be joint chairs.[114]

Procedural authority

The formal powers of a chair of a select committee were traditionally viewed as being substantially the same as those of the chair of a committee of the whole House. Although the committee of the whole no longer exists in the House, relevant precedents are considered to continue to apply, where appropriate. As, under the former procedures, no appeal could be made to the Speaker regarding the decisions and rulings of the Chairman of Committees in a committee of the whole, it was considered that no appeal could be made regarding the decisions and rulings of a chair of a select or standing committee. Within the framework set by the House (in terms of the provisions of the standing orders and any resolution of appointment), formal authority over select and standing committee procedures therefore lies with the chair and the committee itself, and the Speaker may not take formal notice of committee proceedings in so far as purely procedural matters are concerned. During a committee meeting a chair's procedural authority is as exclusive as that of the Speaker in the House.

While the Speaker's advice is occasionally sought on complex procedural matters, there is rarely any scope for the Speaker to intervene on committee procedures. The Speaker would normally interfere in such matters only if they were of general significance or affected the allocation of resources to a committee, which is largely the Speaker's responsibility. Nevertheless, Speakers' rulings on procedural matters are significant as precedents. Further, committee chairs must have regard to the practice of

107 VP 1980–83/805–6 (23.3.1982); VP 1983–84/52–3 (4.5.1983).
108 S.O. 232(a).
109 Joint Committee on Social Security, VP 1940–43/158, 161–2 (3.7.1941).
110 Joint Committee on Profits, VP 1940–43/158–9, 162 (3.7.1941).
111 VP 1956–57/168–9 (24.5.1956) (committee originally named Joint Committee on Constitutional Change), 171 (29.5.1956), 341 (25.10.1956).
112 S.O.222(b).
113 S.O. 222A(c).
114 VP 1987–90/39–40 (17.9.1987).

the House where this is applicable to committee proceedings—for example, in respect of the sub judice convention.

Any concern about committee procedure or authority can be brought to the attention of the House in a special report, a dissenting report or in a debate on a motion that the House take note of a report.

While these courses have been adopted, no formal action has been taken by the House.[115] It is doubtful as to whether the Speaker, rather than the House, could exercise any authority in such a situation. In 1955 the Speaker replied to questioning on the extent of the powers and functions of the Committee of Privileges:

> Such questions should not be directed to the Speaker; they are matters for the House, not for me. I am not a member of the Committee of Privileges. As the House appointed the committee, the House must answer questions in relation to it.[116]

Unlike the Speaker, the chair of a committee takes part in the substance of discussions, as well as playing a procedural role at hearings and deliberative meetings. A chair's rights to take part in proceedings are no less than those of other members, except that in divisions the chair may only exercise a casting vote.[117] However, the chair exercises a dual role, for example in ensuring that rights of witnesses are observed.

Administrative authority

The Speaker, or an official appointed by the Speaker, has exclusive authority to approve expenditure for the running of the House.[118] In 1944 three members of the Joint Committee on Social Security resigned from the committee in protest at the Speaker's insistence that a parliamentary employee replace a public service employee who had earlier been seconded to serve as clerk to the committee (i.e. committee secretary) with the consent of the Speaker and on the recommendation of the committee. No action was taken by the House to question the Speaker's exercise of his authority to appoint committee staff but some Members expressed disapproval.[119] (The power of employment is now held by the Clerk of the House.[120])

The Speaker is not involved in normal day-to-day funding or related decisions in respect of committees, although a continual oversight of operations, administration and expenditure is maintained, and in instances involving unusual or large expenditures the Speaker may be consulted. The Speaker's statutory powers are clearly exclusive in these areas and a lack of a reference to the Speaker in resolutions of appointment or sessional orders does not diminish either the Speaker's authority or obligations. In exercising these responsibilities it is considered that the Speaker would be obliged to intervene in committee operations where it was believed that a committee was using or seeking resources for activities which exceeded its delegated authority. Proposed overseas visits by the members of a committee are subject to the provision of additional funding. In

115 *See* for example the dissent of A. J. Forbes in Joint Committee on the Parliamentary Committee System, *A proposed system of committees for the Australian Parliament, interim report,* PP 275 (1975) 95–7; the dissent of G. M. Bryant and L. R. Johnson in Joint Select Committee on Aboriginal Land Rights in the Northern Territory, *Report,* PP 351 (1977) 72; H.R. Deb. (18.8.1977) 419, 423; dissenting reports to Committee of Privileges report on allegations by a Member, PP 498 (1989); dissenting report in Standing Committee on Family and Human Services, *The winnable war on drugs—The impact of illicit drug use on families*, PP 187 (2007) 313–4. *See also* statements at time of presentation of reports of the Legal and Constitutional Affairs Committee, critical of the operation and chair of the committee, H.R. Deb. (9.8.2004) 32425; H.R. Deb. (11.8.2004) 32768–71.

116 H.R. Deb. (7.6.1955) 1438.

117 S.O. 232(a). Chairs of joint committees may have a deliberative vote as well—*see* p. 675. *See also* 'Powers of chair' in *May*, 24th edn, p. 811.

118 *Public Governance, Performance and Accountability Act 2013*, s.71.

119 H.R. Deb. (29.3.1944) 2203–24; S. Deb. (30.3.1944) 2281–91.

120 *Parliamentary Service Act 1999*, s. 22.

such cases an approach is made to the Presiding Officers for approval and allocation of such funding—*see* 'Meetings overseas' at page 672.

The chair of a committee has a role in respect of matters arising from committee operations but the committee itself may be involved in significant decisions or actions involving matters of principle. Within the framework set by relevant regulations and directions, and subject to the ultimate authority of the Speaker, technically decisions to authorise expenditure, as well as those relating to staffing matters, fall to the responsible parliamentary staff members.

Some joint committees are serviced by the Department of the Senate. In those instances the role and powers of the President of the Senate and the Clerk of the Senate are similar to those of the Speaker and the Clerk of the House, although in the case of the Senate the Appropriations and Staffing Committee may also be involved in some aspects.

Deputy chair

Deputy chairs of House committees are appointed by the Leader of the Opposition.[121] Prior to the 44th Parliament deputy chairs, as well as chairs, were elected. In practice an opposition member was normally elected.

In the case of joint committees resolutions of appointment generally provide for a deputy chair to be elected by each committee and for the deputy chair to be a non-government member. In the past, it has been provided on some occasions that the chair appoint a member of the committee as deputy chair 'from time to time'—that is, as circumstances demanded. In such cases the same member was not necessarily appointed each time.[122]

In practice the deputy chair of a joint committee is normally an opposition member. The resolution of appointment of the Joint Committee on the Parliamentary Committee System directed that the committee elect as deputy chair one of the members nominated by the Leader of the Opposition. The deputy chair was also to be a member from a different House from the chair.[123]

When a deputy chair is to be elected the chair conducts the election. It is considered that the provisions of standing order 14, which provide for the filling of a vacancy in the office of Deputy Speaker and Second Deputy Speaker should be followed as appropriate.

The deputy chair acts as chair of the committee at any time when the chair is not present at a meeting. If neither the chair nor deputy chair is present at a meeting, the members present elect another member to act as chair at the meeting.[124]

POWERS OF COMMITTEES

Source of power

Section 49 of the Constitution confers on both Houses the powers, privileges and immunities possessed by the United Kingdom House of Commons in 1901. Section 50 confers on each House the right to make rules or orders concerning its powers and

121 S.O. 232(b).

122 Standing Committee on Road Safety, VP 1974–75/51–2 (18.7.1974); Select Committee on Aircraft Noise, VP 1970–72/33–4 (11.3.1970).

123 VP 1976–77/59–60 (16.3.1976).

124 S.O. 232(b).

conduct of business. This power extends to committees and is delegated to a committee by the standing orders, by the resolution of appointment, or by the relevant statute.

A committee possesses no authority except that which it derives by delegation from the House or Houses appointing it, or which has been specifically bestowed by legislation in the case of statutory committees. The power of a House or joint committee is determined by the power possessed by the House or Houses and the degree to which this has been delegated.

'Powers' explicitly granted to a committee by the standing orders are:

- to appoint subcommittees (S.O. 234);
- to conduct proceedings using approved means (S.O. 235(a));
- to conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting (S.O. 235(c));
- to call witnesses and require that documents be produced (S.O. 236);
- to consider and make use of the evidence and records of similar committees appointed during previous Parliaments (S.O. 237);
- to confer with a similar committee of the Senate (S.O. 238);
- to authorise publication of any evidence given before it or documents presented to it (S.O. 242); and
- to report from time to time (S.O. 243).

While the use of the word 'power' is traditional, most of these matters can be regarded as authorisations. The real power possessed by a committee, as the word is more usually understood, is the power to order the attendance of witnesses and the production of documents.

These powers and authorisations apply to all committees of the House,[125] except as provided in another standing or sessional order, or as otherwise ordered by the House. Similar powers are also generally included in resolutions establishing joint committees.

A committee's powers should not be taken for granted. To determine the extent of the authority delegated to any committee, recourse must be had to the standing and sessional orders, and if applicable, to a committee's resolution of appointment and any later amendments, and any other orders agreed to by the House subsequent to the committee's appointment.

In the case of a statutory committee, the constituting Act must be consulted. In some cases the Act makes provisions for terms of reference, powers and procedures. This is the case in respect of the Joint Committee on Public Works, the Joint Committee of Public Accounts and Audit, and the Joint Committee on Intelligence and Security. In some other cases, such as the Joint Committees on Corporations and Financial Services, Law Enforcement, and Law Enforcement Integrity, it is provided that matters relating to the powers and proceedings of the committee shall be determined by resolution of both Houses of the Parliament.[126] This approach may be seen as avoiding some of the practical and theoretical difficulties that could be associated with complex and detailed statutory provision for committees.

125 The situation prior to the amendment of standing orders on 3.12.1998 is covered in editions 1 to 3.

126 E.g. VP 1993–96/78–9 (13.5.1993), 131 (27.5.1993), 150 (17.8.1993), 901–2 (24.3.1994); VP 1998–2001/160–4 (3.12.1998); VP 2010–13/44–7 (29.9.2010).

Derivation and extent of investigatory powers

Some doubts have been expressed as to the precise extent of the investigatory powers which the Houses may exercise or delegate to committees. By virtue of section 49 of the Constitution the powers of the House and of committees to which it delegates these powers are those of the United Kingdom House of Commons at 1901. Based on this there could be a claim of extremely wide powers. In 1845 Lord Coleridge said that as the 'general inquisitors of the realm' the Commons could inquire into anything it wanted to. A corollary of this was the authority to compel the attendance of witnesses.[127] The Commons exercised these powers in aid of both its legislative responsibilities and of its responsibility as the 'Grand Inquest of the Nation'. There was no limit to the subject matters on which the Commons could legislate and as the 'Grand Inquest of the Nation' it considered itself entitled to advise or remonstrate with the Crown on all affairs of State and in regard to any grievance of the monarch's subjects. Thus, there was no practical limit to the subject matters into which the House of Commons could inquire at 1901.

In *R. v. Richards: ex parte Fitzpatrick and Browne* the High Court held in unequivocal terms that section 49 is incapable of a restricted meaning and that the House of Representatives, until such time as it declares otherwise, enjoys the full powers, privileges and immunities of the United Kingdom House of Commons.[128] If such is the case, either House of the Commonwealth Parliament, or its committees, could be said to have the power to conduct any inquiry into any matter in the public interest and to exercise, if necessary, compulsive powers to obtain evidence in any such inquiry.

On the other hand, there is the view that the compulsive investigatory powers which the House may delegate to its committees is limited to matters on which the Parliament may legislate. This view was argued on the basis of a judgment by the Judicial Committee of the Privy Council in 1914. It was held that the Commonwealth Parliament could not legislate to grant a royal commission, appointed by the Commonwealth Government, power to compel witnesses to attend and give evidence before it unless the royal commission's terms of reference were limited to matters on which the Parliament could legislate.[129] It has been suggested that neither House could achieve by resolution that which it could not achieve by statute and that consequently the limitations on the granting of compulsive powers to royal commissions must apply equally to the delegation of such powers to parliamentary committees.[130] However, there must be some doubt as to whether a court would find the so-called *Royal Commissions Case* relevant to the question of the powers of parliamentary committees, as that case was concerned with a different form of inquiring body and the exercise of a different head of constitutional power.[131]

Attorney-General Greenwood and Solicitor-General Ellicott did not accept that the House has unlimited power of inquiry:

> Although, for the time being, s. 49 of the Constitution has conferred on each House the powers of the Commons as at 1901, it does not, in our view, enlarge the functions which either House can exercise. In considering the effect of s. 49, it is important to bear in mind that there is a distinction between 'powers' and 'functions'. The section, as we construe it, is intended to enable the Commonwealth Parliament to declare what the powers, privileges and immunities of its Houses and their members

127 *Howard v. Gosset* (1845) 10 QB 359 at 379–80, quoted in PP 168 (1972) 3.

128 (1955) 92 CLR 157 at 164–70.

129 *A.G. (Commonwealth) v. Colonial Sugar Refining Company Ltd* (1914) AC 237.

130 Enid Campbell, *Parliamentary privilege in Australia*, 1966, pp. 163–4; *see also* G. Sawer, 'Like a host of archangels', in the *Canberra Times*, 7 April 1971.

131 The existence of doubt is acknowledged in D. C. Pearce, *Inquiries by Senate committees* (1971) 45 ALJ 659. *See also* Enid Campbell, *Parliamentary privilege,* Federation Press, 2003, pp. 153–5.

> and committees shall be for the purpose of enabling them to discharge the functions committed to them under the Constitution. What the Commons did as 'the Grand Inquest' was not done in aid of its legislative function but represented the exercise of an independent and separate function said to be as important as that which it exercised as part of the legislature. However, it would not, in our view, be proper to construe s. 49 as conferring such an important and independent function on the Australian Houses of Parliament. Not only is it unlikely that such a function would be left to implication and then only until Parliament provided otherwise but the exercise of such a function by the House of Representatives or the Senate would in some respects be inconsistent with the Constitution. For instance, the notion that either House could impeach a person for trial before the other is inconsistent with the notion that judicial power is to be exercised by the Courts as provided in Chapter III. Again, the Commons could as the Grand Inquest inquire into any matter or grievance. It would surely be inconsistent with the federal nature of our Constitution that a House of the Commonwealth Parliament could inquire into a grievance which a citizen had in relation to the execution of a law wholly within State competence.
>
> It is our view, therefore, that neither of the Houses of the Commonwealth Parliament has been vested with the function which the Commons exercised as the Grand Inquest of the Nation. This view was also expressed by Forster J. in *Attorney-General v. Macfarlane & Ors*.[132]

Nevertheless, the law officers differentiated between the virtually unlimited power of inquiry and the legal limitations of the inquiry power, which would arise only when it was sought to enforce that power, for example, by compelling persons to attend a parliamentary committee.[133] A similar view was taken by Fullagar J. in *Lockwood v. The Commonwealth*.[134]

Even though Greenwood and Ellicott stated that there are legal limits to the facts and matters into which the Houses can, by compulsion, conduct an inquiry, for practical purposes they also noted that these limits are extremely wide, as a consideration of the various heads of Commonwealth legislative power will quickly reveal.[135] They added that each House:

> . . . is entitled to investigate executive action for the purpose of determining whether to advise, censure or withdraw confidence. It would indeed be odd if a House could not inquire into the administration of a department of State by a Minister in order to judge his competence before determining whether to advise him, censure him or withdraw its confidence in him. Each House of the Commonwealth Parliament can, therefore, in our view, as a necessary consequence of the existence of responsible government, exercise investigatory powers through committees in order to exercise what might broadly be called an advisory function.[136]

A recognised authority on constitutional law, Professor Geoffrey Lindell, has observed that, even if the power to establish parliamentary committees is federally limited, two factors would lessen the practical significance of such a limitation: the limitation may not come into play unless a committee was armed with powers to compel the attendance of witnesses and the production of documents, and the difficulty of establishing that a matter may never be relevant to the Commonwealth's legislative powers.[137]

It may be a very long time before the courts make any authoritative judgment on the limits on the Houses in these matters. First, committees rarely use their compulsive powers but rather rely on voluntary assistance and co-operation. Secondly, political realities, conventions and courtesies arising from the federal framework of the Constitution are likely to continue to inhibit the House and its committees from pressing

132 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 6–7.

133 *See also* Enid Campbell, *Parliamentary privilege,* 2003, p. 154.

134 (1954) 90 CLR 177 at 182.

135 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 9.

136 PP 168 (1972) 7.

137 Geoffrey Lindell, 'Parliamentary committees and government witnesses', *Melbourne University Law Review*, vol. 20, 1995, pp. 384–91, at 388.

hard for information on matters wholly, or even largely, within the constitutional jurisdiction of the States (*see* 'Evidence from State public servants and State Members' in the Chapter on 'Committee inquiries'). Thirdly, the courts have been reluctant to intervene in the affairs of the Parliament, particularly with respect to parliamentary privilege and the Houses' powers to investigate and deal with alleged contempt, which underpin the Houses' powers to compel the giving of evidence. (However, punitive action under the *Parliamentary Privileges Act 1987* may involve a court of competent jurisdiction.)

Delegation of investigatory powers

Without authority from the House a committee has no power to compel witnesses to give oral or documentary evidence. The power to call witnesses and require that documents be produced is now given to all House committees by standing order 236,[138] but may be limited by another standing order (as in the case of the Committee of Privileges and Members' Interests) or by resolution.

Special provisions have sometimes been made. When first appointing the Joint Committee on Foreign Affairs in 1952, the Houses imposed an unusual qualification on the committee's power to send for persons, papers and records in the resolution:

> . . . the Committee shall have no power to send for persons, papers or records without the concurrence of the Minister for External Affairs and all evidence submitted to the Committee shall be regarded as confidential to the Committee . . .[139]

The Committee of Privileges and Members' Interests has power to call for witnesses and documents, but when considering a matter concerning the registration or declaration of Members' interests it must not exercise that power, or undertake an investigation of a person's private interests, unless the action is approved by not less than six members of the committee other than the chair.[140] The Parliamentary Joint Committee on Intelligence and Security has, by virtue of the Act establishing the committee, some limitations in respect of the gathering and use of evidence.

A committee would have no authority to consider or use the evidence and records of a similar committee appointed in previous Parliaments or sessions without specific authority in a constituting Act or granted by the House. Standing authority in relation to House committees is now granted by standing order 237,[141] but previously was granted to committees on an individual basis by the sessional or standing orders or resolution of appointment.

A committee may only exercise compulsive powers in relation to the matters which the House has delegated to the committee to investigate by way of its terms of reference.

Powers of joint committees

Doubts have been expressed as to whether joint committees are invested with the same powers, privileges and immunities as the committees of the individual Houses.[142] These doubts have been expressed because section 49 of the Constitution invests the two Houses and the committees of each House with the powers, privileges and immunities of

138 Prior to 3.12.1998 this power was granted to committees individually.

139 VP 1951–53/129 (17.10.1951). In later Parliaments the restrictions on the committee's power to call for evidence were gradually eased, VP 1957–58/13–4 (20.3.1957); VP 1959–60/25–6 (25.2.1959); VP 1973–74/52–3 (15.3.1973). The powers of the modern Joint Standing Committee on Foreign Affairs, Defence and Trade are unqualified in this respect, VP 1998–2001/168 (3.12.1998).

140 S.O. 216(c).

141 Since 3.12.98.

142 *And see Odgers*, 14th edn, pp. 489–92; *but see also* Geoffrey Lindell, 'Parliamentary inquiries and government witnesses', *Melbourne University Law Review*, vol. 20, 1995, pp. 392–3, expressing the view that such doubts are not well founded.

the United Kingdom House of Commons and its committees at the time of Federation. No express mention is made of joint committees. If joint committees were not covered by section 49, the implications could have far-reaching and significant effects for those without relevant statutory provisions. However, it is relevant that section 3 of the *Parliamentary Privileges Act 1987* provides that, in the Act, 'committee' means a committee of a House or of both Houses (and subcommittees).

In response to a request by the Joint Committee on War Expenditure in 1941, the Solicitor-General advised that in his opinion absolute privilege attached to evidence given before a joint committee just as it did to evidence given before a select committee of one House. He also gave the opinion that a joint committee authorised to send for persons, papers and records had power to summon witnesses. He suggested that it was doubtful, however, whether a joint committee had the power to administer oaths to witnesses.[143]

Statutory secrecy provisions

A number of provisions in Commonwealth Acts prohibit the disclosure of certain information and create criminal offences for disclosure in contravention of the provisions. Examples are to be found in the Income Tax Assessment Act and the Family Law Act. The application of such provisions could become an issue in respect of either House directly, but is more likely to arise in respect of committee inquiries, and did so in 1990 and 1991. Different views were expressed as to whether such provisions prevented the provision of such information to a committee, but in August 1991 the Solicitor-General advised as follows:

> Although express words are not required, a sufficiently clear intention that the provision is a declaration under section 49 must be discernible. Accordingly, a general and almost unqualified prohibition on disclosure is, in my view, insufficient to embrace disclosure to Committees. The nature of section 49 requires something more specific.[144]

(The advice went on to state that certain provisions in the National Crime Authority Act which limited activities of the Joint Committee on the National Crime Authority were sufficient to fetter the otherwise wide powers of the committee.)

It is also to be noted that should information prohibited from disclosure under a general secrecy provision be disclosed in a submission received by a committee or in oral evidence to a committee, the law of parliamentary privilege would effectively block prosecution because the disclosure would have occurred as part of 'proceedings in Parliament'.[145]

SUBCOMMITTEES

Subcommittees may be appointed to:

- undertake ad hoc tasks such as taking evidence or conducting inspections on a particular day;
- investigate and report on a specified aspect of a broader inquiry; or
- conduct a full scale inquiry.

143 Opinion of Solicitor-General, dated 8 August 1941.

144 Opinion of Solicitor-General Griffith, 12 August 1991. This view was consistent with a joint opinion given in 1985 by the Attorney-General and the Solicitor-General, *but see* earlier opinion of Solicitor-General Griffith, 20 August 1990, and account of different views outlined in *Odgers*, 14th edn, pp. 68–73. In a 1984 report the House of Lords Committee of Privileges published an opinion by three Law Lords to the effect that general legislative provisions override previously existing parliamentary privileges (HL 254 (1984)). *And see* Geoffrey Lindell, 'Parliamentary inquiries and government witnesses', *Melbourne University Law Review*, vol. 20, 1995, pp. 408–9.

145 *Parliamentary Privileges Act 1987*, s. 16.

A committee cannot delegate any of its powers or functions to a subcommittee unless so authorised by the House. Without this authority committees may only appoint subcommittees for purposes which do not constitute a delegation of authority, such as the drafting of reports.[146] Standing authorisation for committees of the House to appoint subcommittees is given by standing order 234, which provides that a committee may appoint subcommittees of three or more of its members and may refer to a subcommittee any matter which the committee may examine.[147] It is considered that a committee is responsible for the activities of its subcommittee(s) and that a subcommittee is accountable to its committee.

The chair of a subcommittee is appointed by its parent committee, and has a casting vote only. If the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present elect another member of the subcommittee to act as chair at that meeting. The quorum of a subcommittee is two members of the subcommittee.[148] Members of the committee who are not members of a subcommittee may participate in the public proceedings of the subcommittee but may not vote, move any motion or be counted for the purpose of a quorum.[149]

The following powers and authorisations granted to committees by the standing orders are also expressly granted to subcommittees:

- to call witnesses and require that documents be produced (S.O. 236);
- to consider and make use of the evidence and records of similar committees appointed during previous Parliaments (S.O. 237);
- to authorise publication of any evidence given before it or any document presented to it (S.O. 242(a));
- to conduct proceedings using approved means (S.O. 235(a));
- to conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting (S.O. 235(c)).

Section 3 of the Parliamentary Privileges Act provides that, in the Act, a reference to a 'committee' includes a subcommittee.

A subcommittee is required to keep minutes of each meeting[150] and submit them with its report to the committee by which it was appointed. A subcommittee may not report directly to the House but only to its parent committee[151] which in turn reports to the House in terms of its reference. This requirement applies to matters which may arise in the course of an inquiry—for example, unauthorised disclosure of evidence or possible intimidation of a witness[152]—as well as to reports.

In general practice reports by subcommittees are prepared and considered in the same manner as committee reports. The chair of the subcommittee presents the report and minutes of the subcommittee to the full committee. If the report is for presentation in the House, the committee then considers the report, makes any amendments it requires and resolves that the report, as amended, be the report of the committee.

There is no provision for a protest or dissenting report to be added to a subcommittee report. Committee practice is that formal protest or dissent is recorded only at the

146 *And see May*, 24th edn, p. 827.
147 Prior to 3.12.1998 such authorisation was granted to individual committees by standing order or resolution of appointment.
148 Because of the lower quorum requirement, a subcommittee is sometimes appointed temporarily to conduct a particular public hearing if it is expected that a quorum of members of the full committee will be unable to attend.
149 S.O. 234(d).
150 S.O. 239(a).
151 *And see May*, 24th edn, p. 828.
152 H.R. Deb. (9.1.2000) 22635–6.

committee consideration stage. A member of a subcommittee, or any other committee member, can disagree to a subcommittee report or portions of it when the committee is considering the matter and this will be recorded in the committee's minutes of proceedings.

In 1975 the Joint Committee on the Parliamentary Committee System presented a lengthy report of its subcommittee, in effect as an appendix to the committee's two-page report, without expressing any view on the subcommittee's conclusions and recommendations. The purpose was to seek comment on the report for the consideration of the full committee.[153] A member of the committee presented a dissenting report in which he stated:

> It is my opinion, and I suspect that it is the opinion shared by many members of the Committee, that when a subcommittee is sent to perform a task it should not be obliged to report as an isolated unit; rather it should present its findings to its parent body, have them ratified and then present them to the Parliament.[154]

On other occasions, when inquiries have not been reported on at the dissolution of the House, in the new Parliament the opportunity has sometimes been taken for the new committee, or another appropriate committee, to have the inquiry completed by use of a subcommittee. It has been pointed out that while, for the purpose of enabling a report to go forward, a committee may adopt a subcommittee's report in such circumstances, the report does not necessarily convey the views of committee members who did not serve on the subcommittee.[155]

MEETING PROCEDURES

The following sections describe procedures applying to committees of the House, although particular considerations applying to joint committees are also covered. It should be noted that, by convention, joint committees have followed established Senate committee practices and procedures to the extent that these differ from those of the House.[156] Senate committee procedures are outlined in *Odgers*. Procedures at committee hearings are covered in the Chapter on 'Committee inquiries'.

First meeting

The first meeting cannot be held until the Members have been formally appointed by the House.[157] If it is left to a committee to elect its own chair, the committee secretary must call the first meeting. It is the secretary's responsibility to inform the members in writing of the time and place of the first meeting. If the chair is appointed, for example by the Prime Minister, it is technically the chair's responsibility to call the first meeting.

The first item on the agenda is the formal announcement by the committee secretary of the formation of a duly constituted committee and of its membership, and of the appointment of a chair in accordance with SO 232(a). If a chair has not been appointed, the committee secretary conducts the election of the chair, as described at page 660.

153 PP 275 (1975) xi.

154 PP 275 (1975) 95–7.

155 E.g. Standing Committee on Road Safety, *Passenger motor vehicle safety,* PP 156 (1976) xii. Standing Committee on Transport, Communications and Infrastructure, *Constructing and restructuring Australia's public infrastructure*, PP 284 (1987) x.

156 *See* page 648.

157 The Selection Committee was able to be constituted in the 43rd Parliament despite a vacancy in its membership, after the House suspended standing orders to provide for its first meeting, VP 2010–13/68 (30.9.2010)—*and see* page 660. In the following Parliament the equivalent motion enabled the initial business of the Selection Committee to be determined by the Speaker, Chief Government Whip and Chief Opposition Whip in the absence of a fully constituted committee, VP 2013–16/82 (14.11.13).

After the announcement of their appointment, or their election, the chair then assumes control of the meeting and may announce the appointment, or conduct the election, of the deputy chair if required. The remainder of the agenda is at the committee's discretion.

Time and place of meeting

A committee or a subcommittee may conduct proceedings at any time or place as it sees fit, and whether or not the House is sitting.[158] Some committees have regular meeting times, but others may meet only as required by the work at hand. Formal notice of each meeting is issued by the committee secretary. The time and place of the next meeting is routinely included on the agenda for each meeting.

Committees normally adjourn to an agreed date or to a date to be fixed by the chair or presiding member. If the committee adjourns to a specific date, and a change in the date is subsequently found to be necessary, it is incumbent upon the chair to ensure that members are notified and given reasonable notice of the new date which is fixed by the chair. If a meeting is expected to be the committee's last, it adjourns 'sine die'.[159]

If there is disagreement within a committee concerning the appropriateness of adjourning at a particular time, the matter should be determined by resolution of the committee. However, in circumstances of grave disorder, the chair may suspend or adjourn the meeting without putting a question. These practices reflect those of the House itself.[160]

The following provisions of Senate standing order 30 for the convening of meetings apply to joint committees:

> Notice of meetings subsequent to the first meeting shall be given by the secretary attending the committee (*a*) pursuant to resolution of the committee, (*b*) on instruction from the Chair or (*c*) upon a request by a quorum of members of the committee.

Meetings during sittings of the House

A House committee may sit during any sittings of the House.[161] Committees of the House make much use of meetings during sittings of the House (although meetings may be interrupted from time to time by calls for divisions or quorums in the House).

Meetings of joint committees during sittings of the Senate

Senate standing order 33, providing for circumstances in which Senate committees may meet during sittings of the Senate, also expressed to apply to joint committees, states:

> (1) A committee of the Senate and a joint committee of both Houses of the Parliament may meet during sittings of the Senate for the purpose of deliberating in private session, but shall not make a decision at such a meeting unless:
>
> (a) all members of the committee are present; or
>
> (b) a member appointed to the committee on the nomination of the Leader of the Government in the Senate and a member appointed to the committee on the nomination of the Leader of the Opposition in the Senate are present, and the decision is agreed to unanimously by the members present.
>
> (2) The restrictions on meetings of committees contained in paragraph (1) do not apply after the question for the adjournment of the Senate has been proposed by the President at the time provided on any day.
>
> (3) A committee shall not otherwise meet during sittings of the Senate except by order of the Senate.

158 S.O. 235(c).
159 That is, without fixing a day for future action or meeting.
160 S.O. 95.
161 S.O. 235(c).

(4) Proceedings of a committee at a meeting contrary to this standing order shall be void.

(5) For the purpose of paragraph (3), a committee that seeks to meet contrary to this standing order may deliver a notice in writing to the Clerk, signed by the chair of the committee, setting out the particulars of the meeting proposed to be held. Immediately after prayers on any day, the Clerk shall read a list of such proposals and they shall be taken to be approved accordingly but, at the request of any senator, the question for authorisation of a particular meeting contrary to this standing order shall be put to the Senate for determination without amendment or debate.

Until 1987 the Senate imposed a general prohibition on committees meeting during its sittings (the view being held that the primary duty of Senators was to the plenary), although leave to sit during sittings of the Senate had been granted on motion.[162] The attitude was taken that leave was required only of the Senate because House of Representatives committees are permitted to meet during sittings of the House. Occasionally resolutions of appointment have authorised joint committees to sit during the sittings of either House of the Parliament.[163]

The Joint Committee of Public Accounts has reported on the issue of whether it was able to sit while the Senate was sitting, and maintained that it had a statutory right to meet contrary to the provisions of Senate standing orders and the wish of the Senate.[164] However, more recent practice has been for the committee to seek the permission of the Senate to take evidence while the Senate is sitting.[165]

Meetings outside Parliament House

Standing order 235(c) provides standing authorisation for committees of the House to conduct proceedings 'at any place'. Without such authorisation, in the past it was considered that a committee could only meet outside Parliament House, Canberra, by special order of the House. In 1968 two such orders had to be made by both Houses in relation to the Joint Committee on the Australian Capital Territory whose resolution of appointment did not contain this authorisation. Each motion passed by the Houses limited the authorisation to the committee's current inquiry.[166] The committee's resolution of appointment was amended soon afterwards to avoid the need for these cumbersome procedures.[167]

Meetings overseas

On occasion committees or their subcommittees have been permitted to travel overseas in relation to their inquiries. The main principle to be considered, in relation to a committee travelling overseas, is that the House, and therefore its committees, has no jurisdiction outside Australia, and in visiting other countries a committee cannot formally meet or formally take evidence. Where approval has been given, it has been considered proper for members of a committee, as a group, to make inquiries and conduct informal discussions abroad and to have regard to the results of those inquiries and discussions, provided they do not purport to exercise the powers delegated by the House.

It would appear that provided a committee did not attempt to exercise its powers to administer oaths, compel the giving of evidence, and so on, it could sit as a committee

162 E.g. J 1974–75/655 (14.5.1975).

163 Joint Committee on Profits, VP 1940–43/158–9, 162 (3.7.1941); Joint Committee on Constitutional Review, VP 1956–57/168–9 (24.5.1956), 171 (29.5.1956) (the name of the committee was altered from Joint Committee on Constitutional Change *see* PP 50 (1957–58) 4).

164 Reports 264 and 292 of the Joint Committee of Public Accounts, PP 75 (1987) and PP 317 (1988). *See also* reports of the Senate Standing Orders Committee, PP 117 (1983) and PP 169 (1987); and J 1987–90/1050 (1.11.1988).

165 *See also Odgers*, 14th edn, pp. 527–9.

166 VP 1968–69/44 (30.4.1968), 53 (2.5.1968), 329 (27.11.1968), 339 (28.11.1968).

167 VP 1968–69/344 (25.2.1969), 356 (26.2.1969).

overseas and, with the consent of witnesses, have proceedings transcribed and published.[168] As proceedings would almost certainly not be privileged (in terms of the law of the country concerned), witnesses would need to be informed accordingly. In addition, committees would be unable to have orders enforced and to protect witnesses against intimidation or penalty. It would seem improper for a committee to sit, as a committee, in a foreign country without first seeking the consent of that country's government. Committees which are allowed to travel overseas are therefore more likely to conduct inspections and hold meetings and discussions of an informal nature.

Subject to the provision of funding,[169] the Speaker has supported travel to regional countries, such as New Zealand, Papua New Guinea, Indonesia and Thailand, and, with parliamentary funding, South America. These visits (apart from the annual committee visits as part of the Parliament's official overseas delegation program—*see below*) have been directly related to inquiries by the Joint Standing Committee on Foreign Affairs, Defence and Trade. Generally it has not been considered appropriate for other committees to travel internationally as part of an inquiry.[170]

As part of the Parliament's official overseas delegation program, there are three annual overseas committee visits: to New Zealand and the Pacific; to the People's Republic of China; and to two countries in Asia.[171] Each of the visits is undertaken by a House, Senate, or joint committee in rotation. In selecting committees regard is given to the reason for the travel and to how the committees' work would benefit.

In 2006 members of the Standing Committee on Procedure travelled together to various overseas Parliaments, using their individual study leave entitlements, to study developments in parliamentary practice and procedure.[172]

House committees have taken evidence in Australian external territories on several occasions, sometimes on oath.

Meetings by means of video or teleconference

Committees are authorised to use electronic communication devices in order to take oral evidence from a witness who is not in attendance at a meeting of the committee, and to enable committee members not in attendance to participate in a public or private meeting. A quorum of members in one physical location is not necessary. Standing order 235(b) provides:

> A committee may conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used, committee members and witnesses must be able to speak to and hear each other at the same time regardless of location. A committee may resolve for a subcommittee to use audio visual or audio links.

Teleconferences are regularly held for private meetings, especially for machinery matters or for report consideration. In 2010 the House suspended standing orders to enable the first meeting of the Selection Committee of the 43rd Parliament to be held by teleconference.[173]

168 *And see* Sir Barnett Cocks, 'Parliament goes abroad', *Parliamentarian,* LII, no. 1, 1971, p. 10. For UK House of Commons practice *see May*, 24th edn, pp. 815–6. *And see Odgers*, 6th edn, p. 756–7.

169 The Presiding Officers have the authority to approve overseas travel by members of parliamentary delegations under the Parliamentary Business Resources Regulations 2017, ss. 55–7.

170 However, in recent years several committees have taken evidence from witnesses in other countries by video or teleconference.

171 An overseas committee exchange with New Zealand has been an ongoing part of the delegations program for many years; in 2014 the Presiding Officers agreed to also include a visit to one other Pacific region country. The visit to countries in Asia has been in place since 2009 and the visit to China since 2011.

172 Standing Committee on Procedure, *Learning from other Parliaments—Study Program 2006*, PP 179 (2006).

173 VP 2010–13/68 (30.9.2010).

Quorum

The proceedings of a committee which meets in public or in private without a quorum are invalid. Consequently, decisions taken are not binding and, more seriously, words spoken by members and witnesses are not assumed to be privileged. Any order by committee members has no legal authority in this circumstance.

In the absence of a quorum at the commencement of a meeting the following procedures provided for in the standing orders are followed:

> If a quorum is not present within 15 minutes of the time appointed for the meeting of a committee, the members present may retire, and their names shall be entered in the minutes. The secretary of the committee shall then notify members of the next meeting.[174]

The reference to 'entered in the minutes' is in practice taken to mean the committee secretary's rough minutes. If, after a committee has proceeded to business, the number of members present falls below a quorum, the chair must suspend the proceedings until a quorum is present or adjourn the committee.[175] This requirement is applied with common sense, and a meeting is not suspended if the quorum lapses when members leave the room for short periods. However, no vote can be taken during these periods.

The quorum of a committee of the House is three[176] (unless otherwise ordered). The standing orders are silent on the quorum for meetings at which a committee of the House confers (sits jointly) with a similar committee of the Senate. In the absence of any provision, the House and Publications Committees, when conferring, have fixed their quorums at five, provided that each House is represented in the quorum.

The quorum of a subcommittee of a House committee is two.[177]

Quorum—joint committees

The House may set the quorum of its members required for a sitting of a joint committee. A joint committee may set its own quorum, subject to any requirement of the House[178] or statutory requirement. Normally the quorum is stated in the resolution of appointment and no specific provision is made as to the number of Senators or Members, respectively, required to form a quorum. The effect has been that a quorum may be maintained by Members of one House only. This has not prevented some joint committees, such as the Joint Committee on Publications, from maintaining an informal quorum arrangement where the committee agrees that it is not properly constituted unless there is at least one representative from each House.

Quorum requirements may vary between committees and for the same committee in different Parliaments. In the 37th Parliament the Joint Standing Committee on Foreign Affairs, Defence and Trade, with 32 members, had a quorum requirement of 10, while the joint standing committees on Electoral Matters and Migration, each with a membership of 10, had quorum requirements of four.[179] In later Parliaments these committees, with the same number of members as before, had quorum requirements of six, three and three, respectively. In the later Parliaments the quorum provisions also included a requirement for the presence of one government and one non-government

174 S.O. 233(b).
175 S.O. 233(a).
176 S.O. 233(a).
177 S.O. 234(c).
178 S.O. 225. The Senate could also set such a requirement by resolution or by standing order. The last occasion the Houses fixed the quorum of their respective Members was for the Joint Select Committee of Public Accounts for which the quorum included at least one Member of each House, VP 1932–34/118–9 (11.3.1932); J 1932–34/45, 46 (11.3.1932); *see also* Joint Select Committee on the Moving-Picture Industry, VP 1926–28/294 (3.3.1927), 303 (11.3.1927).
179 VP 1993–96/81–3 (13.5.1993).

member (from either House) at deliberative meetings.[180] The resolution of appointment of the Joint Standing Committee on the New Parliament House provided that five members of the committee, one of whom was either the Speaker or the President, constituted a quorum of the committee.[181] The Joint Standing Committee on the National Capital and External Territories has had a quorum of three, one of whom must be the Deputy Speaker or the Deputy President when matters affecting the parliamentary zone are under consideration.[182]

Senate practice is that a committee meeting may continue without reference to the number of members present until a committee member draws attention to the lack of a quorum, in which case the proceedings are suspended until a quorum is present. If a quorum is not present after 15 minutes the meeting must be adjourned.[183]

Motions and voting

The standing orders are silent on the moving of motions and amendments and voting in committees, except to state that the chair has a casting vote only[184] and to provide for voting during the consideration of draft reports.[185] However, committees have regard to the practice of the House where this is applicable to their proceedings; for example, the same motion rule has been applied.[186]

Following the procedure of the former committee of the whole, motions and amendments do not require a seconder. The one exception is the nomination of a member for election as chair (*see* page 660). As well as amendments being moved, an amendment may be moved to an amendment.[187] As in the House, a division is not proceeded with unless more than one member has called for a division. In such instances the member may inform the chair that the member wishes his or her dissent to be recorded in the minutes. This request is automatically granted.[188]

Questions are determined by a majority of votes. As in the House, pairing arrangements have operated.[189] The chair of a House of Representatives committee exercises a casting vote only.[190] Supplementary members may not vote.[191]

Voting—joint committees

The voting rights of chairs of joint committees can vary. It is common to include in the resolution of appointment of joint committees the provision that 'In the event of an equality in voting, the chair, or the deputy chair when acting as chair, shall have a casting vote'.[192] This is in effect a second vote which is in addition to the chair's deliberative vote. If special provisions are not made for a casting vote, the chair of a joint committee

180 E.g. VP 1996–98/227–35 (30.5.1996); VP 1998–2001/164–74 (3.12.1998).
181 VP 1987–90/39–40 (17.9.1987).
182 VP 2013–16/117–8 (21.11.2013).
183 Senate S.O. 29(2).
184 S.O. 232(a). For example of chair's casting vote being used *see* Selection Committee, minutes, 1.6.2011. In the 43rd Parliament, in exercising a casting vote the Selection Committee chair (the Speaker) was guided by the principles followed by the Speaker in exercising a casting vote in the House. However, this committee is a special case because of its relationship with proceedings in the House, and other committee chairs have not necessarily felt so constrained.
185 S.O. 244(d).
186 E.g. Selection Committee, minutes, 1.6.2011. In this instance the chair (the Speaker) ruled that a proposal in the same terms as one negatived the previous week was not in order as it contravened standing order 114.
187 E.g. Committee of Privileges, minutes, 21.12.1993, PP 78 (1994).
188 S.O. 126.
189 E.g. Selection Committee, minutes, 1.6.2011.
190 S.O. 232(a). For an exception *see* Select Committee on Aircraft Noise where the chair had a deliberative vote and, in the event of an equality of votes, also had a casting vote, VP 1969–70/15–7 (25.11.1969).
191 S.O. 215(d).
192 VP 1996–98/126–35 (21.5.1996); VP 1998–2001/171 (3.12.1998).

has a deliberative vote only in accordance with Senate standing orders.[193] Thus, when the votes are equal the question will pass in the negative. This rule is applied to the relatively few joint committees whose resolutions of appointment do not determine the chair's voting powers.[194] The resolution of appointment of the Joint Committee on Foreign Affairs, Defence and Trade in the 37th Parliament did not have a provision covering an equality of voting, hence the provision in the Senate standing order applied.[195]

The Joint Standing Committee on the New Parliament House had joint chairs. Its resolution of appointment provided that in matters of procedure, each of the chairs, whether or not occupying the chair, had a deliberative vote and, in the event of an equality of voting, the chair occupying the chair had a casting vote. In other matters, each of the chairs, whether or not occupying the chair, had a deliberative vote only.[196]

Minutes of proceedings

The minutes of a committee record the names of members attending each meeting, every motion or amendment moved in the committee and the name of the mover, and the names of members voting in a division, indicating on which side of the question they have each voted. The minutes also record the time, date and place of each meeting, the names of any witnesses examined, the documents formally received and any action taken in relation to them, and the time, date and place of the next proposed meeting. The attendance of specialist advisers may also be recorded.

As far as possible the style of committee minutes conforms to the style of the Votes and Proceedings of the House. They do not summarise deliberations but record matters of fact and any resolutions resulting from the committee's deliberations.

The chair confirms the minutes of a preceding meeting by signing them after the committee has adopted them and agreed to any necessary amendments. The committee secretary may certify as correct the unconfirmed minutes of a committee's final meeting.

Minutes are required to be presented to the House with the relevant report.[197] If a committee is conducting more than one inquiry, extracts from its minutes relating only to the inquiry on which it is reporting should be presented.

If the minutes show disagreement or division on the content of a report, there are advantages in having them printed as an appendix to the report. Publication of minutes is one method of drawing attention to dissent, and may overcome the need for a separate dissenting report. Some reports by the Committee of Privileges and the report by the Select Committee on Pharmaceutical Benefits have exemplified this approach.[198]

Minutes, like all documents presented to the House, are authorised for publication once they are presented.[199] Transcripts of evidence and copies of submissions presented with the minutes are subject to the same provisions. Therefore a committee should not present evidence which it does not want to be made public.

193 Senate S.O. 31.

194 Joint Committee on the Australian Capital Territory, VP 1980–83/54–5 (3.12.1980), 69 (4.12.1980).

195 VP 1993–96/82 (13.5.1993). In later Parliaments the resolution did so provide, e.g. VP 1996–98/127 (21.5.1996); VP 1998–2001/167 (3.12.1998); VP 2010–13/51 (29.9.2010); VP 2013–16/115 (21.11.2013).

196 VP 1987–90/39–40 (17.9.1987).

197 S.O. 247(a).

198 Select Committee on Pharmaceutical Benefits, *Report,* PP 73 (1972).

199 S.O. 203. *See* Ch. on 'Documents'.

Presence at meetings of Members who are not members of the committee

Other Members, who are not members of the committee, may be present when a committee or subcommittee is examining a witness, or gathering information in other proceedings. Other Members must leave when the committee or subcommittee is deliberating or hearing witnesses in private, or if the committee or subcommittee resolves that they leave.[200] When present at a hearing the Member cannot put questions to witnesses or take any other part in the formal proceedings unless authorised by a resolution of the committee. These restrictions can also be removed by a provision in the committee's resolution of appointment or by special order of the House. The relevant Senate standing order relating to its legislative and general purpose standing committees allows Senators to be nominated as 'participating members' of committees, although while such members have all the rights of committee members and may participate in the hearing of evidence and deliberations, they may not vote on any question before the committee.[201] Resolutions of appointment of joint committees have also provided for participating members.[202]

A Senator appointed to the Joint Committee of Public Accounts and Audit with effect from a future date, was permitted by resolution of the committee to attend and participate in a public hearing held prior to the effective date of his appointment, but not counted for a quorum or vote.[203]

Standing order 215(d) allows a general purpose standing committee to be supplemented by up to four additional members for a particular inquiry, with a maximum of two extra government members and two extra opposition or non-aligned members. The supplementary members have the same participatory rights as other members but may not vote. In addition, when a committee is considering a bill referred to it under the provisions of standing order 143, one or more members of the committee may be replaced by other Members.[204] In this case, however, the Members in question become full members of the committees for the purposes of those inquiries, and are not to be regarded as 'observers' or 'participating Members'.

Visitors

Standing order 240 provides:

(a) A committee or subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.

(b) All visitors must leave if:
  (i) the Chair asks them to;
  (ii) the committee or subcommittee resolves that they leave; or
  (iii)the committee or subcommittee is deliberating or hearing witnesses in private.

Committee members' personal staff are regarded as visitors for the purposes of this standing order and are not entitled to attend private meetings of a committee. In 1976 the Speaker wrote to all chairs of committees discouraging the attendance of members' staff at other than public meetings of a committee or at committee inspections. The Speaker indicated that the provisions of the standing orders concerning the confidentiality of committee proceedings meant that no person, other than a member of a committee or an

200 S.O. 241.
201 Senate S.O. 25(7) (a)–(c).
202 E.g. VP 2010–13/52 (29.9.2010), 372 1.3.2011), 496–7 (11.5.2011). First Member of the House so appointed, VP 2010–13/481 (10.5.2011).
203 Senator Feeney appointed with effect from 26 August 2008; public hearing 21–22 August.
204 S.O. 229(c).

employee of the House, could be involved in committee proceedings which are not open to the public. Although a nominated member of the personal staff of a committee chair may be entitled to receive travel allowance to accompany the chair on committee business, this does not empower the staff member to attend any but public meetings of the committee.

In the 44th Parliament the House Liaison Committee of Chairs and Deputy Chairs resolved to support a practice whereby non-members do not attend private committee meetings, and briefings and inspections, unless they are expressly invited witnesses or experts directly assisting the committee with its work. The Liaison Committee also required a resolution by a committee if it was necessary for non-members to attend a private committee meeting.

Senate standing order 36, which is relevant to joint committees, states that persons other than members and officers of a committee may attend a public meeting of a committee, but such persons shall not attend a private meeting except by express invitation of the committee and they must be excluded when the committee is deliberating.

Disorder

Disorderly or disrespectful conduct by visitors, including witnesses, during a public or private meeting of a committee may be considered a contempt (*but see* Chapter on 'Parliamentary privilege'). In this regard a Member who is not a member of the committee is on the same footing as a visitor. Examples of disorderly or disrespectful conduct could include: interrupting or disturbing committee proceedings; displaying banners or placards in the room or otherwise drawing attention away from formal proceedings; remaining after visitors have been ordered to leave; appearing before a committee in a state of intoxication; or using offensive language before a committee.[205]

The manner in which a committee chooses to deal with disorderly behaviour will obviously depend upon the circumstances. If a simple direction is insufficient to restore order, the committee may order visitors to leave or suspend its proceedings. The assistance of the Serjeant-at-Arms and staff from the Serjeant-at-Arms' office may have to be sought. On occasion the Serjeant-at-Arms has arranged for police to maintain security. If the committee is meeting outside Parliament House, it may have to adjourn its proceedings.

At a public hearing on 3 December 1981, the proceedings of the Public Works Committee were continually interrupted by interjections by members of the public attending the meeting. The chair made a plea to those persons interjecting to indicate in writing the opinions they wished to express and then suspended the meeting for lunch. During the lunch break the chair gave a radio interview where he indicated that if the interjections continued the meeting would continue in private. There were few interjections at the resumed meeting.

A committee may not punish a person considered guilty of contempt; it may only draw the circumstances to the attention of the House by special report or a statement by the chair. The House may then deal with the matter as it thinks fit.[206]

205 *And see May*, 24th edn, pp. 251–2.

206 *And see* p. 604 of the second edition for details of a case referred by the UK House of Commons to its Committee of Privileges.

Confidentiality of committee records

The confidentiality made possible by a committee's power to meet in private is bolstered by the provision in the standing orders that a committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House; or authorised by the House, the committee or the subcommittee.[207] This provision covers private committee deliberations, the minutes which record them and committee files. Any unauthorised breach of this confidentiality may be dealt with by the House as a contempt.[208]

The files and other records of a committee are confidential to it and may be made available to others only by order of the committee, or of the House itself or, in the limited circumstances noted below, by authority of the Speaker. Standing order 237 provides that a committee or a subcommittee may consider and make use of the evidence and records of similar committees appointed during previous Parliaments.

The Speaker has the authority to permit any person to examine and copy committee documents which have not already been published by the House or its committees and which have been in the custody of the House for at least 10 years. A 30 year rule applies to confidential documents or private evidence.[209]

COMMITTEE ADMINISTRATION — STAFF AND ADVISERS

Committee secretariats have four basic functions:

- advising on committee procedure and practice;
- providing administrative and clerical support;
- undertaking research and analytical work related to the terms of reference and content of particular inquiries, and
- preparing an initial draft of the chair's report.[210]

The Department of the House of Representatives provides secretariats for committees of the House, and some joint committees. The standing committees concerned with domestic or internal matters are usually staffed on a part-time basis by staff with other duties.

Under the Parliamentary Services Act the Clerk of the House has the duties and powers of an employer in relation to departmental employees. Within the framework set by the Act committees are supported by small groups of employees. The detailed arrangements for secretariat support provided to investigatory committees serviced by the Department vary. A typical arrangement might comprise a committee secretary, perhaps two or more project/research officers (depending on the number of committees to be supported) and one or more support staff. Committee secretariats are usually required to support more than one committee. Allocation of additional staffing depends on the availability of funds and personnel, each committee's terms of reference, the number of inquiries a committee is conducting, the nature of its operations, its reporting targets and the incidence of subcommittee operations.

207 S.O. 242(b) *and see also* the *Parliamentary Privileges Act 1987*, s. 13. S.O. 242(b) and resolutions of appointment authorise committees to publish any evidence given before them and any document presented to them.

208 Subject to the provisions of the *Parliamentary Privileges Act 1987*. (*See also* Ch. on 'Parliamentary privilege', *and see May*, 24th edn, pp. 259–60.)

209 Resolution of 11 October 1984, VP 1983–84/988–9 (11.10.1984). (*See* 'Disclosure of private or in camera evidence' in Chapter on 'Committee inquiries'.)

210 S.O. 244(a).

Committees may be assisted by specialist advisers who are remunerated at agreed rates and receive reimbursement for travelling and incidental expenses. Most specialist advisers are engaged only for the duration of a particular inquiry or even to perform a specific task of limited scope and they normally work on a part-time basis as required. Proposals to engage and pay expert advisers must be submitted to a House employee authorised to approve such expenditure, who may approve them subject to the availability of funds. Many committees have employed expert advisers from time to time. Staff from the public service or the defence force may also be seconded to the Department on a full-time or part-time basis to provide specialist advice to committees and this form of support is frequently utilised.

In 1984 the Senate Select Committee on the Conduct of a Judge and Senate Select Committee on Allegations Concerning a Judge appointed legal counsel to advise them. In the latter case the resolution of appointment provided that two Commissioners Assisting the Committee be appointed by resolution of the Senate. Each Commissioner was a recently retired Supreme Court judge.[211]

General principles for the administration of parliamentary committees

In June 2007 the Speaker presented to the House *General principles for the administration of parliamentary committees* which had been endorsed by the Liaison Committee of Committee Chairs and Deputy Chairs. The Liaison Committee amended the principles in June 2014 to include the responsibilities of committee members. The principles are as follows:

General principles for the administration of parliamentary committees

Parliamentary committees are established under the authority of one or both Houses of the Parliament. They may be established by resolution, under a standing order or by statute.

Role and responsibilities of committees

Committees are appointed to carry out certain functions of the House. Their powers derive from those of the House and the House has implemented a set of rules (standing orders) to govern the way in which committees must operate. It is incumbent upon each committee to ensure that it operates in accordance with the standing orders and any other instructions from the House.

The committee's prime duty is to report the results of its activities to the House, or both Houses in the case of a joint committee. In order to enhance flexibility and efficiency the House has delegated to the Speaker the power to receive and authorise publication of committee reports when the House is not sitting (SO 247). A committee should take into account any views expressed by the Speaker when considering whether to exercise this option instead of reporting first to the House.

Within the standing orders committees have flexibility to manage their work as best suits the committee. It is the responsibility of the committee as a whole to agree on priorities, work programs and the direction and management of the conduct of inquiries.

The committee is required by the House to elect a chair and a deputy chair to assist it to manage its business effectively.

Support provided to committees

The Department of the House of Representatives is responsible for providing resources and services to support the operations of the House and its committees. A portion of the funds appropriated for the House of Representatives is allocated by the Clerk of the House to each committee on an annual basis to enable it to carry out its agreed program of work. Staff of the department are allocated by the Clerk to work with the committee to assist it in achieving its objectives.

Staff are employed under the Parliamentary Service Act. The department, through its managers, is responsible for the welfare of its staff, ensuring that conditions of service and legal obligations to staff are met and that staff uphold the parliamentary service values and code of conduct and meet service standards.

211 Senate Select Committee on the Conduct of a Judge, *Report to the Senate*, PP 168 (1984); Senate Select Committee on Allegations Concerning a Judge, *Report to the Senate,* PP 279 (1984).

The chair, deputy chair and secretariat staff work in partnership with each other and the committee to achieve the best outcomes for the committee. The responsibilities of each to achieve this goal are set out below.

Responsibilities of the chair—

- undertake a leadership role in achieving committee effectiveness;
- conduct proceedings in an orderly and fair manner;
- ensure the standing orders and any other relevant requirements of the House or the Parliament are applied appropriately;
- on behalf of the committee, and subject to its direction, direct such administrative tasks as are necessary for the effective operation of the committee;
- in giving administrative directions the chair should have cognisance of the possible views of committee members and consult with other committee members as necessary. Strategic planning decisions affecting the conduct of the committee's business such as selection of witnesses, timetabling of hearings and report presentation arrangements must not be made without consulting the committee;
- ensure that witnesses before the committee are treated fairly and respectfully;
- as far as possible, ensure all committee members have equal opportunity to contribute to the proceedings of the committee;
- ensure equal and timely access to evidence, correspondence and information provided to, or commissioned by, the committee for all committee members;
- respond promptly and comprehensively to any concerns raised by committee members;
- ensure that the committee receives advice from the secretary in relation to matters of procedure and availability of resources to meet the proposed work plans of the committee.

Responsibilities of the deputy chair—

- assist the chair in achieving committee effectiveness;
- in the absence of the chair, conduct proceedings in an orderly and fair manner;
- assist the chair with administrative action when called upon;
- canvass the views of, and represent, non-government members of the committee when requested to do so by the committee, the chair or the non-government members of the committee. Liaise, as necessary, with the chair and the secretary to assist effective decision making and coordination of committee activities.

Responsibilities of the members—

- support the chair and deputy chair in achieving committee effectiveness;
- understand the role of parliamentary committees and be prepared for committee meetings by reading papers beforehand;
- contribute to the formation of a committee view on matters relevant to an enquiry;
- provide a quorum to enable the committee to hold a properly constituted meeting in Canberra and elsewhere;
- treat witnesses with respect and courtesy at all times;
- understand their obligations in relation to parliamentary privilege;
- understand the obligations of the secretariat to the committee as a whole, and
- ensure the security of committee documents in their possession, especially draft reports.

Responsibilities of the secretary—

- provide impartial, non-partisan advice and support services to the committee. The secretary must provide advice and services to assist the committee as a whole and not so as to favour an individual member or members of the committee;
- consult appropriately and as necessary with senior staff of the Department of the House of Representatives or written authorities to ensure the highest quality of advice is available to the committee;
- provide equal and timely access to evidence, correspondence and information provided to, or commissioned by, the committee to all committee members;
- manage resources responsibly to enable the committee to carry out its functions effectively. Provide advice to the committee on the availability of resources to meet its proposed work plan;

- uphold the parliamentary service values and code of conduct;
- with the support of the senior managers of the Department of the House of Representatives, uphold the department's obligations to its staff and ensure their welfare.

19
Committee inquiries

REFERRAL OF MATTERS FOR INQUIRY

The range of matters a committee is able to investigate or inquire into is restricted by the terms of reference contained in the relevant standing or sessional orders, resolution of appointment, or Act establishing the committee. A committee may have no power of inquiry or it may be free to determine its own inquiries within a general subject area (e.g. Procedure Committee). However, in a majority of cases, inquiries are referred by the House, a Minister, or in some cases the Speaker. A matter may also be referred to a committee by legislation.[1]

In practice committees may either take the initiative and seek a reference or at least be involved in considering and negotiating suitable terms of reference.[2] In addition, the ability of general purpose standing committees to initiate any inquiry they wish to make into annual reports of government departments and authorities and Auditor-General's reports [3] has enabled them to conduct inquiries into a wide range of matters. In practice the need to relate an inquiry to an annual report has been interpreted as permitting committees to take evidence in relation to any subject mentioned in a report in their area of responsibility. A committee's investigation is not limited to developments occurring during the period covered by the report. The six-monthly hearings during which the Governor of the Reserve Bank briefs the Standing Committee on Economics on current developments in monetary policy take place under the guise of the committee's review of the Reserve Bank annual report of the previous financial year.

When a matter is referred to a committee, the committee normally formally resolves to accept the reference.[4] It has been considered that, although a Minister may refer a matter to a committee, a Minister is not able to withdraw a reference from a committee.

Avoidance of duplication of inquiries

Senate legislative and general purpose committees are prohibited from inquiring into matters that are being examined by Senate select committees.[5] There is no equivalent rule in the House. However it has generally been considered desirable for committees to endeavour to avoid duplication with the work of other committees—for example, in inquiries by the House Standing Committee on Aboriginal Affairs and a Senate select committee in 1988, there was considerable potential for duplication, but the two committees concentrated on different matters. Such considerations also apply in respect of joint committees—for example, in the 36th Parliament the Joint Committee of Public Accounts and the Joint Committee on Migration Regulations were careful to avoid

1 Not necessarily to a statutory committee—for example, s. 8F of the *International Monetary Agreements Act 1947* provided that 'A national interest statement tabled in the Parliament under section 8D shall stand referred for inquiry and report within two months of the reference to the Joint Standing Committee on Foreign Affairs, Defence and Trade constituted under resolutions of the Senate and the House of Representatives'.

2 E.g. Standing Committee on Community Affairs, minutes 5.9.89, 24.7.90.

3 S.O. 215(c).

4 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes 24.11.93.

5 Senate S.O. 25(13).

duplication in their respective inquiries into the Business Migration Program and the control of visitor entry.

In the House the procedure for referral of legislation to a standing committee was designed to be used judiciously, rather than as a routine stage in the passage of a bill. This was partly for the reason of not wishing to duplicate Senate activity in this area, with the potential for the same submissions and witnesses.[6]

In 2011 a House committee reported on a bill that had been referred to it by the Selection Committee, noting that a Senate committee was currently conducting an inquiry into the bill. The report stated that the committee did not consider that it could significantly add to the work already being undertaken and that duplication was likely from a further inquiry.[7] Since House committees have been able to discharge their obligation to report on a bill referred to them for an advisory report by way of an oral statement to the House (*see* page 728), there have been several such statements reporting that a House committee has declined to inquire into a bill because an inquiry was considered to duplicate the work of a Senate committee.[8]

While in most instances referral of a bill to a committee of one House only, or to a joint committee, would seem preferable to separate referrals to a House and to a Senate committee, in specific circumstances it can be entirely appropriate for both a House and a Senate committee to consider the same bill. This was the case with the Judicial Misbehaviour and Incapacity (Parliamentary Commission) Bill 2012 which related to the powers of both Houses under the Constitution. However, rather than issue a call for submissions to the same stakeholders, the House committee agreed to make use of the submissions received as evidence to the concurrent Senate inquiry.[9]

To avoid duplication, if a general purpose standing committee intends to inquire into all or part of a report of the Auditor-General, the committee must notify the Joint Committee of Public Accounts and Audit of its intention, in writing.[10]

Scope of inquiry and procedures

The standing or sessional orders or resolution of appointment define the nature and limits of the authority delegated to each committee by the House. They contain the committee's terms of reference and powers and may contain directions which the House wishes to give, for example, in relation to procedures. A resolution may modify or extend the provisions of the standing orders and in these cases it is standard practice to include the following paragraph:

> That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

In the case of a statutory committee, the constituting Act defines the nature and limits of the committee's authority.

6 Standing Committee on Procedure, *About time: bills questions and working hours*, PP 194 (1993) 16. The Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 is an example of a bill referred to a Senate as well as a House committee.

7 Standing Committee on Social Policy and Legal Affairs, *Advisory report of the inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, May 2011.

8 E.g. H.R. Deb. (18.3.2013) 2314.

9 Standing Committee on Social Policy and Legal Affairs, *Advisory report: Judicial Misbehaviour and Incapacity (Parliamentary Commission) Bill 2012 and Courts Legislation Amendment (Judicial Complaints) Bill 2012*, paras 1.13–15, 1.24–27.

10 S.O. 215(c)(iv). In practice joint committees also notify the JCPAA when they review audit reports.

Change to scope of inquiry or procedures

Amendments to resolutions of appointment have usually been initiated directly or indirectly by the committee itself. Normally a committee seeks an amendment through the Leader of the House or the Minister associated with the committee's field of inquiry. If the proposed amendment has the Government's support, the Leader of the House or the Minister then moves for its adoption by the House.[11] It is rare for the chair of the committee to move such an amendment.[12] Motions for controversial or unusual amendments have occasionally been preceded by the presentation of a special report by the committee explaining the need for the amendment.[13] Amendments have included extension of time for reporting,[14] alteration of quorum size,[15] extension of powers,[16] change in the number of Members,[17] and extension of the terms of reference.[18]

DOCUMENTARY EVIDENCE

Invitation of submissions

It needs to be stressed that most witnesses, far from needing to be compelled to give evidence, welcome the opportunity to do so. Soon after subjects are adopted for inquiry, committees usually publicise their terms of reference and their desire to receive submissions from interested individuals or organisations. In addition, letters or messages inviting submissions may be sent directly to those who are thought to have a special interest or expertise in the field under investigation.

Use of internet

The use committees make of the internet is evolving. In recent years some committees have used social media and online forums to publicise inquiries and to obtain information. Online questionnaires have also been used. Most committee hearings are audio webcast live and video footage of some hearings is available live or as video on demand.

The general practice of publication of submissions on the internet has caused committees to be aware of, and to adapt to, privacy and other considerations which were of less concern when publication, while authorised, was in practice restricted by the constraints of earlier technology. Some practices have been adjusted—for example, addresses and contact details of private citizens making submissions may be omitted.

11 VP 1974–75/380 (28.11.1974) (change in number of members appointed to Select Committee on Specific Learning Difficulties); VP 1993–96/131 (27.5.1993) (amendment of resolution of power of Joint Committee on Corporations and Securities).

12 VP 1920–21/377 (14.10.1920) (time of reporting extended for Select Committee on Sea Carriage).

13 VP 1954–55/225 (26.5.1955) (special report from the Committee of Privileges seeking power for committee to investigate matters not referred to it by the House) *see also* Joint Committee on the Parliamentary Committee System, *Resolution of appointment of the Committee: Special report*, PP 78 (1976) 5, which sought power to retain as chair the chair of the committee in the previous Parliament (the report was not adopted by the House).

14 E.g. VP 1983–84/156 (23.8.1983); VP 1985–87/764 (14.3.1986), 886 (29.4.1986); VP 1993–96/2058 (11.5.1995); VP 2013–16/1516 (17.8.2015); VP 2013–16/761 (27.8.2014); VP 2013–16/1634 (13.10.2015) (to enable a select committee to continue its work after presentation of its report).

15 E.g. VP 1987–90/123 (20.10.1987).

16 E.g. VP 1974–75/358 (27.11.1974).

17 E.g. VP 1987–90/123 (20.10.1987); VP 2013–16/1916 (22.2.2016) (appointment of Senators as participating members of a joint committee).

18 VP 1983–84/124 (25.5.1983); VP 1985–87/87 (19.3.1985), 675 (11.2.1986).

Submissions and exhibits

There is no fixed form or format for submissions, although it assists if they are in typewritten or printed form, and if an electronic version is also provided. A single page letter and a large elaborately presented document can each be accepted as a submission. Distinguishing features of a submission are that it is:

- prepared for the purposes of presentation to a committee;
- prepared solely for the purposes of the inquiry and not previously published elsewhere;
- relevant to the terms of reference of the inquiry;
- sent ('submitted') to the committee; and
- received by it.

There is no obligation on the author of a submission to address the full terms of reference of an inquiry. Comments or information may be provided on one or some aspects only. Submissions may be received electronically or in hard copy, but in either case the submitter is required to provide their full name and sufficient information to enable the committee to make contact if necessary (for example, email or postal address).

The protection of parliamentary privilege (for example, in conferring immunity from action for defamation) applies to the preparation of a document for the purposes of or incidental to the transacting of the business of a committee and the presentation or submission of a document to a committee.[19] In addition, committees may authorise the publication of submissions, thus conferring privilege on their wider publication. In the absence of such motions submissions remain confidential and any wider publication would not be protected and may give rise to a matter of contempt. In addition, if a committee directs that a submission be treated as evidence taken in private (*see* page 697) the provisions of section 13 of the Parliamentary Privileges Act in respect of unauthorised publication are available.

In addition to the protection witnesses enjoy under the House's penal jurisdiction, witnesses are protected by section 12 of the Parliamentary Privileges Act from penalty or injury on account of evidence given or to be given to a House or a committee. For the purposes of the Act the submission of a written statement by a person is, if so ordered, deemed to be the giving of evidence. Because of this, committees may choose at the first available opportunity to resolve to accept submissions they wish to receive.

Exhibits are items (most commonly documents) presented to committees or obtained by them during an inquiry—either by being sent in or by presentation during a hearing. While a submission is a document prepared solely for the purposes of an inquiry, an exhibit is not. An exhibit is a document or item created or existing for another purpose but presented to a committee or obtained by it because of its perceived relevance to an inquiry or to a matter under consideration. Typically, an exhibit would be a copy of a document or record—perhaps held by a person, organisation or department for other purposes but seen as relevant to the inquiry. Sometimes persons may seek to tender as exhibits copies of material published elsewhere. When such material is readily available, there is less point in receiving and retaining it as an exhibit. The act of presenting an exhibit to a committee would normally be protected by parliamentary privilege, although it would not be expected that committees would authorise the publication of exhibits, so

19 *Parliamentary Privileges Act 1987*, s. 16.

any wider publication would not be protected.[20] Sometimes committees have, however, authorised the publication of exhibits.[21] Committees have sometimes received exhibits as confidential exhibits.[22]

A document presented to a committee as a proposed submission, but which was substantially a reproduction of a document previously published by the witness, has been received as an exhibit.[23] A submission to another committee has been received as an exhibit—a course which may be seen as minimising the burden on the authors of the document.[24]

See also discussion of return of submissions and documents below.

Search for documents

It is considered that committees do not have the power to order a general search for documents—that is, for any documents which may be relevant to a particular inquiry. For example, it would be impractical for a committee to write to a witness requesting all documents relating to an inquiry. A committee would need to provide a certain level of precision relating to its request. At the same time, a committee would not be expected to know document reference numbers or dates on which a document was created. In 2016 the House Economics Committee, as part of its review of the four major banks, exercised its power to call for documents. During public hearings the committee focused on certain topics within the context of the inquiry and called for certain documents such as board minutes relating to these issues. There was a certain level of precision with the requests and the banks complied by providing the committee with documents.

Withdrawal, alteration, destruction or return of documents

No submission received by the secretary of a committee may be withdrawn or altered without the knowledge and approval of the committee.[25] A submission becomes the property of a committee as soon as it is received by the secretary or by a member of the committee.

It has been common practice for committee chairs to ask a witness at a hearing whether the witness wishes to amend his or her submission in any way. Witnesses may use this opportunity to draw attention to inaccuracies or omissions. A committee secretary may not change the substance of a submission at the request of the originator, or on the secretary's own initiative, without the express approval of the committee. Where a committee decides to take oral evidence from a witness it is normal for the witness to be given the opportunity to supplement or amend a submission. Committees have also accepted revised submissions in place of versions received and published earlier.[26]

Committees may agree to return documents to witnesses. In 1977 the Standing Committee on Expenditure agreed to return voluminous confidential documents to a department which was concerned about their security. The documents were returned only after the department gave an undertaking that the committee would be granted ready access to them whenever it decided it needed to see them. The Standing

20 *Parliamentary Privileges Act 1987*, s. 16.
21 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes 17.11.1994.
22 E.g. Standing Committee on Finance and Public Administration, minutes 10.10.1991.
23 PP 115 (2016) 117.
24 E.g. Standing Committee on Finance and Public Administration, minutes 25.9.1991.
25 *And see May*, 24th edn, p. 819.
26 E.g. Standing Committee on the Environment, minutes, 4.6.2015.

Committee on Legal and Constitutional Affairs has resolved to return to a witness attachments to a submission which the witness wished to make use of in a court case. The submission itself was received as evidence.[27]

It is a sound principle that the House, in considering a committee's report, should have ready access to the evidence upon which the report was based. This would suggest the need for a committee to exercise the utmost caution in considering the destruction of evidence presented to it, even after the House has received the committee's report.

A committee could resolve to return a submission or other document lodged with it if, for example, the submission was considered irrelevant to the committee's inquiry[28] or if it contained offensive or possibly scurrilous material. A rejected submission would cease to be the property of the committee and any further circulation of it would not attract privilege. In most circumstances it would be more appropriate for the committee to retain the document, not use it in its deliberations and not authorise its publication. By virtue of standing order 242(b), the fact that the document has not been published by the committee or, subsequently, by the House would preclude anyone from publishing the document as a submission to the committee without some risk in terms of the law of contempt of the House. Anyone who published a submission which had not been authorised for publication would not have the protection this would confer, and would therefore not be immune from any legal proceedings for such publication. Whether or not qualified privilege would apply would depend upon the circumstances (for example, publishers' intentions). It is highly unlikely that the House would give its protection to a person who had ignored the desire of a committee that a defamatory document remain unpublished.

ORAL EVIDENCE

Invitation to give oral evidence

Sometimes, depending on the particular circumstances, a person who has not lodged a written submission is granted the opportunity to give evidence at a hearing. Committees need however to have some knowledge of the nature of evidence to be presented so that they can consider in advance, for example:

- whether the prospective witness is likely to be acting in good faith;
- whether the evidence is likely to be relevant and/or useful in the inquiry;
- what lines of questioning they would like to adopt; and
- whether the evidence should be taken in private.

Occasionally committees have sent questionnaires to appropriate organisations and used the responses to these questionnaires to form the basis for questioning at hearings.[29]

It is completely within a committee's discretion to decide whether or not a person who has lodged a submission should be invited to appear as a witness. When persons give oral evidence their examination is usually substantially based on their written submissions, but it is not considered that committee members must confine their questions to matters dealt with in submissions. Witnesses may also be asked their opinions of other evidence. Sometimes oral evidence is thought unnecessary and no invitation is issued.

27 Minutes 23.10.2008. More examples are listed at pages 648–9 of the 4th edition.
28 E.g. Standing Committee on Finance and Public Administration, minutes 14.11.1992.
29 E.g. *see* PP 244 (1977) 16–17.

Procedures at hearings

Hearings are normally held in public but at the committee's discretion they may be held in private. The authority to conduct public hearings is contained in standing order 235(a), which provides that a committee or a subcommittee may conduct proceedings by hearing witnesses, either in public or in private. This authorisation is reflected in the standing order which provides that a committee or subcommittee may admit visitors when it is examining a witness or gathering information in other proceedings.[30] Hearings are frequently attended by the general public and by media representatives. It is standard practice for the committee secretariat to notify the media in advance of proposed hearings and to advise individuals or organisations who have asked to be informed.

The chair or presiding member may open a hearing with a brief statement of its purpose and background, and may also outline the procedures to be followed by the committee. The first witness or witnesses are called to the table and may be required to swear an oath or make an affirmation (*see* page 696). The witness then sits at the table and is usually asked to state his or her full name and the capacity in which he or she is appearing before the committee, and whether the witness wishes to propose any amendment to the submission (*see* page 687). Before questions are put by committee members, it is usual for the chair to invite the witness to make a short statement to the committee.

The examination of witnesses before a committee or a subcommittee is conducted according to the procedure agreed on by the committee.[31] While procedures vary to some extent between committees, all operate on the principle that questions are asked and answered through the chair and in an orderly manner. All members should be given an equal opportunity to put questions to a witness. Questions put to witnesses are normally substantially focussed on the witnesses' written submissions, but it is considered that committees are not confined to questioning witnesses only about matters raised in their submissions.

A member of the committee or a witness may object to a question, in which case the chair decides whether the witness should be required to answer. If there is any dissent by a Member from the chair's decision, the chair may suspend the public hearing and have the witness (and other visitors) leave while the committee determines the matter in private, by vote if necessary. The committee may insist on the question being answered (*see* page 698).

The House has adopted the following provisions to be observed by committees of the House:

> The Chair of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry.
>
> Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be

30 S.O. 240.
31 S.O. 255(d).

> answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.[32]

Other parts of the provisions (which are reprinted in full as an attachment to the standing orders) are quoted elsewhere in this chapter, although four particular provisions should be noted here:

> A witness shall be given notice of a meeting at which he or she is to appear, and shall be supplied with a copy of the committee's terms of reference and an indication of the matters expected to be dealt with during the appearance. Where appropriate a witness may be supplied with a transcript of relevant evidence already taken in public.
>
> A witness may be given the opportunity to make a submission in writing before appearing to give oral evidence.
>
> A witness shall be given reasonable access to any documents or records that the witness has produced to a committee
>
> Witnesses shall be treated with respect and dignity at all times.[33]

During a hearing a witness may be asked to provide information or a document which is not immediately available. In such cases the witness may be asked or may volunteer to provide the information later in writing or, less often, at a subsequent hearing.

No person other than a member of the committee, or another Member participating by authorisation of the committee, may question a witness during examination. No witness may question a member or any other person present, but a witness may ask for clarification of a question. In 1971 the Speaker made a private ruling that (like committee staff) specialist advisers must not be permitted to question witnesses, comment on the evidence or otherwise intervene directly in formal proceedings at a public hearing.

Documents provided to a committee, including maps, diagrams, or other illustrated and written material, are sometimes included in the committee's records as exhibits (*see* page 686). Historically, where it was thought necessary to incorporate material in the transcript and there was no objection to this course, the chair usually so ordered, although modern practice is that the transcript is regarded as a record of oral evidence only, and the incorporation of material is kept at a minimum. Hansard prepares a written transcript of evidence taken at hearings. Witnesses are given an opportunity to make corrections to the transcript. However, suggested amendments are acceptable only insofar as they provide a true record of what the witness said; the meaning cannot be changed.

The House has adopted the following provisions:

> Reasonable opportunity shall be afforded to witnesses to request corrections in the transcript of their evidence and to put before a committee additional written material supplementary to their evidence. Witnesses may also request the opportunity to give further oral evidence.[34]

It is customary at the conclusion of public hearings for motions to be passed authorising the publication of the evidence taken (*see* page 717), thus conferring privilege on the publication of the transcript.

Witnesses may request that their evidence be taken in private and that documents submitted be treated as confidential. Such requests are usually but not necessarily granted (*see* 'Private or in camera hearings' at page 697).

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32 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 8 and 9.
33 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 3, 4, 5 and 14.
34 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 15.

Less formal proceedings

Less formal means of gathering information are provided for by standing order 235, which provides for proceedings 'in the form of any other meeting, discussion or inspection conducted under the practice of committees of the House'.

Inspections

In addition to gathering formal evidence, committees frequently undertake visits or inspections at which informal discussions take place. Such inspections permit members to familiarise themselves with places, processes, and matters which are important to their inquiries but which cannot be adequately described in formal evidence. If a quorum is present, these are formal proceedings (private meetings), and the committee's minutes will reflect the nature of the inspections, as with private briefings.

Seminars, informal discussions, public meetings and workshops

Committees frequently decide that public meetings, round table discussions, seminars, workshops, discussions, briefings, or other similarly informal proceedings would be more appropriate for their purposes than formal hearings. Such procedures have been used:

- to conduct preliminary discussions prior to the adoption of a formal reference;
- to permit general background discussions at the beginning of an inquiry;
- as a device for discussions on matters of interest to the committee but not the subject of a formal inquiry;
- to obtain general community views; and
- to obtain expert advice and scrutinise it with experts collectively.

Committees have made use of public meetings where there is widespread community interest in an inquiry and where, because of the large number of persons involved, the formal public hearing approach may be time-consuming and repetitive, yet still exclude many from the committee's processes. Public meetings not only enable committee members to be exposed to community attitudes but also provide an opportunity for a large number of private citizens to put views to the committee.

As an alternative to a public meeting, some committees have followed a formal public hearing with a period during which members of the public present can seek to make a short (three to five minute) statement to the committee to express their views on the matter being investigated.

Committees also sometimes arrange discussions in a 'round table' format, either in public or in private, at which committee members sit at a table with invited participants, each person being given the opportunity to speak and to contribute to the general discussion. Round table public hearings, while still formal hearings, have witnesses from different organisations at the table being examined simultaneously.

Seminars and workshops can allow committee members to question experts and others, and such persons can also question each other directly. This process provides immediate opportunities to both clarify the issues and explain particular opinions.

The Standing Committee on Aboriginal and Torres Strait Islander Affairs has followed a practice of conducting informal discussions with Aboriginal communities and groups and a range of other community organisations during field trips in connection with its inquiries. As these discussions are not conducted under standing orders they are much more informal and allow for a much freer interchange of views than is normally possible in a public hearing context. In particular, they enable people who may be

unwilling to submit themselves to the more formal procedures of a public hearing to express themselves openly. Hansard produces a precis of the informal discussions which is not published by the committee.

Although alternative processes of this nature can be helpful in particular inquiries, they are not regarded as a substitute for the normal hearing process under which witnesses may be questioned as fully as necessary to allow committee members to inform themselves on a matter. The information obtained in this manner does not have either the forensic value nor the technical status of formal evidence, although it can be used in committee reports, provided that the report indicates the manner in which the information has been obtained. Depending on the circumstances, the extent to which such informal proceedings enjoy parliamentary privilege could become an issue.

Minutes or a report, or both, on public meetings or seminars can be included in the committee's records as an exhibit. The Hansard record of such proceedings is often not authorised for publication although it may be incorporated into the committee's records as an exhibit.

Hearings by video or teleconference

A committee may conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used, committee members and witnesses must be able to speak to and hear each other at the same time regardless of location. A committee may resolve for a subcommittee to use audio visual or audio links.[35]

The following guidelines have been issued by the Procedure Committee to assist committees in deciding whether to conduct meetings using audio visual or audio links; they are to be used by each committee as it sees fit:

1. Audio visual or audio links may be used for deliberative meetings or for hearing oral evidence from witnesses or for any other proceeding described in standing order [235(b)].
2. Audio visual or audio links should only be used to hear evidence in camera if the committee is satisfied that the evidence will not be overheard or recorded by any unauthorised person and that the transmission is secure.
3. The following factors should be considered by a committee in deciding whether an audio visual or audio link is suitable for use in any particular circumstance:
   (a) whether use of the link will confer any benefit not available using traditional meeting processes eg cost or time savings, access to evidence not otherwise obtainable;
   (b) any benefit of traditional methods which may be lost. These may include the value of the committee being present at a location away from Canberra; the benefit of including regional, rural and remote areas in the work of the committee; the value of the public being able to observe the committee at work; or possible restrictions on the committee being able to interact freely with a witness;
   (c) real cost comparisons of alternative means of evidence collection;
   (d) the type of evidence to be heard. Specialist or expert evidence may be suited to hearing in this way. Audio visual or audio links may make it feasible to hear evidence from witnesses located outside Australia, however, the committee should take into account the fact that the protection afforded by parliamentary privilege would not extend beyond Australia; and
   (e) whether evidence is likely to be contentious or a witness needs to be tested rigorously for truthfulness or there is any concern about the identification of the witness. If the committee wishes to administer an oath an authorised officer must be present with the witness to administer it.
4. Any other factors which the committee considers relevant should be taken into account and a decision made appropriate to the particular circumstances of the proceeding, inquiry or witness.[36]

35 S.O. 235(b).
36 VP 1998–2001/1985 (6.12.2000).

An early example of a public hearing conducted by video conference was a hearing of the Aboriginal and Torres Strait Islander Affairs Committee on 3 November 2003—the committee meeting was in Parliament House and the witnesses in Darwin. Hearings of this kind by video or teleconference are now not uncommon.

Committees have also taken evidence from witnesses overseas by electronic means. For example, in 2005 the Family and Human Services Committee took evidence via teleconference from a witness in Taiwan for the inquiry into the adoption of children from overseas. The teleconference took place during a private meeting of the committee. The witness was advised that her evidence would not be covered by privilege outside Australia. After seeking agreement from the witness the committee authorised publication of the transcript.

Also in 2005 the Family and Human Services Committee gave evidence collectively via a live audio-visual link to a committee of the Scottish Parliament. The 'witnesses' gave evidence as a committee in a formal meeting in order to 'bolster' the privilege associated with the hearing for both committees. The evidence given by the members of the Australian committee was taken as formal evidence by the Scottish committee and authorised by it for publication. In 2008 the Petitions Committee took evidence by teleconference from the Public Petitions Committee of the Scottish Parliament for its inquiry into electronic petitioning.

Televising, filming and recording of proceedings

Public hearings in Parliament House are regularly televised for the House monitoring system, thus allowing them to be viewed live by occupants of Parliament House and to be webcast on the Parliament's web site. The signal is also available to networks for rebroadcast.

Committees of the House are permitted to allow the recording of their proceedings for radio or television broadcasting, subject to a number of conditions set down by the resolution of the House of 9 December 2013, which authorised the broadcasting and re-broadcasting of proceedings, including committee proceedings.[37] The resolution provides as follows:

3. Broadcast of committee proceedings

The following conditions apply to the broadcasting of committee proceedings:

(a) Recording and broadcasting of proceedings of a committee is subject to the authorisation of the committee;

(b) A committee may authorise the broadcasting of only its public proceedings;

(c) Recording and broadcasting of a committee is not permitted during suspensions of proceedings, or following an adjournment of proceedings;

(d) A committee may determine conditions, not inconsistent with this resolution, for the recording and broadcasting of its proceedings, may order that any part of its proceedings not be recorded or broadcast, and may give instructions for the observance of conditions so determined and orders so made. A committee shall report to the House any wilful breach of such conditions, orders or instructions;

(e) Recording and broadcasting of proceedings of a committee shall not interfere with the conduct of those proceedings, shall not encroach into the committee's work area, or capture documents (either in hard copy or electronic form) in the possession of committee members, witnesses or committee staff;

(f) Broadcasts of proceedings of a committee, including excerpts of committee proceedings, shall be for the purpose only of making fair and accurate reports of those proceedings, and shall not be used for:

37 VP 2013–16/182–3 (9.12.2013). The resolution replaced several earlier related resolutions dating back to 1988.

(i) political party advertising or election campaigns; or
(ii) commercial sponsorship or commercial advertising;

(g) Where a committee intends to permit the broadcasting of its proceedings, a witness who is to appear in those proceedings shall be given reasonable opportunity, before appearing in the proceedings, to object to the broadcasting of the proceedings and to state the ground of the objection. The committee shall consider any such objection, having regard to the proper protection of the witness and the public interest in the proceedings, and if the committee decides to permit broadcasting of the proceedings notwithstanding the witness' objection, the witness shall be so informed before appearing in the proceedings.

Important questions of principle arise in respect of the rights and legitimate interests of witnesses and of third parties who may be the subject of comment in proceedings conducted under privilege. The atmosphere in which the televised proceedings are held might also affect a witness significantly in some cases, as experience of the televising of committee proceedings in some jurisdictions would seem to suggest. Such considerations are recognised in the conditions set out above. While the concerns of witnesses must be recognised, committees have been encouraged to permit televising of their proceedings to increase awareness of the activities of committees.

Because these matters are not covered by the Parliamentary Proceedings Broadcasting Act, the protection attaching to a television or film company may be found to be similar to that enjoyed by any person who, with the approval of the committee, published a report of its proceedings—that is, qualified privilege only may apply. Members of a committee and witnesses appearing before it would have the usual protection from action in respect of statements made by them during the proceedings. The fact that the proceedings were telecast or filmed would not alter their legal position.[38]

Mainly because of the potential distraction to members and witnesses, photographs of committee proceedings are not permitted without the committee's authority. Committees may agree to pose for photographs before or after a hearing or during a suspension of proceedings, or may permit photographs to be taken during proceedings.

People taking film, video or still photographs should have regard to the powers of each House to deal with any act which may be held to be a contempt or a breach of the rules applying to the taking of photographs in Parliament House.

Any person permitted by a committee to attend a hearing may make an audio recording of the proceedings. It is the responsibility of the person concerned to ensure that the recording is not used improperly or in contravention of the Parliamentary Proceedings Broadcasting Act or any other statute. Further, such a recording of proceedings has no special standing in terms of the laws governing the broadcasting of proceedings or the laws of parliamentary privilege.

Compulsory attendance

If a witness declines an invitation to give evidence, a committee may order the witness to attend the committee by summons, issued by the committee secretary.[39] The form of the summons is not prescribed by standing orders or by statute.

It appears to have been the practice of committees established in the early years of the Parliament to issue what were called 'summonses' to prospective witnesses, whether or not they had shown any reluctance to appear. Contemporary practice is for prospective witnesses to be invited to appear before the committee. The House has adopted the following provision:

38 Advice of the Attorney-General to the President of the Senate, dated 23 May 1963.
39 S.O. 254. In the UK Commons the chair signs the order, *May*, 24th edn, p. 820.

> A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.[40]

In 1963 the Joint Select Committee on Parliamentary and Government Publications summonsed two witnesses to appear before it. The witnesses were required to give evidence in relation to alleged threats to a witness because of evidence he had given to the committee. Each summons, which was signed by the clerk to the committee (i.e. committee secretary), showed the full name, designation and address of the person being summonsed.

On occasion witnesses, although not unwilling to give evidence, have not wanted to be seen as appearing on their own initiative—for example, because of concerns that the evidence that they might give could affect future employment prospects or affect business relationships with other witnesses. In such cases committees have assisted witnesses by summonsing them to appear. The use of a summons has also been considered necessary where evidence was sought from a witness on matters subject to a requirement of confidentiality.[41]

On relatively rare occasions, committees intent upon obtaining evidence from particular individuals or organisations reluctant to provide it have drawn attention to their powers to compel the giving of evidence and to the possibility that failure to comply with their orders might be dealt with as a contempt of the House. This approach has usually avoided the necessity of resorting to the issue of a summons.

It is unlikely that the House would take any action against, or in relation to, a recusant witness until that witness had refused or neglected to obey a formal summons. Failure to accept an invitation or request to appear before a committee could not be interpreted as a failure to obey an order of the committee. This view was supported by the Attorney-General in 1951 when the Senate Select Committee on National Service in the Defence Force reported to the Senate the failure of the Chiefs of Staff of the armed services and other specified officers of the Commonwealth service to appear before it (*see* page 712).[42]

In 2000 a witness was summonsed to appear before the Joint Standing Committee on Electoral Matters after he had been invited and had agreed to appear at a public hearing, but had failed to appear. The witness also failed to appear in response to the summons. However, he contacted the committee secretariat to explain his reasons for not attending, and appeared before a subsequent public hearing, and the committee did not take the matter of the failure to respond to the summons further.[43] In the 40th Parliament a public service official who had declined an invitation to appear before a joint committee was summonsed but still did not appear. The committee sought an explanation from the agency head and the official later appeared voluntarily. In the 43rd Parliament the House Standing Committee on Infrastructure and Communication summonsed individuals from certain companies to provide evidence in general terms on how information technology is priced in Australia, after written invitations to attend hearings had been repeatedly declined.[44]

40 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 1.
41 Joint Committee of Public Accounts report no. 325, Midford Paramount case, December 1992.
42 S. Deb. (8.3.1951) 155–7.
43 H.R. Deb. (6.2.2001) 23906–7.
44 Standing Committee on Infrastructure and Communications, *At what cost? IT pricing and the Australia tax*, PP 238 (2013) 5–6.

Witness in prison

There is no longer an explicit House standing order relating to a witness in custody. According to *May*, when a witness is in prison, the person responsible for the prisoner's custody may be directed by warrant issued by the Speaker to bring the witness to be examined.[45] If a joint committee were to require a witness to be brought from prison, it would appear to be desirable that the warrant be issued jointly by the Speaker and the President. In 2000 a witness serving a sentence appeared before a joint committee, but she did so voluntarily and with the co-operation of the prison authorities.

Witnesses' expenses

Witnesses are not paid fees. At the discretion of the committee, payments may be made to witnesses for reasonable travel and accommodation expenses. This does not occur often. The ability of witnesses to appear by telephone or video link, and the capacity for committees to travel, have assisted with keeping down costs associated with witnesses appearing before committees.

Swearing of witnesses

There are no provisions in the standing orders for the swearing of witnesses. Committees of the House which have the power to call for persons, documents and records have the power to administer an oath to witnesses. This power is derived from the United Kingdom House of Commons by virtue of section 49 of the Constitution and on the basis that the UK Parliamentary Witnesses Act 1871 empowered the House of Commons and its committees to administer oaths to witnesses and attaches to false evidence the penalties of perjury.[46] There has been some doubt cast on whether joint committees[47] have this power[48] but some, such as the Joint Committee on Foreign Affairs, Defence and Trade, have sworn witnesses. According to *May*, a witness who refused to be sworn or to take some corresponding obligation to speak the truth could be dealt with by the House for contempt.[49]

The practice of swearing witnesses has become less common in recent years. Committees may exercise their discretion as to whether they require a witness to take an oath. In some situations it may be regarded by a committee as unnecessary in view of the House's power to punish a witness who gives false evidence even when not under oath. If witnesses are not sworn, the committee should formally warn that the deliberate misleading of the committee may be regarded as a contempt of the House.

A reluctant witness, especially one who has been summonsed, should probably be sworn to impress upon him or her the importance and solemnity of the occasion and to ensure that an obligation to tell the whole truth is understood.

A witness who does not wish to take an oath is given the opportunity to make a solemn affirmation. The oath or affirmation is administered to the witness by the

45 *May*, 24th edn, p. 820. *See also* Senate S.O. 180; former House S.O. 361 (until 1998); *Parliamentary Privileges Act 1987*, s. 14, and '*Bankstown Observer* (Browne/Fitzpatrick) Case' in the Ch. on 'Parliamentary privilege'.

46 Opinion of Solicitor-General, dated 8 August 1941. This view was supported by the Solicitor-General in 1958 in an opinion given to the Senate Select Committee on Payments to Maritime Unions. Greenwood and Ellicott believed there was 'room for doubt' as to whether this was the correct view as the precise limits of section 49 had not been determined, PP 168 (1972) 12.

47 That is, other than statutory committees given the power by legislation, e.g. *Public Works Committee Act 1969*, s. 20; *Public Accounts and Audit Act 1951*, s.10.

48 Opinion of Solicitor-General, dated 8 August 1941.

49 However, it is now not usual for House of Commons select committees to examine witnesses on oath except upon inquiries of a judicial or other special character. *May*, 24th edn, p. 824.

committee secretary. The oath and affirmation used by committees of the House take the following form:

Oath

Secretary: Please take the Bible in your right hand. Do you swear that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth. So help you God.

Witness: I do. So help me God.

Affirmation

Secretary: Do you solemnly and sincerely affirm and declare that the evidence you shall give on this examination shall be the truth, the whole truth, and nothing but the truth.

Witness: I do.

An oath need not necessarily be made on the authorised version of the Bible. Every witness 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.[50]

Private or in camera hearings

The standing orders refer only to private hearings; these are the same thing as in camera hearings referred to in the Parliamentary Privileges Act and in former standing orders. Private or in camera hearing of evidence is explicitly provided for by standing order 235 as follows: 'A committee or a subcommittee may conduct proceedings . . . by hearing witnesses, either in public or in private'.

Visitors, including committee members' personal staff and other Members who are not members of the committee, must leave when a committee or subcommittee is conducting a private hearing.[51]

Witnesses may request a private hearing but a committee will agree only for compelling reasons. Evidence which committees would normally take in private and not publish because of possibly adverse effects includes: evidence which might incriminate the witness, commercial-in-confidence matters, classified material, medical records and evidence which may bring advantage to a witness's prospective adversary in litigation. In the last case the witness could be disadvantaged by having the details of a case made known to an adversary or by informing the adversary of the existence of certain evidence relevant to the witness's case and even how the evidence might be obtained. Other reasons for private hearings could include evidence likely to involve serious allegations against third parties, a matter which is sub judice (*see* page 714) or a matter on which a Minister may otherwise claim public interest immunity (*see* page 710). When a witness makes an application for a private hearing, the committee decides the issue on the balance of the public interest and any disadvantage the witness, or a third party, may suffer through publication of the evidence.

The House has adopted the following provisions in relation to the taking of in camera evidence:

> A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in camera, and shall be invited to give reasons for any such application. The witness may give reasons in camera. If the application is not granted, the witness shall be notified of reasons for that decision.
>
> Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the

50 Advice of Attorney-General's Department, dated 16 February 1962, on the swearing in of Members (*see* Ch. on 'Members').
51 S.O.s 240, 241.

> relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.
>
> Where a committee has reason to believe that evidence about to be given may reflect on a person, the committee shall give consideration to hearing that evidence in camera.[52]

Where a committee has wished to take evidence in public but wished also to protect the privacy of persons or their families, it has allowed witnesses to be identified as "Witness 1, etc", although the secretariat has obtained the witnesses' names.[53] UK House of Commons committees have occasionally taken evidence from witnesses whose names are not divulged where it is thought that 'private injury or vengeance might result from publication'.[54]

Even though evidence is taken in private or documents received in confidence there can be no absolute guarantee that the evidence or documents will not at some future date be authorised for publication—*see* 'Disclosure of private or in camera evidence' below.

The Standing Committee on Aboriginal and Torres Strait Islander Affairs has on several occasions taken evidence in private which witnesses knew beforehand would be authorised for publication. This approach has been followed in order to make the process of giving evidence less stressful for the witnesses.

Answers to questions, provision of information

A committee may demand that witnesses answer questions. *May* states that witnesses are bound to answer all questions put to them and cannot be excused on grounds such as that:

- they may become subject to a civil action;
- they have taken an oath not to disclose a matter;
- a matter was a privileged communication (for example by a client to a solicitor);
- they have been advised that they cannot answer without the risk of incriminating themselves or being exposed to a civil suit; or
- they would be prejudiced as defendants in pending litigation.

It is acknowledged that some of these grounds would be accepted in a court of law. *May* also notes that a witness cannot refuse to produce documents in his or her possession on the ground that they are under the control of a client who has given instructions that they not be disclosed without the client's authority.[55]

Section 10 of the *Evidence Act 1995* provides that that Act does not affect the law relating to the privileges of any Australian Parliament or any House of any Australian Parliament.

As a committee may only exercise compulsive powers in relation to matters which the House has delegated to the committee by way of its terms of reference, a witness may object to a question on the grounds that it is outside the committee's terms of reference or that the terms of reference are outside the House's constitutional powers.

If a witness objects to a question the committee may, and frequently does, exercise its discretion in the witness's favour. If the objection is overruled, the witness is required to

52 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 6, 9 and 10.

53 E.g. Standing Committee on Family and Community Affairs, *Every picture tells a story: Inquiry into child custody arrangements in the event of family separation*, Dec 2003, Appendix D.

54 *May*, 24th edn, p. 840.

55 *May*, 24th edn, p. 823.

present the oral or documentary evidence required. Failure to provide such evidence may be reported to the House and the witness may be punished for contempt.

The House has adopted the following provisions:

> The Chair of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry.
>
> Where a witness objects to answering any question put to him or her on any ground, including the grounds that it is not relevant, or that it may tend to incriminate him or her, he or she shall be invited to state the ground upon which he or she objects to answering the question. The committee may then consider, in camera, whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination, and of the reasons for it, and shall be required to answer the question in camera, unless the committee resolves that it is essential that it be answered in public. Where a witness declines to answer a question to which a committee has required an answer, the committee may report the facts to the House.[56]

There has been no case where a witness, after declining to answer a question from a committee, has been reported to the House by that committee. If a committee wished to raise a matter it could resolve that the Chair, pursuant to standing order 51, raise the issue in the House as a matter of privilege. However, it is always preferable for a committee to resolve disputes with witnesses rather than escalate them to the House.

In 1982 the Joint Committee of Public Accounts summonsed the Commonwealth Crown Solicitor to appear before it with a number of files the committee considered would be pertinent to an inquiry. The Crown Solicitor refused to produce the documents sought by the committee, and in answer to a question without notice the Attorney-General stated that the reason the Crown Solicitor would not produce the documents was on the ground of legal professional privilege.[57] On the following day the chair of the committee, by leave, made a statement to the House to the effect that the Commonwealth Crown Solicitor's claim was inappropriate. In addition, the chair incorporated a legal opinion supporting the committee's argument and the chair also drew attention to the Greenwood and Ellicott paper which stated:

> It also follows from the wide powers which committees can exercise that, if ordered to produce a document which contained communications which were privileged before Courts of law (e.g. between solicitor and client), a person would be in contempt if he did not do so.
>
> Although these privileged communications are usually respected by committees, committees are not restricted in the same way as the Courts.[58]

Committees have at times had to negotiate with witnesses who were reluctant to provide specified evidence. The success of committees in such negotiations has been largely due to their ability to draw attention to their undoubted powers and the means by which they may be enforced.[59]

The House has adopted the following provision to be observed by committees:

> Where a committee desires that a witness produce documents or records relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents or records be produced shall be made (whether or not an invitation to produce documents or records has previously been made) only where the committee has made a decision that the circumstances warrant such an order.[60]

56 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 8 and 9.
57 H.R. Deb. (19.10.1982) 2163.
58 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 33.
59 E.g. *see* p. 721 (Select Committee on Road Safety case).
60 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 2.

For discussion of the effect of a secrecy provision in an Act on the provision of information to a parliamentary committee *see* 'Statutory secrecy provisions' in Chapter on 'Parliamentary committees'.

Evidence from Commonwealth public servants

The House has adopted the following provision to be observed by committees of the House:

> A departmental officer shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of him or her to superior officers or to the appropriate Minister.[61]

The Government has issued guidelines to assist official witnesses in their dealings with the Parliament—*Government guidelines for official witnesses before parliamentary committees and related matters*.[62] As the title suggests the guidelines are intended to provide general guidance, and not inflexible rules. Basically their purpose is to assist Commonwealth public servants appearing before parliamentary committees by informing them of the principles they are required by the Government to follow. However, the guidelines state that they must be read in conjunction with relevant parliamentary and statutory provisions.[63]

The guidelines set out the Government's views on matters such as: attendance at committee hearings; the Government's expectations in the content of submissions; privilege considerations; aspects which might give rise to claims for public interest immunity; publication provisions; means of correcting evidence; and discretions relating to the extent to which the guidelines are applied.

Whilst these guidelines have not been accepted or endorsed by either House, they were issued after consultation with parliamentary staff and should be regarded as an attempt to assist government personnel and the Parliament by setting down the basic position of the Executive on a wide range of detailed matters connected with the operations of committees.

In 1969 the Joint Committee of Public Accounts set down its practice on questions to public servants about government policy. This practice, while to some extent reflecting the particular concerns of that committee, nevertheless represents a sensible balance between meeting the needs of most investigatory committees and recognising the role and responsibility of public servants. The joint committee said:

> This Committee does not examine public servants on matters of Government policy. The understanding of Government policy, however, is itself essential to the effective operation of the Committee during specific inquiries as the Committee is concerned with the administrative out-workings of such policy. In these circumstances, the Committee has normally proceeded on the basis of asking public servants to outline for it the particular policy of the Government which is being administered by them. It does not ask public servants, however, to comment on the adequacy of such policies. It is not unusual to find that in the implementation of Government policy, departments and authorities develop administrative policies. In the past, the Committee has regarded this type of policy as within its purview and has examined public servants in the administrative policy field.[64]

(*See also* 'Public interest immunity' at page 710.)

61 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 13.The 2015 government guidelines are consistent with this provision.

62 Department of the Prime Minister and Cabinet, Canberra, February 2015. This paper sets down similar guidelines to those originally presented to the House in 1978 and updated in 1984 and 1989.

63 Guidelines, paras. 2–3.

64 Joint Committee of Public Accounts, *114th Report*, PP 162 (1969) 3.

Evidence from State public servants and State Members

State public servants have appeared before House and joint committees in response to an invitation. The need to have due regard to the position and responsibilities of State and Territory Governments is recognised. Most recent practice has been for committee chairs to write to the relevant State or Territory Premiers or Chief Ministers seeking co-operation with inquiries. Subsequently contact may occur at staff level. Co-operation is usually forthcoming but in some cases State Governments have been seen as unhelpful because of either refusal to co-operate or failure to contribute to an inquiry.[65]

As with Commonwealth officials it is accepted practice that State officials will not be asked to comment on government policy. In fact, State authorities have often insisted on agreement to this condition before permitting their officials to give evidence. Committee requests for personal appearances by State officials are usually directed to the relevant Minister, unless a contact official has been nominated, and adequate notice of the need for attendance is given.

The question of State public servants being compelled to give evidence before committees of the House of Representatives poses special problems, as constitutional issues are added to those relating to the role and responsibilities of government officials.

As noted previously, it is unclear in law as to whether the Commonwealth Houses and their committees have the full investigatory powers of the House of Commons or whether they are limited to those matters on which the Commonwealth Parliament may legislate. If the latter were the case, committees of the House could not expect that any demand that witnesses attend before them and give evidence on matters outside these constitutional limits could be enforced; beyond those limits evidence could be sought only on a voluntary basis from any person.

No committee of the Commonwealth Parliament has been prepared to summons a State public servant or Minister to give documentary or oral evidence which they have been unwilling to provide. If such a summons were issued, a State Government could seek to challenge it in the High Court or simply claim public interest immunity. In the highly unlikely event of either House of the Commonwealth Parliament attempting to deal with a State Minister or Government for contempt, the matter would appear to be one to be decided by the High Court.

In 1953 the Parliamentary Standing Committee on Public Works sought the Solicitor-General's advice as to its power to summons a State official to give evidence before it. The Solicitor-General considered the matter so doubtful that the advice given was against making a test case by summoning a State official.[66] The relevance of this opinion to the powers of other committees is unclear as the Public Works Committee derives its power from statute, whereas committees appointed by resolution or pursuant to standing or sessional orders, given the appropriate authority, enjoy the powers of committees of the House of Commons as at 1901 by virtue of section 49 of the Constitution.

In light of the unclear constitutional situation, a committee would be wise to assume it would be found not to have authority to summons State officials or State Ministers to provide oral or documentary evidence where such persons have not provided material requested. A further complication could arise in the case of a former or retired State

65 House of Representatives Standing Committee on Aboriginal Affairs, *Lack of co-operation by the Queensland Government*, PP 282 (1982); Joint Select Committee on Telecommunications Interception, *Report, dated 20 November 1986, incorporating dissenting report*, PP 306 (1986).

66 Opinion by Solicitor-General, to the Secretary of the Parliamentary Standing Committee on Public Works, dated 16 September 1953.

official. It would seem that if such a person is a citizen without any immunity he or she could be compelled to appear. However, difficult questions could arise if a committee sought to compel the production of information in respect of his or her duties as a State official. Advice can be sought in particular cases, and this was done in 1982 when the Standing Committee on Aboriginal Affairs was concerned over what it regarded as a lack of co-operation by a State Government in two of its inquiries. The committee sought the Attorney-General's advice, which confirmed that the committee did not have the power to require the attendance of State officials. If the resolution of appointment of the committee was to be amended to give the committee this power, then the Attorney-General's advice was that serious constitutional questions would arise. The committee felt that it was being hampered in making worthwhile recommendations and it reported its view that the State Government deserved strong condemnation for its lack of willingness to co-operate with the committee.[67]

During the course of an inquiry into the Australian Loan Council in 1993 a Senate select committee sought to receive evidence from five Members of State Parliaments. The committee recommended in a special report that the Senate ask the State Houses involved to require the attendance of the Members in question. The Senate passed such a motion.[68] *Odgers* reports that the Houses of the Victorian Parliament did not agree to require their Members to attend, but gave leave for them to appear if they thought fit and the Legislative Assembly of New South Wales accepted a statement by its Speaker that it did not have the power to compel its Members to appear before the committee.[69] In the event none of the Members listed in the motion gave evidence.[70]

In 2006 a Tasmanian government Minister and a Western Australian government Parliamentary Secretary appeared voluntarily before the Standing Committee on Family and Human Services. Neither was sworn although it was the practice of the committee at the time to swear witnesses. It was considered that there was some doubt about the committee's power to swear witnesses from another Parliament.

Evidence from Members and Senators

Members or Senators may appear as witnesses before committees of the House. If a Member, including a Minister, volunteers to appear before a House committee the Member may do so and does not need to seek leave of the House. Ministers, including a Prime Minister, have appeared before committees of the House, and Ministers have briefed general purpose standing committees at the commencement of inquiries, or held discussions with committee members concerning possible inquiries or previous inquiries.[71]

May states:

> A Member who has submitted himself to examination without any order of the House is treated like any other witness.[72]

If a committee wishes a Member to attend as a witness, the chair writes inviting the Member to attend. If the Member refuses to attend or to give evidence or information as

67 VP 1980–83/1161 (28.10.1982); PP 282 (1982).

68 J 1993–96/565–6 (5.10.1993). The resolution also requested the House of Representatives to require the Commonwealth Treasurer's attendance, *see* p. 704.

69 *Odgers*, 14th edn, p. 565.

70 PP 449 (1993).

71 For example, Hon. J. Anderson, Deputy Prime Minister and Minister for Transport and Regional Services, meeting with members of Transport and Regional Services Committee, March 2003; Hon. M. Ferguson, meetings in the 42nd and 43rd Parliaments; and Hon. I. Macfarlane, meetings with the Agriculture and Industry Committee in the 44th Parliament.

72 *May*, 24th edn, p. 821.

a witness, the committee cannot summon the Member again, but must advise the House.[73] It is then for the House to determine the matter. These procedures have never had to be implemented in the House of Representatives. In appearing before the Committee of Privileges, Members (and Senators) have been required to swear an oath or make an affirmation and have been dealt with in the same manner as other witnesses.[74]

Senators cannot be compelled by the House to appear before it or before one of its committees, or to produce evidence. The same applies to Members in relation to the Senate and its committees. This immunity is entrenched practice, but derives ultimately from section 49 of the Constitution.

In 1920 a Senator of his own volition sought consent of the Senate to appear before a House of Representatives committee. The Senate, by motion, granted the Senator leave to attend and give evidence to the committee if he thought fit.[75] However, in 1973 and 1976 Senators appeared before the House of Representatives Standing Committee on Environment and Conservation without seeking leave of the Senate. Their appearance was at their own request. In 1994 members of a Senate committee attended a private meeting of the House Procedure Committee for informal discussions on the Senate committee's experience with videoconference technology. In 2015 a Senator made a submission to the House of Representatives Standing Committee on the Environment and appeared before the committee without seeking leave of the Senate.[76]

There have been several instances of Members of the House who have appeared, as Ministers, before Senate committees.[77] In 1981 the Speaker appeared voluntarily before the Senate Select Committee on Parliament's Appropriations and Staffing. In the same year the chair of the Senate Standing Committee on Finance and Government Operations wrote to a former Minister regarding an apparent conflict in evidence given to the committee during the course of its inquiry into the Australian Dairy Corporation and its Asian subsidiaries.[78] The former Minister, who at the time had another portfolio, wrote to the committee. There was still a discrepancy between the sworn evidence of one witness and the recollections of the Minister as expressed in the letter. As a result of further correspondence the Minister made a personal explanation in the House of Representatives. During the course of this personal explanation the Minister stated:

> I do not believe it appropriate that a Minister of this House should appear and give sworn evidence before a committee of the other House.[79]

A copy of this personal explanation was forwarded to the committee and the chair made a statement to the Senate shortly afterwards.

Standing orders of both Houses set down procedures to be followed if a member of the other House is to be called to give evidence before a committee. If a committee of the House wishes to call before it a Senator who has not volunteered to appear before it as a witness, a message is sent to the Senate by the House requesting the Senate to give leave to the Senator to attend for examination.[80] Upon receiving such a request the

73 S.O. 249(b).
74 E.g. PP 77 (1994) 3.
75 J 1920–21/153 (15.9.1920); S. Deb. (15.9.1920) 4531.
76 PP 115 (2016) 110, 120.
77 *Odgers*, 6th edn, pp. 871–2, and 14th edn, pp. 562.
78 Senate Standing Committee on Finance and Government Operations, *The Australian Dairy Corporation and its Asian subsidiaries*, PP 153 (1981) 149–51, 166.
79 H. R. Deb. (7.5.1981) 2110.
80 S.O. 251; e.g. VP 1993–96/596 (15.12.1993); VP 1998–2001/2075 (8.2.2001).

Senate may authorise the Senator to attend.[81] In 1901 the Senate ordered that a Senator have leave to give evidence before the Select Committee on Coinage if that Senator thought fit[82] and, in response to a request from the House of Representatives,[83] the Senate has granted leave to authorised Senators to attend and give evidence before the House of Representatives Committee of Privileges.[84] The Senators appeared and gave evidence having sworn oaths/made affirmations.[85] On 7 March 2001 the Senate gave leave to seven Senators, members of the Joint Standing Committee on Foreign Affairs, Defence and Trade, to appear before the House Privileges Committee, 'subject to the rule, applied in the Senate by rulings of the President, that one House of the Parliament may not inquire into or adjudge the conduct of a member of the other House'.[86]

Using similar procedures to those followed by the House,[87] the Senate has requested that Members of the House be given leave to attend and be examined by Senate committees. House standing order 252(a) provides that if the Senate asks the House by message for a Member to attend before the Senate or one of its committees, the House may authorise the Member to attend, provided the Member agrees. In its early years the House several times resolved to grant such leave to Members, adding the qualification that the Member may attend and give evidence 'if he think fit'.[88] In 1913 the House considered a request from the Senate that six named Members, including the Prime Minister, be granted leave to be examined as witnesses before the Senate Select Committee on General Elections. On motion moved by the Prime Minister, the House resolved to grant such leave only to three of the Members, all of them opposition Members. The Prime Minister explained that the three government Members whose attendance had been requested were not included in the motion because they did not desire to attend.[89] After the receipt of the message from the House was announced in the Senate, the President stated in answer to a question:

> The Senate sent a request to the House of Representatives; but it is no part of our duty, nor have we any right to dictate to the House of Representatives as to what it should or should not do. We have no right to ask it to give reasons as to why it has complied with a part and not the whole of our request.[90]

A similar request for the attendance of Members before another Senate committee was received later on the same day and was dealt with in the same manner.[91]

In 1993 the Senate requested the House to require the attendance of the Treasurer before a Senate select committee. The request was considered by the House, but rejected, in the following terms:

> That the House of Representatives . . . :
>
> (a) notes that the Senate's request that the House require the attendance of a Member of the House before a committee of the Senate does not conform with the practice of requesting the House to give leave for a Member to attend;
>
> (b) resolves that it is not appropriate that a Minister of this House should appear and give evidence before a committee of the Senate against the Minister's will;

81 E.g. J 1993–96/1077–8 (17.12.1993).
82 VP 1901–02/109 (26.7.1901), 113 (31.7.1901); J 1901–02/88 (26.7.1901).
83 E.g. VP 1985–87/1365 (27.11.1986); VP 1993–96/596 (15.12.1993).
84 E.g. VP 1985–87/1430 (17.2.1987); H.R. Deb. (17.2.1987) 147; J 1993–96/1077–8 (17.12.1993).
85 PP 77 (1994) 3.
86 J 1998–2001/4043 (7.3.2001); VP 1998–2001/2157 (7.3.2001).
87 Senate S.O. 178.
88 VP 1904/100 (30.6.1904), 114 (14.7.1904); VP 1909/189 (11.11.1909). *See also* VP 1914/74 (10.6.1914) (consideration of Senate message made order of day but lapsed at dissolution of House shortly after).
89 VP 1913/130 (31.10.1913); H.R. Deb. (31.10.1913) 2830–1.
90 S. Deb. (31.10.1913) 2824.
91 VP 1913/134 (31.10.1913); H.R. Deb. (31.10.1913) 2843.

(c) further resolves that it is not appropriate that any Member of the House of Representatives be required to appear before a committee of the Senate against the Member's will;

(d) confirms that it is for each Member to determine whether the Member thinks fit to appear before a committee of the Senate; and

(e) declines to require the Honourable John Dawkins MP to attend before the Senate Select Committee on the Functions, Powers and Operation of the Australian Loan Council.[92]

In 1901 the House granted a Member leave, if he thought fit, to attend and be examined by a select committee of the Victorian Legislative Assembly.[93]

The Speaker has declined an invitation to make a submission to the Senate Committee of Privileges in connection with an inquiry into matters arising at a joint meeting of the Houses held in October 2003, instead referring the committee to a statement he had made in the House.[94] In 2005 Speaker Hawker made a written submission to the Senate Committee of Privileges in connection with a general inquiry into the unauthorised disclosure of committee information.

Evidence from former Members and Senators

Opinions differ over whether the immunity of Members and Senators from compulsion by the other House extends to former Members and Senators. *Odgers* asserts that it does not, citing the case of a former Treasurer and a former Prime Minister, no longer Members, being summonsed to appear before a Senate committee in 1994.[95] This question again arose in 2002 during the inquiry by the Senate Select Committee on a Certain Maritime Incident. Legal opinions provided to the committee and advice from the Clerk of the House and the Clerk of the Senate did not agree on whether the former Minister for Defence, a former Member of the House, could be compelled to give evidence to the committee relating to his conduct as a Minister and Member. The view of the Clerk of the House was that the immunity probably extended to former Members.[96] The committee accepted the view of the Clerk of the Senate, but decided not to summons the former Minister, stating that it believed the summons would be contested in the courts, incurring expense for the taxpayer and causing delay to the inquiry.[97]

Evidence from parliamentary staff

If a committee of the House wishes to call a Senate staff member to give evidence, a message is sent to the Senate by the House requesting the Senate to give leave to the staff member to attend for examination.[98] Upon receiving such a request the Senate may authorise the staff member to attend the committee.[99] If the Senate were to ask the House by message for an employee of the House to attend before the Senate or one of its committees, the House may instruct its own employee to attend.[100]

In 1975 the Joint Committee on the Parliamentary Committee System formally sought the agreement of the Clerk of the House to the appearance before it of two employees of his department. It was noted that the standing orders concerning the

92 J 1993–96/565–6 (5.10.1993); VP 1993–96/342–3 (7.10.1993).
93 VP 1901–02/149 (4.9.1901).
94 VP 2002–04/1402–3 (10.2.2004) (papers tabled).
95 *Odgers*, 14th edn, p. 566 (Senate Select Committee on Certain Foreign Ownership Decisions in relation to the Print Media).
96 Senate Select Committee on a Certain Maritime Incident, *Report,* October 2002. The advice and opinions referred to (from B. Walker SC, Professor G. J. Lindell and A. Robertson SC) are included at appendix 2 of the report. *Odgers*, 14th edn, p. 566.
97 ibid, p. xv.
98 S.O. 251.
99 Senate S.O. 179.
100 Senate S.O. 178; S.O. 252(b).

appearance of parliamentary staff before committees were always interpreted liberally. Formal approval was sought in this case because the staff concerned sought to present personal views rather than to speak on behalf of the department. The Clerk gave approval.

In 1971, at the request of the Committee of Privileges, the Clerk Assistant and the Serjeant-at-Arms appeared before the committee to give their account of proceedings referred to in an article in the *Daily Telegraph* which had been referred to the committee.[101] In 1973 the Secretary of the Joint Committee on Prices appeared before the Committee of Privileges and in 1987 members of a select committee secretariat gave evidence to the committee. In 1978 the Clerk of the House and the Serjeant-at-Arms appeared before the Senate Committee of Privileges to give evidence relating to the security of Parliament House.[102] The Clerk and other House staff have appeared informally before the Broadcasting Committee and the Procedure Committee to discuss matters being considered by the committee.[103] At the request of the Standing Committee on Community Affairs, the Assistant Secretary (Committees) appeared at a public hearing in 1995 in relation to the committee's inquiry into migrant access and equity.[104]

The Clerk of the House is routinely invited to make submissions to inquiries by the Procedure Committee, and to provide oral evidence. In recent years the Clerk has lodged written submissions addressing issues relevant to the administration or interests of the Department of the House of Representatives to several committee inquiries. The Clerk and senior officers have also given oral evidence in association with submissions.[105] In 2015 the Clerk provided submissions to the Senate Standing Committee on Finance and Public Administration inquiries into the Parliamentary Service Amendment Bill 2014, and into proposed Parliament House security upgrade works. In 2017 the Clerk gave oral evidence to the Senate Select Committee on a National Integrity Commission in relation to the adequacy of the Australian Government's framework for addressing corruption and misconduct. In 2018 the Clerk made a submission to the Joint Committee on Intelligence and Security, providing advice on the privilege implications of the Foreign Influence Transparency Bill 2017.

Secretariat staff members of joint committees have appeared before the Privileges Committee in relation to inquiries into the possible unauthorised disclosure of proceedings or private evidence.[106]

Evidence as to proceedings

Only if the House grants permission, may an employee of the House, or other staff employed to record evidence before the House or one of its committees, give evidence relating to proceedings or give evidence relating to the examination of a witness.[107]

In 1974 an inquiry was conducted by the Australian Broadcasting Control Board into allegations that certain television stations had suppressed television news coverage of a report presented by the Joint Committee on Prices.[108] The Clerk of the House received a

101 Standing Committee of Privileges, *Article published in* Daily Telegraph, *27 August 1971*, PP 242 (1971) 39–45.

102 Senate Standing Committee of Privileges, *Appropriate means of ensuring the security of Parliament House*, PP 22 (1978).

103 E.g. PP 364 (1994), PP 108 (1995) and PP 158 (2000).

104 PP 24 (1996) 130.

105 E.g. Joint Standing Committee on Electoral Matters inquiries into civics and electoral education (2007), and into the delivery of electoral education (2015); Joint Committee of Public Accounts and Audit inquiries into effects of the ongoing efficiency dividend on smaller public sector agencies (2008), and into the development of the Commonwealth Performance Framework (2015).

106 E.g. PP 135 (1987). Standing Committee of Privileges, *Report concerning the possible unauthorised disclosure of in camera evidence to the Defence Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade*, June 2001.

107 S.O. 253. *See* Ch. on 'Documents'.

108 PP 326 (1974); VP 1974–75/177 (19.9.1974).

request for the clerk to the committee (i.e. committee secretary) to make a statement and, if necessary, to give evidence before the board of inquiry. In giving permission for the clerk to the committee to make a statement it was made clear that he could not give evidence in respect of any proceedings before the committee without the leave of the House, and that this restriction was imposed by the standing orders of both Houses.[109] The clerk to the committee appeared before the inquiry and read a statement in which no reference was made to any proceedings of the committee and which contained only factual information as to when and to whom copies of the committee's report had been distributed after it had been presented to the Senate and ordered to be printed.

Subsection 16(6) of the Parliamentary Privileges Act provides that neither the section nor the Bill of Rights prevents or restricts the admission in evidence and examination of proceedings in connection with the prosecution for an offence against an Act establishing a committee. Section 17 of the Act provides, inter alia, that a certificate signed by or on behalf of the Speaker or President, or a committee chair, in relation to committee records, evidence, etc. is evidence of the matters contained in the certificate. (*And see* Chapter on 'Parliamentary Privilege'.)

Evidence from judges

Judges have appeared as witnesses before House committees. These appearances have been voluntary and have concerned matters of law and policy.[110]

WITNESSES

Protection of witnesses

Resolution on procedures for dealing with witnesses.

On 13 November 2013 the House adopted a resolution setting out procedures to be observed by committees of the House in their dealings with witnesses.[111] The resolution was in very similar terms to a draft resolution originally proposed by the Procedure Committee in its 1989 report *Procedures for dealing with witnesses*.[112] Although not formally adopted, the draft resolution had served as a de facto guide to committee practice in the intervening years. Excerpts from the 2013 resolution are quoted under the relevant headings below.

Privacy

A straightforward protection which can be afforded a witness is that of taking evidence in private and treating documents in confidence—*see* 'Limited publication' at page 717; 'Private or in camera hearings' at page 697; 'Documents treated in confidence' at page 721; and 'Expunging material from evidence' at page 724, and 'Televising, filming and recording of proceedings' at page 693.

109 S.O. 253; Senate S.O. 183.

110 E.g. *Transcript of evidence*, Standing Committee on Family and Community Affairs (10.10.2003); *Transcript of evidence*, Standing Committee on Legal and Constitutional Affairs (26.7.2005); *Transcript of evidence*, Standing Committee on Aboriginal and Torres Strait Islander Affairs (30.3.2010). Magistrates have also appeared before committees.

111 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, VP 2013–16/58–9 (13.11.2013). The resolution is reproduced in full as an attachment to the Standing Orders.

112 *Committee procedures for dealing with witnesses,* PP 100 (1989). Recommendation repeated: *10 years on,* PP 91 (1998); *It's your House*, PP 363 (1999); *Building a modern committee system*, PP 144 (2010). A similar resolution was adopted by the Senate in 1988.

Counsel or advisers

There is no provision in the standing orders nor any statutory provision for a witness before a committee of the House to be represented by counsel. Furthermore, there is no precedent for such representation before the House of Representatives or its committees.

Over the years, however, there have been precedents[113] for House of Representatives committees permitting witnesses to have counsel or advisers present in an advisory capacity during hearings, and the House has more recently formally adopted the following rule:

> A witness may make application to be accompanied by counsel or an adviser or advisers and to consult counsel or the adviser(s) in the course of the meeting at which he or she appears. If such an application is not granted, the witness shall be notified of reasons for that decision. A witness accompanied by counsel or an adviser or advisers shall be given reasonable opportunity to consult with counsel or the adviser(s) during a meeting at which he or she appears.[114]

On several occasions the Committee of Privileges has permitted witnesses to be accompanied by, and to confer with, counsel or advisers. Historically, save for seeking clarification on and making submissions concerning their own involvement, counsel have not been permitted to address the committee directly. However, procedures agreed by the Committee of Privileges and Members' Interests in 2009 now provide for a more extensive role for such persons—*see* Chapter on 'Parliamentary privilege'.

Persons permitted to accompany and assist witnesses need not be lawyers—for example, Members appearing before the Committee of Privileges have been accompanied by research assistants.[115] On another occasion a Member appearing before the Committee of Privileges was accompanied by another Member.[116] The role of such persons was emphatically that of adviser rather than representative. Witnesses have been permitted to converse freely with such advisers, but the advisers have not been permitted, for example, to:

- present evidence in support of a witness or the witness's submission;
- object themselves to procedures or lines of questioning pursued by the committee; or
- ask questions of witnesses or committee members.

On one occasion a committee intervened to prevent what it saw as an attempt to avoid these restrictions by the passing of notes to a witness or providing the witness with written responses to questions.[117] These limitations attempt to ensure that the witness answers the questions and presents his or her own evidence while at the same time allowing the witness to readily obtain, for example, advice or help as to legal or other issues arising in the giving of evidence.

Counsel or advisers may be permitted, at the committee's discretion, to attend a private hearing of a client's evidence.

Protection in legal proceedings

Standing order 256 states 'Any witness giving evidence to the House or one of its committees is entitled to the protection of the House in relation to his or her evidence'. The protection available to witnesses however also has another source—it derives from Article 9 of the Bill of Rights (applying by virtue of section 49 of the Constitution and

113 Covered in previous editions (6th edn pp. 693–5).
114 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 12.
115 PP 77 (1994)—minutes 17.12.93.
116 PP 498 (1989)—minutes 28.11.89.
117 Standing Committee on Aboriginal Affairs, *Transcript of evidence*, 2 December 1983, p. 1362.

re-asserted by the Parliamentary Privileges Act) which declares that . . . 'proceedings in Parliament ought not to be impeached or questioned in any court . . .'. The term 'proceedings in Parliament' includes committee proceedings,[118] and witnesses giving evidence to a committee are protected from legal proceedings on account of that evidence (for a more complete coverage *see* Chapter on 'Parliamentary privilege'). However, it is important that a committee is properly constituted at the time of a hearing, to remove any possible concerns as to the protection of parliamentary privilege.

The protection afforded a witness in relation to oral evidence given before a committee also applies to documentary evidence that the witness may give.[119] This protection is now conferred explicitly under the Parliamentary Privileges Act. The protection of parliamentary privilege applies as equally to the evidence of a voluntary witness as it does to the evidence of a witness summonsed by the committee. It is immaterial whether the evidence is given on oath or not.[120]

The absolute privilege derived from the Bill of Rights and enhanced by the Parliamentary Privileges Act applies essentially to oral or written statements which form part of parliamentary proceedings, although some related actions may also be covered. The Parliamentary Papers Act provides absolute protection to the publisher of documents, including submissions and transcripts, whose publication is authorised by the House or its committees. While a statement made by a witness in the course of committee proceedings is absolutely privileged, the same statement repeated by that witness elsewhere is not. Similarly, the separate publication of a document presented to a committee is not absolutely privileged unless publication has been authorised by the House or the committee.

Protection from improper interference, arrest and molestation

Witnesses are protected from arrest (other than on criminal charges), molestation, tampering or other acts aimed at deterring them from giving evidence before a committee or punishing or penalising them for having given such evidence under the traditional power of the House to punish contempts. These matters are described in detail in the Chapter on 'Parliamentary Privilege'.

Witnesses are also protected by the Parliamentary Privileges Act. Section 12 of the Act provides for substantial penalties to be imposed against persons or corporations:

- who by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence a person in respect of evidence given or to be given before a committee or who induce another person to refrain from giving evidence; or
- who inflict any penalty or injury upon, or who deprive of any benefit, a person on account of the giving or proposed giving of any evidence, or any evidence given or to be given, before a committee.

For the purposes of the Act the submission of a written statement is, if so ordered by the House or a committee, deemed to be the giving of evidence, and thus the protection of section 12 can be gained. Under section 14 of the Act, a person who is required to attend

118 *Parliamentary Privileges Act 1987*, s. 16(2). The enactment of the Parliamentary Privileges Act followed, and sought to reverse, judicial decisions which had allowed witnesses before Senate committees to be examined in court as to their committee evidence.

119 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 31.

120 Opinion of Solicitor-General, dated 8 August 1941.

before a House or a committee on a particular day may not be required to attend before a court or a tribunal, or arrested or detained in a civil cause, on that day.

Witnesses may also be protected by the Act establishing a statutory committee.

If a committee becomes aware of allegations that an offence or contempt may have been committed against a witness or a prospective witness, it should take all reasonable steps to ascertain the facts of the matter. This could include publishing details of the allegation to the person alleged to have offended, so that the person is able to respond.[121]

The House has adopted the following provision:

> Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which has been or may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given or in respect of prospective evidence, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the House.[122]

The careful and proper application of procedural rules and discretions is significant in the protection of committee witnesses, as well as other persons—*see* immediately below, and also 'Private or in camera hearings' at page 697.

Protection of persons referred to in evidence

The House has adopted the following provisions for the assistance or protection of persons referred to in evidence:

> Where a committee has reason to believe that evidence about to be given may reflect on a person, the committee shall give consideration to hearing that evidence in camera.
>
> Where evidence is given which reflects upon a person, the committee may provide a reasonable opportunity for the person reflected upon to have access to that evidence and to respond to that evidence by written submission or appearance before the committee.[123]

Public interest immunity

The Executive Government may seek to claim immunity from requests or orders by a committee for the production of certain oral or documentary evidence on the grounds that the disclosure of the evidence would be prejudicial to the public interest. (More general aspects of the doctrine of 'public interest immunity', sometimes described as 'crown privilege', are covered in the Chapter on 'Documents'.)

The Government's strong position

Commonwealth public servants appearing before committees as private individuals to give evidence unrelated to their past or present duties as public servants, are bound by orders of a committee. They are open to the same penalties as any other citizen if they do not obey. While in principle they are equally bound when summoned to give evidence relating to their official duties, in practice their position is somewhat different. This is particularly so with respect to failure or refusal to answer a committee's questions. They may, under certain circumstances and on behalf of their Minister, claim public interest immunity. It is doubtful, however, whether a public servant, even on instructions from a Minister or the Government, could refuse or fail to obey a summons to attend a committee.[124]

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121 E.g. Standing Committee on Transport, Communications and Infrastructure, minutes, 31.5.1995; *and see* H.R. Deb. (7.9.2000) 20385–7.

122 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 16.

123 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraphs 10 and 11.

124 *See* Enid Campbell, 'Parliament and the Executive', in Leslie Zines (ed), *Commentaries on the Australian Constitution*, Butterworths, 1977, p. 100.

The Joint Committee on the Parliamentary Committee System reported that the application of the rules of public interest immunity was 'one of the most vexed questions of committee procedure'. It concluded:

> Notwithstanding the authoritative literature and knowledge of the application of the rule in other Commonwealth Parliaments the Committee finds itself unable to offer any clarification of the rules.[125]

Public interest immunity in relation to parliamentary proceedings involves the following considerations:

- the belief that the House's power to require the production of documents and giving of evidence is, for all practical purposes, unlimited;
- the view that it would be contrary to the public interest for certain information held by the Government to be disclosed; and
- the fact that the Government, by definition, has the support of the majority in the House and, by standing order or resolution of the House, on its committees.

There is obvious potential for Governments, by use of their strong position in this regard, to undermine the efforts of the House and its committees to call Governments to account. The Joint Committee on the Parliamentary Committee System commented:

> It is clear that crown privilege is relied on by governments to protect themselves. The protection of the confidentiality of advice to Ministers or security matters is a shield behind which witnesses sometimes retreat.[126]

Government guidelines

The principles upon which Governments have proceeded to deal with public interest immunity were summarised by Greenwood and Ellicott. They drew on two documents in particular, namely, a letter of November 1953 to the Joint Committee of Public Accounts from the Prime Minister and a letter of September 1956 from the Solicitor-General to the Senate Regulations and Ordinances Committee.[127] These principles have been substantially incorporated in the Government's *Guidelines for official witnesses before parliamentary committees and related matters*. Key points in the guidelines include the following:

- the privilege involved is not that of the witness but that of the Crown;
- if a witness attends to give evidence on any matter in which it appears that issues of public interest immunity may be concerned, the witness should endeavour to obtain instructions from a Minister beforehand as to the questions, if any, which the witness should not answer;
- if questions arise unexpectedly in the course of an inquiry, the witness should request postponement of the taking of evidence to enable the Minister to be consulted;
- if the Minister decides to claim immunity, normally the Minister should write to the committee chair to that effect;
- should the committee regard information about which a claim for public interest immunity may be made as necessary, consideration should be given to agreeing on a means of making it available in some other form, such as private evidence; and

125 Joint Committee on the Parliamentary Committee System, *A new parliamentary committee system*, PP 128 (1976) 87.
126 PP 128 (1976) 87.
127 Both are quoted in full in *Odgers*, 6th edn, pp. 830–44.

- before deciding whether to grant a certificate, the Minister should carefully consider the matter in the light of the relevant principles.[128]

It needs to be emphasised that the fourth point, regarding a letter from a Minister to a committee, simply recognises that it is the Minister, not a staff member, who may claim public interest immunity. In this respect it therefore represents sound practice. However, as already indicated, a committee may negotiate further with a Minister[129] or the Prime Minister. Ultimately it is, in principle, open to the committee to challenge the Minister's claim in the House by raising the Minister's or the Government's behaviour as a possible contempt of the House.[130]

Committee practice

The reality of the Government's effective capacity to refuse to disclose information or documents to the House or its committees, no matter how important they might be for an investigation, is not lost on Members. Neither the House nor the Senate has ever persisted in its demands for government documents or oral evidence to the point where a charge of contempt has been laid.

In 1951 the Government directed that the Chiefs of Staff of the armed forces and other officials should not attend before a Senate select committee inquiry into national service. The grounds upon which the Government based its direction are of interest. In the first instance the Prime Minister indicated that permanent officers of the armed services or the public service should not be expected to comment on government policy, and that they would have no alternative but to claim privilege if such opinions were sought. He therefore saw little purpose in their attendance. The committee chair responded to the Acting Prime Minister that the committee was primarily concerned with factual evidence, not with comment and opinions on government policy, and that it would therefore invite the officials to give evidence. After the officials had received letters inviting them to attend to give evidence the Acting Prime Minister informed the committee that Cabinet considered the officials' participation in the inquiry 'would be against the public interest'. He stated further:

> It is quite impossible to draw the line between what your Committee may call "factual" and what is "policy", and it should not be for any official or for the Committee, in the view of the Government on matters which may touch security, to decide whether it is either one or the other.[131]

The failure of the committee to summons the officials was not mentioned but the Attorney-General subsequently referred to it in debate.[132]

In its report to the Senate the committee acknowledged that it was for the Senate itself to decide on any action to be taken. The committee, nevertheless, drew attention to established practice that neither House of the Parliament could punish any breach or contempt offered to it by any member of the other House. It recommended therefore that in so far as House of Representatives members of Cabinet were concerned, a statement of the facts should be forwarded to that House for its consideration. As to the Senate members of Cabinet the committee recommended:

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128 *Parliamentary committees: powers over and protection afforded to witnesses*, Paper prepared by I. J. Greenwood and R. J. Ellicott, PP 168 (1972) 37–8.

129 *See* for example efforts by the Joint Committee on Migration Regulations to gain access to departmental information and the compromise whereby the committee chair and deputy chair were given access to the papers. Committee minutes of proceedings 19.7.90, 4.9.90, 18.10.90.

130 *And see* Senator Greenwood's later view on the conclusiveness of a Minister's certificate, PP 215 (1975) 51.

131 S 2 (1950–51) 8.

132 S. Deb. (8.3.1951) 154–7.

> . . . if the Senate decides that a breach of privilege has been committed, the action to be taken by the Senate should be aimed at asserting and upholding the cherished principle of the right of the Senate to the free exercise of its authority without interference from the Cabinet.[133]

The special report was presented to the Senate and a motion for its adoption was moved.[134] The debate on the motion was not concluded when the Senate was dissolved on 19 March 1951. As the matter was not revived the issues were left unresolved. It could be argued, as the committee did, that the failure to issue a summons was not the central issue, as this was not given as a ground for the Government's refusal to permit the officers to attend.

Significant factors in the case were that the committee consisted entirely of opposition Senators, and also that the Opposition held a majority in the Senate at the time. If this had not been so, it can be surmised that events would have been very different—indeed the committee may not have been appointed. The case perhaps best illustrates the importance of party-political realities in any consideration of parliamentary access to information held by the Government.

In 1975 the Senate Committee of Privileges reported on the refusal of officials, at the direction of the Government, to give oral or documentary evidence at the Bar of the Senate on the Whitlam Government's overseas loans negotiations. The committee divided on party lines.[135]

In 1967 the Joint Committee on the Australian Capital Territory requested the Department of the Interior to produce all relevant papers in connection with applications to subdivide rural land in the Australian Capital Territory and certain acquisitions. The department, on the advice of the Attorney-General, replied:

> Advice now received is that the Minister can properly object to produce to a Parliamentary Committee Departmental documents that disclose the nature of recommendations or advice given by officials, either directly to Ministers or to other officials, in the course of policy making and administration. If it were otherwise, there would be a danger that officials would be deterred from giving full and frank advice to the Government.
>
> On the basis of this advice, the Minister has personally considered what documents should be given to your Committee; he has decided that he must object to the production of documents to the Committee that represent recommendations or advice given or to be given to the Government by public officials, for the reason that these are a class of document which it would be contrary to the public interest to disclose.
>
> However, documents that do not come within this category and are relevant to the matters mentioned in your letters of 28th and 30th November, are produced for the Committee's examination. These papers provide the factual information requested by the Committee.[136]

The committee did not press for the other documents requested.

While objections by officials to presenting certain evidence have sometimes been readily accepted, the evidence has at times been so important that a committee has persisted. This persistence has taken the form of requiring the witness or prospective witness to consult with the departmental secretary or Minister, or of the committee or its chair negotiating with the departmental secretary or the Minister.

In 1977 a subcommittee of the Standing Committee on Expenditure was able to obtain important information, initially refused, after the Minister's approval was obtained. No objection was raised to the committee's subsequent publication of the evidence. The same committee was unsuccessful in certain other attempts to obtain information from the Government and brought this to the attention of the House in a

133 S 2 (1950–51) 16.
134 J 1950–51/215 (7.3.1951), 220 (8.3.1951).
135 Senate Standing Committee of Privileges, *Matters referred by Senate resolution of 17 July 1975*, PP 215 (1975).
136 Letter from the Secretary, Department of the Interior, dated 21 December 1967.

report describing its first year of operation. The committee indicated that the Prime Minister had refused to provide it with two sets of documents, even on a confidential basis, on the ground that they were internal working documents. Attention was drawn to the fact that the documents would have helped the committee to determine which matters under investigation it should concentrate upon and in turn would have enabled it to use its limited resources to greater advantage. The committee urged Governments, if necessary, to find ways of minimising restrictions on information to be made available to committees, for example, by providing documents with offending material removed.[137] This latter course has in fact been followed on occasions.

The subject of relations between committees and the Executive arose in 1992–3 in respect of a Senate select committee inquiry into the Australian Loan Council. This case is referred to at pages 702 and 704 in relation to evidence from State Members and Members of the House. In 1994, in relation to a Senate select committee inquiry concerning the print media, the Treasurer instructed officials not to give evidence or to provide certain documents to the committee.[138]

The course mostly followed by committees in an attempt to circumvent the possibility of public interest immunity being claimed is to undertake to treat oral or documentary evidence as confidential. This confidentiality can create issues when the committee comes to drafting its report, for it runs the risk of publishing conclusions and recommendations which on the published evidence may appear unjustified. Apart from this, the public is prevented from drawing its own conclusions on the basis of all the material evidence.

Sub judice convention

In the case of a matter awaiting or under adjudication in a court of law the House imposes a restriction upon itself to avoid setting itself up as an alternative forum to the courts and to ensure that its proceedings are not permitted to interfere with the course of justice. This restriction is known as the sub judice convention and is described more fully in the Chapter on 'Control and conduct of debate'.

Committees are bound by the convention. The chair of a committee, like the Speaker, may exercise discretion as to whether the convention should apply in a given situation, but the chair must have regard to the principles followed by the Speaker in the House and to the option open to a committee to take evidence in private, an option which is not open to the House in any practical sense.

If a chair decides the sub judice convention should apply to evidence being given, he or she may direct that the line of questioning and evidence be discontinued or that the evidence be taken in private. A chair would normally wish to consult committee members on such a matter. It would also be open to any other member to initiate a resolution of the committee to order visitors to leave.[139]

If the evidence is taken in private and it subsequently becomes clear that it does not warrant the application of the sub judice convention, the committee can authorise publication. Equally, a committee may publish such evidence once the possibility of its publication interfering with the course of justice has passed.

In 1975 a witness before a subcommittee of the Standing Committee on Environment and Conservation sought to give evidence relating to the circumstances of a legal action

137 PP 244 (1977) 20.
138 *And see Odgers*, 14th edn, p. 501.
139 S.O. 240.

against him in the High Court. The evidence was taken in private.[140] In the 37th Parliament the Standing Committee on Transport, Communications and Infrastructure conducted an inquiry into aviation safety. At the time of the inquiry a coronial inquest was taking place into one aircraft accident and a judicial inquiry was being conducted into another. Having regard to the sub judice convention, the committee agreed to a resolution that it should take no evidence on either matter unless the resolution was rescinded, and it completed the inquiry without changing this decision.[141] In 2000 care was taken to try to ensure, by taking evidence in private, that a committee inquiry concerning military justice did not cause any interference with actions being taken within the Defence Forces.[142] In 2013 an inquiry by the Committee of Privileges and Members' Interests was suspended because of sub judice considerations after a Member had been charged with criminal offences.[143]

Charges against Members

Unless another committee is so directed by the House, only the Committee of Privileges and Members' Interests may inquire into, or make findings in respect of, the conduct of a Member of the House. If a committee other than the Committee of Privileges and Members' Interests receives information or an allegation charging a Member, the committee must inform the Member concerned of the details of the charge and give the Member an opportunity to make a statement on the matter to the committee. Unless the committee considers the matter is without substance, it must report the matter to the House and may not proceed further on the information or allegation without being directed by the House to do so.[144]

In 1975 a witness before the Joint Committee on Pecuniary Interests of Members of Parliament alleged that a Senator, who was a member of the committee, was ineligible under paragraph 44(v) of the Constitution to serve as a Senator. The committee resolved that, in accordance with standing orders, the Senate should be acquainted with the relevant evidence. The chair wrote to the President describing the information brought before the committee and enclosing a copy of the relevant transcript of evidence. The President reported to the Senate, read the committee chair's letter and presented the letter and transcript of evidence.[145] The Senator was given leave to make a statement in which the allegations were denied and it was indicated that the Senator had resigned from the committee as the nature of the allegations was such as to place in question the Senator's objectivity in dealing with the issues before the committee.[146] The Senate resolved to refer the matter to the High Court of Australia, in its jurisdiction as the Court of Disputed Returns, and to grant the Senator two months' leave of absence.[147] The Court upheld the Senator's eligibility to serve as a Senator.[148]

140 A Senate committee in 1973 decided not to take evidence from a witness in similar circumstances, *see Odgers*, 6th edn, p. 361.
141 PP 480 (1995) 5.
142 H.R. Deb. (9.11.2000) 22635–6.
143 H.R. Deb. (14.2.2013) 1387.
144 S.O. 250.
145 J 1974–75/597 (15.4.1975).
146 S. Deb. (15.4.1975) 981–4.
147 J 1974–75/628–9 (22.4.1975).
148 For a detailed discussion of pecuniary and personal interest *see* Ch. on 'Members', and for a more detailed description of the case *see Odgers*, 6th edn, pp. 172–4.

Offences by witnesses

Conduct by a witness which improperly interferes with the free exercise by a committee of its authority or functions may be found to constitute contempt of the House. Such an offence may be punished by the House and penalties can include fine and imprisonment. These matters are discussed in more detail in the Chapter on 'Parliamentary privilege'.

Examples of contempt cited by *May* in relation to the conduct of witnesses include:

- interrupting or disrupting the proceedings of a committee;
- refusing to be sworn or to take some corresponding obligation to speak the truth;
- refusing to answer questions;
- refusing to produce evidence or destroying documents;
- prevaricating;
- giving false evidence;
- wilfully suppressing the truth;
- persistently misleading a committee;
- trifling with, or being insolent or insulting to a committee;
- appearing in a state of intoxication before a committee;
- removing any record or document from the Clerk's custody or falsifying or improperly altering such records or documents;
- non-compliance with orders for attendance made by committees with the powers to send for persons;
- disobedience to committee orders for the production of documents;
- avoiding or assisting someone else to avoid being served with a summons.[149]

If a witness who is summonsed fails or refuses to attend before a committee, or to give evidence before it, the committee may draw the circumstances to the attention of the House, which may deal with the matter as it sees fit.[150] Other contempts are in practice dealt with in a similar way, using the procedures established for raising a matter of privilege in the House.

A committee's report to the House on an alleged contempt must be made at the earliest opportunity if the matter is to be given precedence.[151] The report, therefore, might be in the form of a statement to the House by the chair. Despite this requirement it is considered that a committee should seek to form some preliminary view on a matter, and that a matter should be identified in specific terms, before bringing it before the House, and unless the committee has done so the Speaker may direct it to consider the matter further. In order to inform itself on the matter a committee would take such steps as writing to the person or organisation suspected of offending or alleged to have offended, indicating the nature of the concern and seeking a response. By such means a committee can seek to have the essential allegations clarified so that it can make an informed decision as to whether to proceed with a complaint to the House.[152]

149 *May*, 24th edn, pp. 252–4, 837–41.
150 S.O. 254(b).
151 S.O. 51(d); *see also* Ch. on 'Parliamentary privilege'.
152 E.g. H.R. Deb. (7.9.2000) 20385–7.

PUBLICATION OF EVIDENCE

Authorisation for publication of evidence

Standing order 242 provides for committees to authorise publication of evidence:

(a) A committee or subcommittee may authorise publication of evidence given before it or documents presented to it.

(b) A committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been:
  (i) reported to the House; or
  (ii) authorised by the House, the committee or the subcommittee.

(c) A committee may resolve to:
  (i) publish press releases, discussion papers or other documents or preliminary findings; or
  (ii) divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment.

(d) A committee may resolve to authorise a member of the committee to give public briefings on matters related to an inquiry. An authorised member may not disclose evidence, documents proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation.

The Parliamentary Papers Act, inter alia, empowers a committee of either or both Houses to authorise the publication of any document laid before it or of any evidence given before it. It also grants protection from civil or criminal proceedings to any person publishing any document or evidence published under an authority given pursuant to the provisions of the Act. Section 16 of the Parliamentary Privileges Act provides that the term 'proceedings in Parliament' includes 'the formulation, making or publication of a document including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published'. This means that absolute privilege attaches to such actions and documents and, by virtue of section 3 of the Act, the reference to a committee includes a subcommittee. A practical difference between the two statutory provisions is that motions to authorise publication under the Parliamentary Papers Act can only be moved in respect of evidence which has been given or documents which have been presented to a committee (or a House). This limitation does not apply in respect of action under section 16 of the Parliamentary Privileges Act.

The Senate has ordered the publication of documents held by a committee but which the committee had decided not to publish.[153]

Standing order 237 authorises committees to consider and make use of the evidence and records of similar committees appointed during previous Parliaments. Some committees have relied on this standing order to authorise a wider publication of such material than was authorised by the predecessor committee.[154] *See also* 'Access to old evidence and documents' at page 722.

Limited publication

A committee may limit the publication of confidential documents or evidence to particular individuals. This approach may be adopted, for example, to enable individuals to respond to allegations made against them in a submission or at a private hearing by another witness.[155]

153 J 1998–2001/4830 (30.8.2001).

154 Since current committees have become custodians of the web pages containing the reports and submissions of their predecessors, S.O. 237 has been seen as providing authority for the management and editing of such content.

155 E.g., Committee of Privileges, minutes, 25.11.1993 (publication of transcript of in camera evidence to another party, PP 78 (1994)); minutes, 24.8.1995 (publication of submission to another party, PP 376 (1995)).

Limited publication may also be used to enable the testing of conclusions or the vetting of draft reports by persons with expert knowledge. For example, the Standing Committee on Expenditure held private hearings towards the end of its inquiries to test its preliminary conclusions with relevant government departments.[156] The hearings were held in private to avoid speculation about the committee's recommendations. Departments were informed that the evidence would be published when the committee's report had been presented. In May 2008 the Joint Committee of Public Accounts and Audit authorised the release, on a confidential basis, of its draft report of the inquiry into certain taxation matters to the Treasury 'for factual and technical comment' prior to adoption of the report by the committee.

Partial publication

In some cases committees have authorised the publication of submissions or other documents with certain information deleted. Names and addresses of persons may be suppressed, for example, to allow views or facts to be disclosed while still protecting privacy.[157] It is now the usual practice for personal details such as addresses to be omitted from submissions from individuals published on committee web pages.

On occasion a submission may contain material that a committee considers should not have widespread dissemination protected by parliamentary privilege. For example, material may be regarded as offensive or relate to a matter that is sub judice. In such cases the committee may decide to authorise publication with certain material omitted. In 2010 the Joint Select Committee on Cyber-Safety suppressed footnotes in a submission which linked to 'Refused Classification' material and placed the following disclaimer on its website:

> The Committee reserves the right to exercise its discretion not to publish any submission, or part of a submission, which in its view contains objectionable material, or material that is or purports to be Refused Classification or links directly to Refused Classification material.

(*See also* 'Expunging of material from evidence' at page 724.)

Disclosure of private or in camera evidence

It is an offence under the Parliamentary Privileges Act, as well as a contempt of the House, for any person to disclose or publish a document or evidence taken in camera without the authority of the House or a committee. The Parliamentary Privileges Act also provides that a court or tribunal may not require the production of, or admit into evidence, such documents or evidence.[158] The Parliamentary Privileges Act, however, does not prevent disclosure during the course of proceedings in Parliament, and the House has the power, which is delegated to committees by standing order, to authorise the publication of any evidence given or any document presented[159] even if it has initially been taken in private. The final authority in the publication of evidence given in private rests with the House itself.[160] Although it is highly improbable that the House would insist on the publication of evidence received in a private hearing, a committee cannot give a witness an absolute guarantee that the witness's evidence will not be published (*but see* paragraph (c) of the 1998 resolution noted below).

156 E.g. Standing Committee on Expenditure, PP 244 (1977) 18–19.
157 E.g. Standing Committee on Family and Human Services, minutes, 9.3.2005.
158 *Parliamentary Privileges Act 1987,* ss. 13, 16.
159 S.O. 242(a).
160 *And see May*, 24th edn, p. 827.

Witnesses granted permission to give their evidence in private should be warned that it is within the committee's (or the House's) discretion to publish the evidence subsequently, if it thinks fit.[161] For obvious reasons a committee should authorise publication of private evidence only when there is a real and justifiable need or when subsequent events have removed the need for confidentiality, or when the evidence given does not warrant the confidential treatment which it was originally thought might be necessary. For example, having heard the evidence the committee might form the opinion that the arguments in favour of publication in the public interest carry more weight than the grounds of confidentiality claimed, or that a claim that the evidence is sub judice (*see* page 714) cannot be sustained. Committees, while not authorising publication of evidence generally, may in some cases need to authorise publication of the evidence to a person named in it, so that the person may be informed of statements made and given the opportunity to respond.[162]

In the 34th and 35th Parliaments petitions were received from solicitors requesting leave to take possession of certain 'confidential' committee documents in order that they might be produced in court. In each case the House referred the matter to the appropriate committee to determine whether the documents should be presented to the House by the committee for the purpose of the House's granting leave for a subpoena to be issued and served for the production of the documents in court. In the first case the committee recommended that the action proposed be taken and the documents were subsequently presented to the House, the subpoena was served and the House approved the documents being passed to the appropriate court. In the second case, while the matter for which the documents were originally required was settled out of court before the committee reported, the committee nevertheless advanced two propositions to the House, namely, that:

- there was a strong presumption that evidence taken in camera, or documents treated as confidential by parliamentary committees should not be released; and
- this presumption was related to the effectiveness in the working of parliamentary committees.[163]

If a committee does want to publish evidence taken in private, it should inform the witness and consider any objections raised.

The House has adopted the following provision in relation to the disclosure of in camera evidence:

> Before giving any evidence in camera a witness shall be informed whether it is the intention of the committee to publish or present to the House all or part of that evidence, that it is within the power of the committee to do so, and that the House has the authority to order the production and publication of undisclosed evidence. Should the committee decide to publish or present to the House all or part of the evidence taken in camera, the witness shall be advised in advance. A member, in a protest or dissent added to a report, shall not disclose evidence taken in camera unless so authorised by the committee.[164]

161 This is the usual situation. Exceptionally, in the case of the Joint Committee of Public Accounts and Audit consent of the witness is necessary (*Public Accounts and Audit Committee Act 1951*, s. 11A).

162 This course has been followed by the Committee of Privileges, e.g. minutes, 14.12.1993, PP 78 (1994). *See* S.O. 242(c)(ii).

163 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Release of Tyre Safety Inquiry documents*, PP 41 (1989) 6.

164 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 7.

Disclosure of in camera evidence in dissenting reports

In accordance with the resolution of the House cited above, a member, in a protest or dissent added to a report, shall not disclose evidence taken in camera unless so authorised by the committee.

The 1998 resolution on the disclosure of in camera evidence (*see below*) was considered to apply to dissenting reports, although it did not mention them specifically.

Senate standing orders (observed by joint committees) have provisions which allow Senators to refer to in camera evidence or unpublished committee documents in a dissenting report, to the extent necessary to support the reasoning of the dissent, in cases when a committee has not reached agreement on the disclosure of the evidence or documents for that purpose.[165]

Disclosure of in camera evidence after 30 years

Pursuant to a resolution of the House on the disclosure of evidence (*see* page 722), the Speaker has the authority to permit access to unpublished in camera evidence after 30 years, subject to certain conditions; the Speaker and the President of the Senate have similar authority in respect of joint committees.

Resolution on disclosure of in camera evidence

The Standing Committee on Procedure reviewed the question of the disclosure of in camera evidence in 1991 and concluded that a rigorous mechanism should be put in place to ensure that in camera evidence could only be disclosed in the most outstanding circumstances.[166] The committee repeated this recommendation when it reviewed the committee system in 1998.[167] As a result of the committee's recommendations the House agreed to a resolution on the disclosure of in camera evidence on 3 December 1998. The resolution was introduced as a trial, effective initially for a year and later extended to the end of the session. The resolution was not renewed in later Parliaments.

The resolution applied the following conditions to the disclosure of evidence taken in private by a committee of the House:

(a) Committees may take evidence in the following manner:
  (i) By written submissions, whether in hard copy or electronic form;
  (ii) By oral evidence taken in public; and
  (iii) In private session.

(b) A committee may, on its own initiative or at the request of, or on behalf of, a witness or organisation, hear evidence in private session. A witness shall be informed that it is within the power of the committee and the House to disclose all or part of the evidence subsequently. Publication of evidence would be the prerogative of the committee and it would only be disclosed if the majority of the committee so decided by resolution.

(c) Where a committee has agreed to take evidence in camera, and has given an undertaking to a witness that his or her evidence will not be disclosed, such evidence will not be disclosed by the committee or any other person, including the witness. With the written agreement of the witness, the committee may release such evidence in whole or in part.

(d) Where a Member of the House of Representatives discloses in camera evidence other than as prescribed, the House may impose a penalty on the Member following investigation and report of the matter by the Committee of Privileges.

(e) Evidence taken in camera which discloses a serious crime may, in respect to that part, be conveyed to the Speaker for appropriate action by the Chair, with the committee's approval.

165 Senate S.O. 37(2).

166 Standing Committee on Procedure, *Disclosure of in camera evidence,* November 1991, PP 295 (1991).

167 Standing Committee on Procedure, *Ten years on: a review of the House of Representatives committee system*, May 1998, PP 91 (1998) 32–3.

(f) No person not being an officer of the committee when the evidence was given will have access to evidence taken in camera, unless authorised by the full committee.

(g) If a motion is to be moved in the House to release evidence taken in camera by one of its committees, notice must be given. Such notice will not be placed on the Notice Paper without the approval of the Speaker, who must consult the Attorney-General, the Chair of the relevant committee, the Prime Minister and the Leader of the Opposition and report the outcome of that consultation to the House.[168]

Documents treated in confidence

The principles applying to requests for hearing evidence in private apply equally to requests for non-publication of documents. Section 13 of the Parliamentary Privileges Act applies to documents prepared for the purpose of submission, and submitted, to a committee and directed to be treated as evidence taken in private.

A request by a witness that evidence given remain in confidence is often granted but on occasions a committee may consider that the public interest outweighs the private interest of the witness and choose not to accede to the request. In 1975 the Select Committee on Road Safety refused to accept documentary evidence from a witness on a confidential basis, insisting that it was in the public interest that the evidence be published. After protracted negotiations the evidence was provided and was published in the committee's report.[169]

In practice, it is rare for committees to publish confidential evidence against the objections of a witness where the evidence has been taken in-confidence. If a committee is considering this course of action it would need to comply with the following provision:

> Before giving any evidence in camera a witness shall be informed whether it is the intention of the committee to publish or present to the House all or part of that evidence, that it is within the power of the committee to do so, and that the House has the authority to order the production and publication of undisclosed evidence. Should the committee decide to publish or present to the House all or part of the evidence taken in camera, the witness shall be advised in advance.[170]

The committee in complying with this procedure should advise the witness if it intends to publish undisclosed evidence. The witness may then provide additional reasons why the evidence should not be disclosed and the committee may consider these views before proceeding. The committee would consider whether the public interest outweighs the witness's claims of confidentiality. In negotiating the publication of evidence, the committee could agree with the witness to publish extracts of the evidence with sensitive material removed. If a committee were to demonstrate a pattern of publishing undisclosed evidence against the advice of witnesses, it could run the risk in future inquiries of witnesses being reluctant to give evidence in camera or to provide confidential submissions.

Steps are taken to retrieve confidential documents from members of committees of previous Parliaments and from members of any committees which cease to exist, or requests are made that the documents be destroyed. Similar action is taken when a Member ceases to be a member of a committee or a Member of the House. After the House is dissolved former committee members are not given access to such documents, unless they have been authorised for publication.

168 VP 1998–2001/159–60 (3.12.1998).
169 PP 156 (1976).
170 *Procedures for dealing with witnesses*, Resolution of 13 November 2013, paragraph 7.

Access to old evidence and documents

Pursuant to a resolution of the House, the Speaker may permit any person to examine and copy evidence submitted to, or documents of, committees, which are in the custody of the House, which have not already been published by the House or its committees and which have been in the custody of the House for at least 10 years. However, if such evidence or documents were taken in camera or submitted on a confidential or restricted basis, disclosure shall not take place unless the evidence or documents have been in the custody of the House for at least 30 years, and, in the opinion of the Speaker, it is appropriate that such evidence or documents be disclosed. The Speaker must report to the House the nature of any evidence or documents made available under the resolution and the persons to whom they have been made available. Subject to the same conditions, the Speaker and the President of the Senate have been authorised to release records of joint committees. Any such release must be reported to both Houses.[171] This procedure applies to documents which have not been made public.

In 2000 the House agreed to a resolution in relation to in camera evidence of the Privileges Committee, making specific provision for release after 30 years.[172]

The time periods specified in the above resolutions do not prevent the House from authorising (by separate resolution) the publication of any document or evidence in its possession. In 2008 the House resolved to authorise the President of the HMAS *Sydney* II Commission of Inquiry to access, subject to certain conditions, exhibits held for less than 10 years and confidential submissions received by the Joint Standing Committee on Foreign Affairs, Defence and Trade during its 1999 inquiry into the loss of HMAS *Sydney*.[173]

Unusual secrecy provisions

For considerations of national security unusual secrecy provisions were applied to the Joint Committee on Foreign Affairs when it was appointed in 1952. The committee's resolution of appointment required that it sit in camera, that its proceedings be secret, and that it report only to the Minister for External Affairs.[174] Whenever it reported to the Minister the committee was to inform the Parliament that it had reported. The Minister decided whether or not the reports should be tabled in the Parliament and printed. These restrictions were modified and ultimately removed from the resolutions of appointment of the committee's successors in subsequent Parliaments. Because of these restrictions and other limitations imposed on the committee, the Opposition refused until 1967 to nominate members to the committee.[175]

Schedule 1 of the *Intelligence Services Act 2001* places restrictions on the disclosure to Parliament of certain matters. In a report to a House the Joint Committee on Intelligence and Security must not disclose the identity of a person who is or has been a staff member or an agent of certain intelligence agencies; or any information from which the identity of such a person could reasonably be inferred. In addition the committee must not, in a report to either House, disclose operationally sensitive information or information that would or might prejudice Australia's national security or the conduct of Australia's foreign relations; or the performance by an agency of its functions. The

171 Resolution of 11 October 1984, (reproduced as an addendum to the Standing Orders). E.g. VP 1993–96/2027 (9.5.1995); J 1993–96/2942–3 (27.2.1995).

172 VP 1998–2001/2021 (7.12.2000), *see* Ch. on 'Parliamentary privilege'.

173 VP 2008–10/423–4 (24.6.2008).

174 VP 1951–53/129 (17.10.1951).

175 Joint Committee on Foreign Affairs and Defence, *Observations and history of the committee,* PP 4 (1978) ii.

committee is required, before presenting a report to either House, to obtain advice of the responsible Minister or Ministers concerned as to whether the disclosure of any part of the report would or might disclose such a matter.

Unauthorised disclosure or publication of evidence

Subject to section 4 of the Parliamentary Privileges Act, it may be regarded as a contempt for any person, including the originator, to publish or disclose oral or documentary evidence received by a committee before the evidence has been reported to the House or its publication has been authorised by the committee or the House.[176] The restriction on publication of a document, including a submission, applies once the document comes into the committee's possession—that is, when it is received by the committee, or by the secretary of the committee. In addition, section 13 of the Parliamentary Privileges Act enables substantial penalties to be imposed for the publication or disclosure of documents directed by a committee to be treated as evidence taken in camera or oral evidence taken in camera or a report of such oral evidence.

Committees exercise discretion in dealing with breaches of these provisions, and it has not been common for cases of unauthorised publication of evidence to be reported to the House.[177] However, committees have at times deemed it necessary to stress to those concerned the seriousness of their action. A complaint is more likely to be made if the disclosure is seen as particularly damaging or as indicating possible impropriety of some kind. For the processes followed in raising such a matter as a contempt *see* Chapter on 'Parliamentary privilege'.

An instance of the discretion used by committees arose in 1975. A subcommittee of the Standing Committee on Environment and Conservation acceded to a request by two witnesses that their evidence be taken in camera because of their fears of physical harm from persons whom they wished to name in their evidence. One of the witnesses subsequently disclosed the transcript of evidence to a journalist who published parts of it. The other witness, who had not been consulted on disclosure of the evidence, informed the committee that publication of the evidence may have placed him in jeopardy. The Speaker was informed of the circumstances and advice was sought. The Australian Federal Police were asked to investigate the possible need for the witnesses to be given protection, but this was found to be unnecessary. The Speaker advised against the incident being raised as a matter of privilege because of concern that further publicity might lead to a greater risk of harm to the witnesses. The Speaker wrote to the witness who had disclosed the evidence and to the editor of the newspaper which had published it. The Speaker stressed the seriousness of the disclosure, indicated that under normal circumstances the incident may have been raised as a matter of privilege, and stated why no further action had been taken.

It is standard practice for an acknowledgment of receipt of a submission by the committee secretary to give advice to the effect that submissions should not be published or disclosed unless or until such time as the committee has authorised their publication. From time to time publication has preceded receipt of this warning.[178]

If witnesses are examined in public, but publication of the evidence is not authorised, no objection is usually taken to the publication by the press of evidence taken at the

176 Copies of such documents held by government departments are effectively exempt documents under the *Freedom of Information Act 1982*, s. 46(c).

177 *And see* Appendix 25.

178 *And see* fourth edition p. 664.

hearing, provided the reports are fair and accurate. Because it is now standard practice for committees, at the end of each public hearing, to authorise publication of all evidence taken, except confidential documents, this qualification of the non-disclosure provisions now has less relevance. However, it should be noted that additional documents or submissions received during a hearing may not be authorised until later examined.

Expunging of material from evidence

Part or all of the evidence given by a witness, or questions or statements by committee members, has been expunged from the transcript of evidence and an order made that any such material expunged be disregarded by the press. Advice on this matter to the Joint Committee on Pecuniary Interests of Members of Parliament relied on the provisions of the standing orders of each House, subsection 2(2) of the *Parliamentary Papers Act 1908*, *May* and *Odgers*.[179] Instances cited of evidence which might be expunged included unfair allegations, use of improper language and hearsay. The advice noted that in all cases the references were to the authority of the committee and not of the chair and therefore recommended that any direction that material be struck out and be disregarded by the press be by order of the committee.[180]

In its report on procedures for dealing with witnesses in 1989,[181] the Procedure Committee recognised the difficulties that could be encountered in respect of orders for material to be expunged if, for example, the act of publication occurred prior to or in ignorance of an order that it be expunged. It considered that it would be better practice for committees to consider the evidence being given and that, where it was felt that the evidence was of such a nature that immediate publication would not be appropriate, a committee should give consideration to taking further evidence in private.

Witnesses have sometimes requested that material be expunged from the evidence they have given after it has been published, or that the committee revoke its authorisation for publication. Since evidence has been published on the internet the practical difficulty of removing material in this way has considerably increased. Since the committee can have no knowledge of who may have accessed or made copies of the evidence, removing it from the web site may not be fully effective, especially if such a request is made several years after the original publication.[182]

See also 'Partial publication' at page 718.

REPORTS

Frequency of reporting

The frequency with which a committee may report is determined by standing or sessional orders or its resolution of appointment. Standing committees are authorised to report from time to time—that is, as the need arises. Select committees have had various limits placed on their power to report but they are usually required to report by a specified date or as soon as possible, in which case they may submit only one report (whereupon they cease to exist).

179 The published authorities at the time—the first edition of *House of Representatives Practice* was published five years later.

180 Then S.O. 340 and Senate S.O. 308; *May*, 19th edn, p. 650; *Odgers*, 5th edn, p. 503. Current relevant references are S.O. 242; Senate S.O. 37; *Odgers*, 14th edn, p. 554; *May,* 24th edn, pp. 825–7; *see also* Senate privilege resolution 1 (12).

181 *Committee procedures for dealing with witnesses,* PP 100 (1989).

182 Even if a submission is removed from a committee's website it may remain publicly available via search engine caches or internet archives.

A committee without the power to report from time to time may, however, seek leave of the House to submit an 'interim' or 'special' report. A special report is one in which a committee draws attention to matters incidental to its inquiry and which relates to its powers, functions or proceedings. For example, the Committee of Privileges has submitted special reports seeking an extension of its reference[183] and recommending that the House ask the Senate to grant leave to named Senators to appear before it.[184] In 1976 the Joint Committee on the Parliamentary Committee System presented a special report seeking an amendment to its powers to elect a chair and deputy chair.[185] The Joint Committee of Public Accounts has reported on the issue of whether it was able to sit while the Senate was sitting,[186] and in 1988 it reported on revised procedures for its reports.[187]

Instead of presenting a single report on a wide-ranging inquiry, a committee, properly authorised, may submit one or more interim reports. Such reports may deal with the committee's method of inquiry, or report progress on the inquiry as a whole and/or contain the committee's recommendations on facets of the inquiry.[188]

The Senate has referred matters to committees for report on a specified date, or not before a specified date. The Clerk of the Senate has advised that such a reference cannot negate the power explicitly conferred by Senate standing orders for committees to report when they choose to.[189]

From time to time committees have reported to the House without a formal inquiry reference or without following the normal procedures of inviting submissions and conducting public hearings. Circumstances in which committees have decided to report without following the normal inquiry processes have included situations:

- when a need to report quickly had been identified;
- where a committee wished to comment on aspects of the Government's response to previous reports;
- where the issues were felt to have little public interest;
- where costs and other resource limitations had prevented a full inquiry;
- where extensive published material, letters and other documents were available; and
- where a report naturally flowed from informal briefings, seminars, round-table discussions or inspections.

This practice provides a cost and time-effective way for a committee's views to be placed before the Parliament, but should be used with care, as the committee could leave itself open to criticism that some community, government or interest groups have been excluded from the process. In addition the committee runs the risk that its conclusions and recommendations could be based on incomplete or incorrect information.

183 VP 1954–55/225–6 (26.5.1955), 239 (31.5.1955).
184 VP 1985–87/1361 (26.11.1986); H.R. Deb. (26.11.1986) 3778.
185 VP 1976–77/119 (6.4.1976).
186 Reports 264 and 292 of the Joint Committee of Public Accounts, PP 75 (1987) and PP 317 (1988).
187 Report 291 of the Joint Committee of Public Accounts, PP 146 (1988).
188 E.g. House of Representatives Standing Committee on Aboriginal Affairs, *Effectiveness of support services for Aboriginal and Torres Strait Island communities: Interim report*, PP 197 (1988). Standing Committee on Communications, Information Technology and the Arts—*Community television: Options for digital broadcasting, First report of the inquiry into community broadcasting*, PP 30 (2007); and *Tuning in to community broadcasting, Second report of the inquiry into community broadcasting*, PP 125 (2007).
189 That is, report from time to time pursuant to Senate S.O. 25(18).

Some committees have presented annual reports.[190] The annual report of the Department of the House of Representatives also contains some information on committees serviced by the department.

Drafting and consideration of reports

Technically, it is the duty of the chair of a committee to prepare a draft report.[191] In order to pave the way for the preparation of a report after evidence has been received and reviewed, it is normal for members to discuss possible conclusions and recommendations at deliberative meetings. This process is normally assisted by advice and documentation from committee staff. In light of such discussions secretariats are able to develop draft report material for consideration, in the first instance, by the chair. A member other than the chair may give a draft report to the committee. In this case the committee must first decide which report it will consider.[192]

The procedures for consideration of a draft report are set down in standing order 244:

(a) The Chair of a committee shall prepare a draft report and present it to the committee at a meeting convened for report consideration.

(b) The report may be considered at once if copies have been circulated in advance to each member of the committee. The report shall be considered paragraph by paragraph. When consideration of the chapters of the report is completed, the appendices shall be considered in order.

(c) After the draft report has been considered, the whole or any paragraph may be reconsidered and amended.

(d) A member objecting to any portion of the report may vote against it or move an amendment when the particular paragraph or appendix is under consideration.

(e) A member protesting about the report or dissenting from all or part of it may add a protest or dissenting report to the main report.

The committee may consider groups of paragraphs together, by leave. Amendments may be proposed by any member and are determined in the same way as amendments to a bill during the consideration in detail stage in the House. The committee may divide on any question. When all paragraphs and appendixes have been agreed to, with or without amendment, the question is proposed 'That the draft report (as amended) be adopted'. The date which appears under the chair's signature in the report and on the front page is the date on which the report was adopted.

The procedures for the drafting, consideration, adoption, presentation and correction of inquiry reports apply equally to all committee reports, including special and interim reports.

Protest or dissent

Committee members may add a protest or dissenting report to a committee's report.[193] The difference between a 'protest' and a 'dissenting report' has not been strictly defined. A distinction would be to associate a protest with procedural matters concerning the conduct of an inquiry, and dissent with opposition to a committee's conclusions or recommendations—however, in practice the term 'dissenting report' is generally used. A protest (which is a rarely used form) or dissenting report is attached to

190 E.g. VP 2013–16/1619–20 (12.10.2015) (Intelligence and Security); VP 2013–16/1543 (7.9.2015) (Public Accounts and Audit); VP 2013–16/2000 (16.3.2016) (Public Works). In these cases the annual report is a statutory requirement, but other committees have also presented one, e.g. VP 2013–16/67 (3.5.2016) (Parliamentary Joint Committee on Human Rights).

191 S.O. 244(a).

192 S.O. 245.

193 S.O. 244(e). Dissenting members have included committee chairs—*see Report of the Joint Select Committee on an Australia Card*, 1986. The chair (a Senator), and two House members dissented; Standing Committee on Health, Aged Care and Sport, *Report on the inquiry into the use and marketing of electronic cigarettes and personal vaporisers in Australia*, March 2018. The chair co-authored a dissenting report.

the committee's report, and signed by the dissenting or protesting members.[194] Additions to reports expressing disagreement or reservation have also been described in other ways, for example, as 'additional comments',[195] 'clarifying statement',[196] 'minority report',[197] and 'supplementary remarks'.[198]

A member who proposes to present a protest or dissenting report is not required to seek authorisation from the committee, as this power resides with individual members, not with the committee. Accordingly, the protest or dissenting report need not be shown by its author to the chair or other members of the committee, although not to do so would be regarded as a discourtesy. On 22 November 1995 the Senate passed a motion to the effect that prior to the printing of a committee report a member or a group of members is not required to disclose to the committee any minority or dissenting report, or any relevant conclusions and recommendations, proposed to be added or attached to the report after it had been agreed.[199] This has not been considered to preclude action by a committee to direct the circulation of dissenting reports to committee members on their receipt by the secretariat. The chair's foreword, which is not subject to approval by the committee, has contained a rebuttal of claims in a dissenting report.[200]

A protest or dissenting report must be relevant to the committee's reference, as the authority delegated to the committee and its members is limited to those areas defined by the terms of the inquiry. The words 'protest' and 'dissent' imply some relationship with the committee's report.

Alternative methods of recording dissent are:

- moving amendments to the draft report, the voting on which is recorded in the minutes which are subsequently presented and thereby become public;[201]
- submitting an alternative draft report to the committee (S.O. 245);
- making a statement in the House, by leave, when the report is presented; or
- stating the dissent or protest in debate on any motion moved in relation to the report.

(For earlier precedents *see* pages 612–3 of the second edition.)

In extreme circumstances members may record their dissent by resigning from the committee. In such instances members have no automatic right to explain their resignation in the House but could do so in a statement made by leave,[202] or during 90 second statements, the adjournment debate or the grievance debate.

If a committee is unable to agree upon a report, it may present a special report to that effect, with its minutes and the transcript of evidence.[203] Even if the circumstances of the committee's inability to agree are widely known, the committee should still report the circumstances to the House, if only as a matter of form and to place them on record.

See also 'Disclosure of in camera evidence in dissenting reports' at page 720.

194 E.g. PP 264 (1977) 71–2; in this instance one member added, separately, a protest *and* a dissent.
195 E.g. VP 2002–04/1297 (5.11.2003); VP 2004–07/1964 (18.6.2007).
196 H.R. Deb. (12.2.2007) 153–4.
197 VP 2008–10/1243 (18.8.2009).
198 VP 2010–13/1946 (1.11.2012).
199 J 1993–96/4198 (22.11.1995).
200 Standing Committee on Family and Human Services, *Balancing work and family*, PP 434 (2006).
201 S.O.s 244(d), 247(a). Members of the Select Committee on Pharmaceutical Benefits had no power to add a protest or dissent to the committee's report. Their dissent was shown in the minutes, printed as part of the report, PP 73 (1972) 95–147.
202 E.g. H.R. Deb. (11.8.2004) 32768–71.
203 There are no cases of this occurring. *And see May*, 24th edn, p. 833.

Presentation of reports

A copy of the report, signed by the chair, dissenting reports, if any, signed by the relevant members, and the committee's minutes of proceedings are presented to the House by the chair or a member of the committee.[204] Copies of the submissions to the inquiry and the corrected copy of the transcript of evidence, other than confidential evidence, may also be presented. A supplementary CD has been presented with a report,[205] and a video explaining a committee's report has been presented.[206] It is normal practice for the report, with or without the accompanying documents, to be made a Parliamentary Paper.[207]

Periods are reserved on Mondays in the House and the Federation Chamber for private Members' business and parliamentary committee and delegation business, which includes presentation of reports and statements relating to inquiries—special procedures applying to these periods are described in detail in the Chapter on 'Non-government business'. Reports can also be presented at any time when other business is not before the House.[208]

A Member presenting a committee report at times other than the period allocated on Monday may be granted leave to make a brief statement on the report and this may be followed by statements, by leave, from other Members. The Member presenting the report may then move a specific motion in relation to the report—that is, that the House take note of the report, or that the report be adopted or agreed to. Normally the 'take note' motion is moved. Debate on the motion is then adjourned to a future day.[209] Debate can be resumed in the House or, after referral by the House, in the Federation Chamber.

Generally, any subsequent debate on a motion to take note of a committee report is adjourned and the order of the day remains listed as House or Federation Chamber business on the Notice Paper, thus enabling further debate. If not called on for eight consecutive sitting weeks the order of the day is automatically removed from the Notice Paper.[210]

Two reports have been presented together, with the single motion moved to take note of each of the reports giving rise to two separate orders of the day (later debated together in a de facto cognate debate).[211]

In 1955 the House ordered that the Clerk read to the House the special report of the Committee of Privileges relating to the *Bankstown Observer Case*.[212]

See also 'Authority for release when House not sitting' at page 731.

Oral reports

If, having considered a bill referred to it for an advisory report, a committee finds no issues requiring a formal report, a statement to the House by the Chair or Deputy Chair

204 S.O.s 246, 247(a). When minutes have not been available at the time of tabling, they have been presented, by leave, on a later day, e.g. VP 2002–04/1441 (18.2.2004).
205 VP 2004–07/1349 (4.9.2006).
206 VP 1998–2001/853 (20.9.1999).
207 S.O.s 39(e), 247(b).
208 S.O. 39.
209 S.O. 39(d).
210 S.O. 42.
211 VP 2002–04/1431 (16.2.2004), 1455 (19.2.2004), H.R. Deb. (19.2.2004) 25340–49.
212 VP 1954–55/225 (26.5.1955).

to that effect, together with the presentation of the relevant minutes of proceedings, discharges the committee's obligation to report on the bill.[213]

A committee's chair or deputy chair (either or both) may make an oral statement to inform the House of matters relating to an inquiry.[214] To enable debate a motion to take note may be moved in respect of a presented copy of the statement.

An oral statement is made annually by the chair of the Joint Committee of Public Accounts and Audit on the draft budget estimates for the Australian National Audit Office and the Parliamentary Budget Office.[215]

Presentation of reports and minutes—joint committees

The standing orders provide that the proceedings of a joint committee shall be reported to the House by one of the Members it has appointed to serve on the committee.[216] The provision of the Senate standing orders is similar except that one of the Senators appointed to the committee is required to report.[217] Reports by joint committees are dealt with in the same manner as the reports of House or Senate committees except that joint committee reports are directed to, and presented in, both Houses. Senate standing orders do not require the presentation of minutes of proceedings with a committee's report.[218]

Committees usually aim to present reports to both Houses on the same day but this is not always possible—for example, when only one House is sitting and there is an urgent need for the report to be presented and published.[219] A motion that the report be made a Parliamentary Paper (or be printed) need only be moved in one House. Special arrangements are provided if the House is not sitting when a joint committee has completed a report of an inquiry—*see* page 731.

Amendment of presented reports

Minor amendments to presented copies of committee reports (for example, to correct typographical errors) may be made with the approval of the Clerk of the House. Amendments are initialled by the committee secretary. The committee chair, or even the whole committee, would have to approve more substantial, even if still relatively technical, amendments. In the case of amendments of substance a corrigendum[220] or a further report[221] would have to be presented. Leave is not required for these purposes.[222] Alternatively, the chair could make a statement in the House.

Premature disclosure or publication

Standing order 242 provides that a committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other

213 S.O. 143(c). Such a statement means that the committee has reported for the purposes of standing order 148, enabling proceedings on the bill to continue. However, the statement is not considered to be a 'report' for the purposes of standing order 39 and the copy presented is not made a parliamentary paper.

214 S.O. 39(a).

215 E.g. VP 2013–16/68 (3.5.2016).

216 S.O. 226.

217 Senate S.O. 42.

218 Although when they are available a more complete understanding of the Senate committee process is possible, e.g. PP 449 (1993) 225–7, 271–3.

219 E.g. Joint Committee on Prices, *Prices of household soaps and detergents*, PP 326 (1974), tabled in the Senate and ordered to be printed on 15 August 1974, J 1974–75/155 (15.8.1974); tabled in the House on 19 September 1974, VP 1974–75/177 (19.9.1974).

220 E.g. VP 1985–87/989 (27.5.1986); VP 2013–16/1057 (4.12.2014).

221 VP 1980–83/1220 (10.11.1982).

222 E.g. VP 2008–10/1275 (7.9.2009).

than a member of the committee or parliamentary employee assigned to the committee) unless they have been reported to the House or their publication has been authorised by the House, the committee or the subcommittee. This is a blanket prohibition which precludes unauthorised disclosure of all or part of a report, or of its contents.

Until 1998 the rule was that such disclosure or publication had to be authorised by the House.[223] The present rule allows authorisation to be given by a committee or subcommittee, and in addition, specifically permits committees to resolve to:

- publish press releases, discussion papers or other documents or preliminary findings;
- divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment; or
- authorise a member of the committee to give public briefings on matters related to an inquiry. An authorised member may not disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee shall determine the limits of the authorisation.

Contravention of the rule on premature disclosure may be found to be a contempt.[224] However, committees have chosen, from time to time, to take no action on unauthorised press articles partially disclosing the contents of their reports or commenting on committee deliberations during the drafting of reports; it has sometimes been thought counter-productive to give further publicity and credence to such articles.[225]

Release to media under embargo

In accordance with the provisions outlined above, a number of committees have adopted the practice of releasing their reports, before presentation, to the media under embargo. This early release gives the media advance information about a committee's recommendations and enables more effective questioning of the committee at press conferences held after presentation. The practice also encourages greater media coverage of committee reports. Release under embargo is authorised by resolution of the committee.

Release to Minister

On rare occasions a committee has been authorised or directed to disclose its report to Ministers before its presentation to the House. The resolution of appointment of the Joint Committee on War Expenditure provided that:

> The Committee have power, in cases where considerations of National Security preclude the publication of any recommendations and of the arguments on which they are based, or both, to address a memorandum to the Prime Minister for the consideration of the War Cabinet, but, on every occasion when the Committee exercises this power, the Committee shall report to the Parliament accordingly.[226]

In 1952 the Joint Committee on Foreign Affairs was directed by its resolution of appointment to forward its reports to the Minister for External Affairs. On every occasion when it did so, the committee was required to inform the Parliament that it had

223 Former S.O. 340.

224 PP 135 (1987). *Parliamentary Privileges Act 1987*, s. 13 deals with in camera evidence, s*ee* Ch. on 'Parliamentary privilege'.

225 VP 1985–87/899 (1.5.1986); H.R. Deb. (1.5.1986) 2890—statement by deputy chair of the Joint Select Committee on an Australia Card; H.R. Deb. (20.10.1986), 2331–2—personal explanation by a committee member regarding a newspaper report of the member's dissenting report (presented 25.11.1986).

226 VP 1940–43/157–8, 161 (3.7.1941). In 1955 attempts were made to have one of the committee's reports and related documents published. The report concerned allegations of fraudulent practices during the years of World War II. The Prime Minister having first agreed to table the report later declined to do so on the grounds of justice to the individuals concerned, VP 1954–55/293–4 (6.9.1955), 301 (13.9.1955); H.R. Deb. (6.9.1955) 360–75; H.R. Deb. (13.9.1955) 572–6.

reported.[227] In later Parliaments the committee's resolution of appointment added that, in the case of inquiries not initiated by the Minister, the committee was not authorised to report, either to the Minister or to the Parliament, without the Minister's consent. It was further provided that, if opposition Members were represented on the committee, copies of its reports to the Minister were to be forwarded to the Leader of the Opposition for his confidential information.[228] It was left to the Minister to decide whether or not the committee's reports would be published.[229] These arrangements were justified on the ground of national security.

The *Intelligence Services Act 2001* provides that the Joint Committee on Intelligence and Security is not permitted to present a report until the advice of the responsible Minister or Ministers has been obtained as to whether the disclosure of any part of the report would or might disclose certain matters which the committee is not permitted to disclose.[230]

Authority for release when House not sitting

Special arrangements are required for times when the House is not sitting and a committee has completed a report of an inquiry. The committee may send the report to the Speaker, or to the Deputy Speaker if the Speaker is unavailable. When the Speaker or the Deputy Speaker receives the report, the report may be published; and he or she may give directions for the printing and circulation of the report. The committee must then present the report to the House as soon as possible.[231] This procedure would normally be used only during a lengthy break when the House is not due to sit for some time, or in cases where the committee has a reporting deadline which falls on a non-sitting day.[232] It has also been used for reports sent to the Speaker before dissolution, but not able to be presented until the new Parliament had met.[233] These provisions also apply to joint committees.[234]

Government responses to reports

The Government is obliged by resolution of the House to present its response to recommendations contained in a report by a House or Joint Committee within six months of the report's presentation. If a response has not been presented within this period, the relevant Minister (or Minister representing the Minister) must present a signed statement stating the reasons for the delay, and must make him or herself available to the committee concerned to be questioned about the statement. If an explanatory statement has not been presented, and if questions on the statement have not been answered to the satisfaction of the committee, the committee may bring the matter to the attention, if appropriate, of the Auditor-General for assistance in resolving matters

227 VP 1951–53/129 (17.10.1951).
228 VP 1954–55/94–5 (12.10.1954).
229 The Minister tabled the committee's first report on 11 September 1952; VP 1951–53/417 (11.9.1952).
230 Sometimes the committee has presented an abridged version of a report provided to the Minister.
231 S.O. 247(c). In the absence of both the Speaker and the Deputy Speaker, the Second Deputy Speaker has given the direction.
232 The first two examples were: a report of the Standing Committee on Communications, Transport and the Arts released in Melbourne on 11 May 2001 following the centenary sittings, H.R. Deb. (4.6.2001) 27116; and a report of the Standing Committee on Family and Community Affairs released on 29 December 2003 (the committee had a reporting deadline of 31 December), VP 2002–04/1406 (10.2.2004).
233 VP 2004–07/21 (17.11.2004).
234 S.O. 226(b). Senate S.O. 38(7) has equivalent provisions.

referred to in the report or to the Speaker for assistance in resolving the response process.[235]

There are government guidelines for departments and agencies on the procedures to follow in relation to the approval and presentation of responses.[236] These procedures do not apply to reports by the Parliamentary Standing Committee on Public Works and the Joint Committee of Public Accounts and Audit,[237] and to advisory reports on proposed legislation.[238] Government responses are made to reports by the Joint Committee on Publications resulting from inquiries, and reports by the Procedure Committee, but not to reports by other committees concerned with 'internal' matters. If appropriate, the Speaker may also respond to a committee report, and both Presiding Officers may respond to reports by joint committees which relate to their shared responsibilities.[239]

Speakers have followed the practice of presenting to the House at approximately six-monthly intervals a schedule listing government responses to House of Representatives and joint committee reports as well as responses outstanding.[240] Subsequently the Leader of the House presents a list of parliamentary committee reports showing the stage reached with the government response in each case.[241] This list does not constitute the formal response, nor does correspondence from a Minister directly to a committee chair. The Government's response to a committee report is considered to have been formally made only when presented directly to the House(s).

The first Notice Paper of each sitting period (fortnight or single week) contains a list of House and joint committee reports awaiting government response.

235 Resolution of 29 September 2010, VP 2010–13/44 (29.9.2010). Governments had followed a practice of responding formally to committee reports since 1978, H.R. Deb. (25.5.1978) 2465–6. While the original commitment was to respond within six months, in 1983 this period was reduced to three months, S. Deb. (24.8.1983) 141–2.

236 *Guidelines for the presentation of documents to the Parliament (including government documents, government responses to committee reports, ministerial statements, annual reports and other instruments)*, Department of the Prime Minister and Cabinet, February 2017, pp. 8–11.

237 Responses to PAAC recommendations on administrative matters are made by Executive Minute. The general approval and tabling process of the guidelines do apply in the case of responses to PAAC policy recommendations.

238 Responses are generally made during debate on the bill or by the moving of government amendments.

239 E.g. VP 1978–80/1237 (22.11.1979); VP 2002–04/1577 (1.4.2004); VP 2010–13/260 (25.11.2010).

240 E.g. VP 1993–96/2687 (30.11.1995); VP 1996–98/95 (9.5.1996); VP 1998–2001/1156 (9.12.1999); VP 2010–13/261 (25.11.2010); VP 2013–16/90 (5.5.2016).

241 E.g. VP 1993–96/1683 (8.12.1994); VP 1996–98/340 (27.6.1996); VP 1998–2001/1596 (28.6.2000); VP 2010–13/242 (24.11.2010); VP 2013–16/1795 (2.12.2015).

20
Parliamentary privilege

PRIVILEGE DEFINED

The term parliamentary privilege refers to the special rights and immunities which apply to the Houses, their committees and their Members, and which are considered essential for the proper operation of the Parliament. These rights and immunities allow the Houses to meet and carry out their proper constitutional roles, for committees to operate effectively, for Members to discharge their responsibilities to their constituents, and for others properly involved in the parliamentary processes to carry out their duties and responsibilities without obstruction or fear of prosecution.

Privileges are not the prerogative of Members in their personal capacities:

> In so far as the House claims and Members enjoy those rights and immunities which are grouped under the general description of "privileges", they are claimed and enjoyed by the House in its corporate capacity and by its Members on behalf of the citizens whom they represent.[1]

Despite the immunity from suit or prosecution which Members have in respect of what they say in the Parliament in carrying out their duties, ultimately they are still accountable to the House itself in respect of their statements and actions. It is within the power of the House to take action to punish or penalise Members, for example, for some form of extreme obstruction of the business of the House.

Distinction between breach of privilege and contempt

'Contempt' and 'breach of privilege' are not synonymous terms although they are often used as such.

> The power of both Houses to punish for contempt is a general power similar to that possessed by the superior courts of law and is not restricted to the punishment of breaches of their acknowledged privileges . . . Certain offences which were formerly described as contempts are now commonly designated as breaches of privilege, although that term more properly applies only to an infringement of the collective or individual rights or immunities, of one of the Houses of Parliament.[2]

It has been said that 'All breaches of privilege amount to contempt; contempt does not necessarily amount to a breach of privilege'.[3] In other words a breach of privilege (an infringement of one of the special rights or immunities of a House or a Member) is by its very nature a contempt (an act or omission which obstructs or impedes a House, a Member or an employee of the House, or threatens or has a tendency so to do), but an action can constitute a contempt without breaching any particular right or immunity. *May* has this to say in respect of contempt:

> Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.[4]

1 HC 34 (1967–68) vii.
2 *Halsbury's Laws of England*, 3rd edn, vol. 28, p. 465; *see also* G. Marshall, 'The House of Commons and its privileges', in *The House of Commons in the twentieth century*, S. A. Walkland (ed), Clarendon Press, Oxford, 1979, pp. 205–9.
3 HC 34 (1967–68) 171.
4 *May*, 24th edn, p. 251.

THE COMMONWEALTH PARLIAMENT'S PRIVILEGE POWERS

This chapter does not attempt to record the history of the development of the law, practice and procedure of privilege, nor does it attempt to treat in detail all questions of privilege that may arise. It is limited to a general description and a summary of the more important aspects of the subject.[5]

Derivation

The Commonwealth Parliament derives its privilege powers from section 49 of the Constitution which provides that:

> The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

In addition, section 50 of the Constitution provides that:

> Each House of the Parliament may make rules and orders with respect to—
>
> (i) The mode in which its powers, privileges, and immunities may be exercised and upheld.
>
> (ii) The order and conduct of its business and proceedings either separately or jointly with the other House.

Reference to House of Commons practice

Whilst the Commonwealth Parliament has passed legislation in this area, and although the House has developed its own practice and created its own precedents in respect of most of its operations, in the area of parliamentary privilege[6] the practice and precedents of the UK House of Commons are of continuing interest.

Statutory provisions

The *Parliamentary Privileges Act 1987* is an enactment under the head of power constituted by section 49 of the Constitution. It provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the Members and the committees of each House, as in force under section 49 immediately before the commencement of the Act, continue in force. The provisions of the Act are described in detail in this chapter.

In addition, the Parliament has enacted a number of other laws in connection with some specific aspects of its operations,[7] although it has been said that certain of these may be 'more properly . . . referred' to section 51(xxxix) of the Constitution, which deals with the power to make laws with respect to matters which are incidental to the execution of any power vested, inter alia, in the Parliament or either House.[8]

Judicial interpretation of section 49

The original privilege powers of the Commonwealth Parliament were tested and confirmed in a significant High Court judgment arising from the case of Browne and

5 The more significant historical references are *May*, 24th edn, together with Anson, *The law and custom of the Constitution*; House of Commons Select Committee on Parliamentary Privilege, *Report,* HC 34 (1967–68); Hatsell, *Precedents of proceedings in the House of Commons*. The first five editions of *House of Representatives Practice* contain additional detail on earlier practice and precedents in the House. *Odgers* contains information on matters that have arisen in the Senate. For a scholarly survey of parliamentary privilege in Australia generally *see* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003.

6 For a list of House of Representatives privilege cases *see* Appendix 25.

7 E.g. *Parliamentary Papers Act 1908; Parliamentary Proceedings Broadcasting Act 1946; Public Accounts and Audit Committee Act 1951; Public Works Committee Act 1969* and legislation making provisions in relation to certain committees.

8 *R v. Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 168. *And see* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, p. 235.

Fitzpatrick. On 10 June 1955 the House of Representatives judged Mr F. C. Browne and Mr R. E. Fitzpatrick guilty of a serious breach of privilege (*see* page 757 for details of this case). On the warrant of the Speaker the two men were committed to gaol for three months. Subsequently, action was taken by the legal representatives of the offenders to apply to the High Court for writs of habeas corpus. The High Court heard the argument between 22 and 24 June and delivered its judgment on 24 June.[9]

The Chief Justice first dealt with the question of whether the warrants issued by the Speaker were a sufficient return to the writs of habeas corpus. He held that such warrants if issued in England by the Speaker of the House of Commons would have constituted sufficient answer, being drawn up in accordance with the law there which was finally established in the case of the *Sheriff of Middlesex* in 1840.[10]

The Court stated that:

> . . . it is for the courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise. The judgment of the House is expressed by its resolution and by the warrant of the Speaker. If the warrant specifies the ground of the commitment the court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms.[11]

The warrants issued by the Speaker stated the contempt or breach of privilege in general terms and not in particular terms but accorded with the law, as each stated that the person concerned had been guilty of a serious breach of privilege, recited the resolution of the House to that effect and stated the terms of committal.

Having established that it was not necessary to go behind the warrant, it remained for the court to determine whether the law as stated above was applicable to the Commonwealth Parliament through section 49 of the Constitution.

Arguments advanced by counsel for Browne and Fitzpatrick urging a restrictive construction or modified meaning of the words of section 49 were, broadly:

- that the Constitution of Australia was a rigid federal Constitution and it was the duty of the courts to consider whether any act done in pursuance of the power given by the Constitution, whether by the legislature or executive, was beyond the power assigned to that body by the Constitution;
- that the Constitution adopted the theory of the separation of powers and that the power of committal by warrant belonged to the judicial power and ought not to be conceded upon the words of section 49 to either House of the Parliament;
- that the power contained in section 49 was a transitional power which ceased when the Parliament declared some of its powers, privileges, and immunities in the *Parliamentary Papers Act 1908* and the *Parliamentary Proceedings Broadcasting Act 1946*;
- that the powers under section 49 were contingent upon the Houses exercising their authority under section 50, which provides that each House might make rules and orders with respect to:
  - the mode in which its powers, privileges, and immunities might be exercised and upheld, and
  - the order and conduct of its business and proceedings.

9 (1955) 92 CLR 157.
10 11 Ad & E 273 [113 ER 419].
11 (1955) 92 CLR 157 at 162.

The High Court rejected, in turn, each of these arguments. In relation to the first proposition, the court declared:

> The answer, in our opinion, lies in the very plain words of s. 49 itself. The words are incapable of a restricted meaning . . . It is quite incredible that the framers of s. 49 were not completely aware of the state of the law in Great Britain and, when they adopted the language of s. 49, were not quite conscious of the consequences which followed from it.[12]

In relation to the second argument on the separation of powers, the court stated that:

> . . . in unequivocal terms the powers of the House of Commons have been bestowed upon the House of Representatives. It should be added to that very simple statement that throughout the course of English history there has been a tendency to regard those powers as not strictly judicial but as belonging to the legislature, rather as something essential or, at any rate, proper for its protection . . . It is sufficient to say that they were regarded by many authorities as proper incidents of the legislative function, notwithstanding the fact that considered more theoretically—perhaps one might even say, scientifically—they belong to the judicial sphere.[13]

Then, in relation to the third contention, the court made it clear that it did not regard the Parliamentary Papers Act and the Broadcasting of Parliamentary Proceedings Act as affecting the operation of section 49. The court held that section 49:

> . . . contemplates not a single enactment dealing with some very minor and subsidiary matter as an addition to the powers or privileges; it is concerned with the totality of what the legislature thinks fit to provide for both Houses as powers, privileges and immunities.[14]

Finally, in relation to the argument on the interrelationship of sections 49 and 50, the court declared that it was clear that section 49 had an operation independent of the exercise of the power of section 50. In a final summing-up, the court declared:

> . . . all the arguments which have been advanced for giving to the words of s. 49 a modified meaning, and the particular argument for treating them as not operating, fail.[15]

Browne and Fitzpatrick petitioned the Judicial Committee of the Privy Council for special leave to appeal against the decision of the High Court. However, the decision of the Privy Council was that the judgment of the Chief Justice of Australia was unimpeachable and leave to appeal was refused.[16]

No new privilege may be created except by legislation

The rights and immunities of the Houses, their committees and Members are part of the law of the Commonwealth, and the law may only be changed by the passage of legislation by the three component parts of the Parliament. Subject to the constraints imposed by the Constitution, it would however be possible for the Commonwealth Parliament to enact legislation which varied an existing right or immunity or created a new one.

Within the framework set by the Constitution and relevant legislation it is within the competence of each House to expound the law of privilege and apply that law to the circumstances of each case as it arises.[17] To suggest, as has on occasions been done, that the existing privileges of the Parliament have been extended in some particular case, is incorrect.

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12 (1955) 92 CLR 157 at 165–6.
13 (1955) 92 CLR 157 at 167.
14 (1955) 92 CLR 157 at 168.
15 (1955) 92 CLR 157 at 170.
16 *R v. Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 171 (PC).
17 *And see* HC 34 (1967–68) 97–9.

In the following sections, the principal rights and immunities of the House are described. While they have been enjoyed since Federation by virtue of the provisions of section 49,[18] the *Parliamentary Privileges Act 1987* has modified the detail or provided amplification in some respects so that the provisions better meet the needs of the modern Houses.

THE PRIVILEGE OF FREEDOM OF SPEECH

By the 9th Article of the Bill of Rights 1688 it was declared:

> That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.[19]

The provisions of Article 9 became part of the law applying to the Commonwealth Parliament by virtue of section 49 of the Constitution.[20]

The privilege has been variously described as one which has always been regarded as most valuable and most essential,[21] and as the only privilege of substance enjoyed by Members of Parliament.[22] Unquestionably, freedom of speech is by far the most important privilege of Members.

Members are absolutely privileged from suit or prosecution in respect of anything they might say in the course of proceedings in Parliament. Provided their statements are in accord with the rules and practices of the House, Members are able to express themselves as they judge fit. It is, however, incumbent upon Members not to abuse the privilege. The House itself, by its rules of debate and disciplinary powers, has the ability to deal with abuse (*see* Chapter on 'Control and conduct of debate', *and see* page 779).

The Committee of Privileges has stated:

> Allegations of wrongdoing are often made to Members of Parliament. Members enjoy very special rights—rights greater than those enjoyed by ordinary citizens. The privilege of freedom of speech is the greatest of these, but its very significance is such, where the reputation or welfare of persons may be an issue, that it should be used judiciously. If a Member is of the opinion that it is in the public interest to disclose such allegations, he or she should make all reasonable inquiries as to the truth of the allegations. The raising of a matter, in full detail, in the House is only one of the options available to Members. . . . it is for the Member to resolve whether or not it is in the public interest to raise a matter in the House, and his or her actions will be judged accordingly.[23]

In 1989 the Committee of Privileges reported on a reference concerning an allegation made in the House by one Member against another. While it did not find that a contempt had been committed, it concluded that having regard to the experience of the Member who had made the allegation he had offended against the rules of the House. It recommended that he be required to apologise and withdraw.[24] The House agreed to a motion calling on the Member to withdraw and apologise, but he declined to do so and was subsequently suspended by the House for two sitting days.[25]

While there is no doubt that, ultimately, Members can be called to account by the House for their actions and statements, the case cited above shows the difficulties that

18 *See Quick and Garran*, pp. 501–2 for an enumeration of the principal powers, privileges and immunities of each House and of the Members of each House, drawn from the law and custom of the House of Commons as at 1901.

19 1 Will. & Mary, sess. 2, c.2 (for note on the dating of this Act *see* footnote in Chapter 1 at page 24).

20 Article 9 did not create the immunity, rather it expressed the position that had come to be accepted by that time, *see* for example *May,* 24th edn, pp. 206–9, and D. McGee, *Parliamentary Practice in New Zealand*, 3rd edn, Dunmore, Wellington, 2005, p. 618. For a recent commentary on Article 9 and its application in Australia, *see* G. M. Kelly, 'Questioning' a privilege: article 9 of the Bill of Rights 1688, *Australasian Parliamentary Review*, v. 16, no. 1, Autumn 2001, pp. 61–99.

21 J. Hatsell, *Precedents of proceedings in the House of Commons with observations*, 4th edn, 1818, vol. I, p. 85.

22 HC 34 (1967–68) 91.

23 PP 407 (1994) 5.

24 PP 498 (1989) (the report was accompanied by two dissenting reports).

25 VP 1987–90/1695–8 (21.12.1989), *and see* case of Senator Heffernan (2002).

can arise.[26] The Joint Select Committee on Parliamentary Privilege considered the issue of misuse of privilege. It commented that if it became the practice to examine formally—as by a reference to the Committee of Privileges—what Members say in the House, the essential freedom could be endangered. It acknowledged the danger of misuse, but concluded that the only practical solution consistent with the maintenance of freedom of speech could lie in allowing persons who had been subject to criticism or attack in either House to apply to have a response incorporated in Hansard.[27] (*See* 'Citizen's right of reply' at page 777 for details of the procedure adopted.)

Absolute privilege does not attach to words spoken by Members other than when participating in 'proceedings in Parliament' (*see below*).

Absolute and qualified privilege

A statement is said to be privileged if the person making it is protected from legal action. Generally, qualified privilege exists where a person is not liable to a successful action for defamation if certain conditions are fulfilled, for example, if the statement is not made with malicious intention. Absolute privilege exists where no action may lie for a statement, even, for example, if made with malice; it is not limited to action for defamation but extends also to matters such as infringement of copyright or other matters which could otherwise be punished as crimes (for example, contempt of court or breach of a secrecy provision).

Proceedings in Parliament

Article 9 of the Bill of Rights refers to 'debates and proceedings in Parliament'. Section 16 of the Parliamentary Privileges Act re-asserts that the provisions of Article 9 of the Bill of Rights apply in relation to the Commonwealth Parliament, but it goes on to provide that for the purposes of the provisions of Article 9, and for the purposes of that section, the term 'proceedings in Parliament' means:

> all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes—
>
> (a) the giving of evidence before a House or a committee, and evidence so given;
>
> (b) the presentation or submission of a document to a House or a committee;
>
> (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
>
> (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

The enactment of this provision gave some precision to the term.

It is clear that the ambit of the term, and so the extent of absolute privilege, is limited. The repetition by Members out of the House of statements they have made in the House has not been found to be protected by absolute privilege.[28] Litigation has also resulted from what has been referred to as effective repetition, where a Member, in circumstances not forming part of proceedings in Parliament, has referred to but not repeated the detail of words used in proceedings (*see* page 743).

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26 *And see* 'The limits of free speech', *Parliamentarian,* LXIII, no. 1, Jan. 1982, pp. 24–7; *and* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 50–68. *See also* 'Punishment of Members' at p. 767.

27 PP 219 (1984) 53–5. *See also* 'Limitations and safeguards in the use of privilege' at p. 779.

28 *R v. Abingdon*, 170 ER 337; *R v. Creevey* 105 ER 102, *but see* Canadian case *Roman Corp. Ltd v. Hudson's Bay and Oil and Gas Co. Ltd* (1973) 36 DLR (3rd) 413—press release held to be protected. *See also* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 13–14.

Conversations, comments or other communications between Members, or between Members and other persons, which are not part of a 'proceeding in Parliament' would not be expected to enjoy absolute privilege.[29] Remarks made by Members during divisions[30] and electronic communications from Members in the Chamber, such as emails or use of Twitter,[31] which do not form part of the proceedings of the House are not assumed to attract the protection of parliamentary privilege. Similarly, citizens communicating with a Member on matters that have no connection with proceedings in Parliament are not protected.[32]

The use of the term 'for purposes of or incidental to' the transacting of the business of a House or a committee in section 16 is, however, to be noted. Sometimes it will be clear whether a particular act forms part of 'proceedings in Parliament', but on other occasions a judgment may be necessary, for example as to whether a particular act was done 'for purposes of or incidental to' the transacting of the business of the House. The Queensland Court of Appeal has accepted that a number of documents obtained by or provided to a Senator which related to a subject he had raised in the Senate did not need to be produced in response to an order because of the protection of subsection 16(2).[33] Documents prepared for Senate committee briefings and documents related to them have been held to be encompassed by section 16 and so not able to be produced in response to a subpoena.[34]

The Committee of Privileges has considered complaints arising from action, or threatened action, against Members following letters the Members had written to Ministers. In each case it accepted that such correspondence did not form part of 'proceedings in Parliament'.[35] In 1994 the committee considered action taken against a person who had sworn a statutory declaration and given it to a Member. The Member later used the material in a speech in the House. The committee reported that whether the informant's actions fell within the scope of section 16 of the Parliamentary Privileges Act would be determined in the course of court proceedings. An opinion appended to the report discussed the issue of whether the informant's actions might be protected[36] (*and see* 'Cases involving letters written by Members' and 'Case involving Mr Katter, MP' at page 758).

In a report in 2000 on the status of the records and correspondence of Members, the committee recommended that there should be no additional protection, beyond that provided by the current law, given to the records and correspondence of Members. It recommended, however, that, at the discretion of the Speaker, the House may intervene to assert the protection of parliamentary privilege in court proceedings in which records and correspondence might reasonably be argued to fall within the definition of proceedings in Parliament. It also recommended that a memorandum of understanding be concluded between the Presiding Officers and the Minister for Justice on the execution of search warrants on Members, their employed staff and their offices. Memoranda with State and Territory Attorneys-General in respect of electorate offices

29 *See also May*, 24th edn, p. 241.
30 H.R. Deb. (13.10.1983) 1801, H.R. Deb. (8.10.1984) 1875.
31 H.R. Deb. (25.11.2009) 12863.
32 *May*, 24th edn, p. 270. *See also Rowley v. Armstrong* [2000] QSC 088—an informant in making a communication to a parliamentary representative was not regarded as participating in 'proceedings in Parliament', and related comments in *Odgers,* 14th edn, p. 61.
33 *O'Chee v. Rowley* [1997] QCA 401.
34 *Australian Communications Authority v. Bedford* (2006), *see Odgers*, 14th edn, p. 62.
35 PP 118 (1992), PP 78 (1994). This was also the conclusion of the Joint Select Committee on Parliamentary Privilege (1984).
36 PP 407 (1994).

were also recommended.[37] The Government agreed with the substance of the recommendations, and a memorandum was negotiated between the Parliament and the Commonwealth.[38] A similar memorandum has been signed between the Parliament and the Tasmanian Government.

In *Crane v. Gething* the Federal Court held that it should not decide whether certain documents were in fact protected by privilege, and the documents were sent to the Senate for determination of that matter.[39] The Senate appointed a retired public servant with legal qualifications to determine whether any of the documents were immune from seizure.

Although, as stated above, the House of Commons has not to date adopted a detailed definition of the term 'proceedings in Parliament', it has considered the meaning and scope of the term. In the London Electricity Board case in 1957 (more generally known as the *Strauss Case*), the House of Commons Committee of Privileges found that Mr Strauss in writing a letter to a Minister criticising certain alleged practices of the Board, was engaged in a 'proceeding in Parliament'. The committee also found that, in threatening a libel action against the Member, both the Board and its solicitors had acted in breach of the privilege of Parliament.[40] By a margin of 218 votes to 213 votes, the House of Commons rejected a motion agreeing with the committee's report. An amendment declaring that Mr Strauss' letter was not a proceeding in Parliament and that no breach of privilege had been committed was carried on a non-party vote.[41] In 1999 a joint committee of the British Parliament which had reviewed the law and practice in relation to privilege recommended against any extension of privilege to cover communications between Members and Ministers.[42] In 1939 the House of Commons agreed that notice in writing of a question to be asked in the House was 'protected by privilege'.[43]

The immunity applying to proceedings in Parliament protects Members in respect of their participation, and continues to apply in respect of those proceedings even though a person is no longer a Member.[44]

Search warrants where parliamentary privilege may be involved

Pursuant to the *AFP national guideline for execution of search warrants where parliamentary privilege may be involved*, if a Member claims that material seized by the Australian Federal Police is subject to parliamentary privilege, the Member may seek a ruling from the House as to whether privilege applies, and until that time the material is held securely by an independent third party.

The first case to which this guideline applied occurred on 23 August 2016, when the Speaker and Mr J. Clare MP were advised that a search warrant was to be executed on the Department of Parliamentary Services at Parliament House. On the search warrant being executed, Mr Clare claimed that seized material was protected by parliamentary

37 PP 417 (2000).

38 VP 2002–04/146 (21.3.2002) (government response); VP 2004–07/222 (9.3.2005) (memorandum of understanding presented; also Australian Federal Police, *National guideline for execution of search warrants where parliamentary privilege may be involved—see* page 740).

39 *Crane v. Gething* [2000] 169 ALR 727. S. Deb. (3.10.2000) 17683–4; S. Deb. (5.12.2000) 20668.

40 House of Commons Committee of Privileges, *Report*, HC 305 (1956–57) viii.

41 H.C. Deb. 591 (8.7.1958) 245.

42 HL 43 (1998–99), HL 214 (1998–99), para. 112. The committee recommended a definition of proceedings almost identical to that in s. 16 of the 1987 Act.

43 House of Commons Committee of Privileges, *Report*, HC 101 (1938–39), para. 3.

44 This is consistent with item 1.4.2 of the Commonwealth Parliamentary Association's *Recommended benchmarks for democratic legislatures*, 2006, <www.cpahq.org/>.

privilege, and at the Member's request the material was held by the Clerk of the House. On 11 October the House referred the claim to the Committee of Privileges and Members' Interests.[45]

The committee reported on 28 November. It recommended that the House rule to uphold the claim of parliamentary privilege, having found the material seized under the search warrant was held by the Member in connection with his parliamentary responsibilities as a Member, and that the material fell within the definition of 'proceedings in Parliament' as defined in the *Parliamentary Privileges Act 1987*.[46]

On 1 December the House adopted the report;[47] the Australian Federal Police were advised of the ruling and the Clerk returned the seized material to the Member.

Privilege attaching to Hansard reports

Hansard reports of the proceedings are absolutely privileged.[48] However, it is considered that parliamentary privilege does not protect individual Members publishing their own speeches apart from the rest of a debate. If a Member publishes his or her speech, this printed statement becomes a separate publication,[49] a step removed from actual proceedings in Parliament and this is also the case in respect of the publication of Hansard extracts, or pamphlet reprints, of a Member's parliamentary speeches. In respect of an action for defamation, regard would also be had to the particular law applying in the State or Territory in which the action is taken or contemplated. Even qualified privilege may not be available unless the publication is for the information of the Member's constituents.[50] In any case arising in the future, reference would need to be had to the provisions of the Parliamentary Privileges Act.

Under section 10 of the Parliamentary Privileges Act it is a defence to an action for defamation that the defamatory matter was published by the defendant without any adoption by the defendant of the substance of the matter, and that the defamatory matter was contained in a fair and accurate report of proceedings at a meeting of a House or a committee. This defence does not apply in respect of a matter published in contravention of section 13 of the Act, and it does not deprive a person of any defence that would have been available to that person if the section had not been enacted.

Use of Hansard and other documents in courts or other tribunals

Two issues arise in this area: first, the restrictions on the actual use of, or reference to, parliamentary records in courts or other tribunals, and second, the arrangements for the production of such records.

45 At the time the warrant was issued and executed the House was dissolved. The Speaker of the previous Parliament, the Hon. Tony Smith, was the deemed Speaker in accordance with the Parliamentary Presiding Officers Act 1965. The new Parliament commenced on 30 August and Mr Smith was re-elected Speaker. Speaker's statement to the House, H.R. Deb. (13.9.2016) 675; Speaker's subsequent statement to the House, presentation of paper prepared by the Clerk's Office on the process to determine claims of privilege in matters such as these, and reference to committee, VP 2016–18/187–8 (11.10.2016).

46 VP 2016–18/388 (28.11.2016); House of Representatives Committee of Privileges and Members' Interests, *Claim of parliamentary privilege by a Member in relation to material seized under a search warrant.* November 2016.

47 VP 2016–18/428 (1.12.2016).

48 The subject of parliamentary privilege relating to documents—including Hansard, House documents and documents presented to the House—is covered in the Ch. on 'Documents'.

49 *And see May*, 24th edn, p. 224.

50 Advice from Attorney-General's Department, dated 25 August 1978.

Restriction on use of or reference to parliamentary records

Article 9 of the Bill of Rights 1688 prevents proceedings from being examined or questioned or used to support a cause of action.[51] Apart from court proceedings in respect of civil[52] and criminal[53] matters, the issue of references to parliamentary records has also arisen in respect of Royal Commissions,[54] and the documents involved have included the Votes and Proceedings,[55] the Hansard report of proceedings,[56] documents presented in the House,[57] a committee report,[58] the transcript of committee evidence,[59] documents submitted to parliamentary committees,[60] exhibits held for less than 10 years and confidential submissions received by a joint committee,[61] and documents related to a speech in the Senate.[62]

It has long been held that Article 9 protects Members, but also other participants in 'proceedings in Parliament', for example, witnesses who give evidence to parliamentary committees. A resolution of the House of Commons of 26 May 1818 stated:

> That all witnesses examined before this House, or any committee thereof, are entitled to the protection of this House, in respect of anything that may be said by them in their evidence.

This resolution reflected the attitude of the House of Commons on this aspect, and this attitude is in turn reflected in House of Representatives standing order 256.

Section 3 of the Parliamentary Privileges Act defines the terms 'court' (a Federal, State or Territory court) and 'tribunal' (essentially a person or body having power to examine witnesses on oath). The law restricting the use of parliamentary material in court proceedings is sometimes referred to as an exclusionary rule of evidence or an exclusionary principle.[63]

Following judgments which had the effect of permitting participants in proceedings in Parliament (in this case witnesses before committees—*see* page 748) to be examined and cross-examined in court in respect of committee evidence, in 1987 the Parliament enacted legislation to restore and enshrine the traditional interpretation of Article 9, which it believed should be upheld in the interests of the Parliament. Section 16 of the Parliamentary Privileges Act provides, inter alia:

> (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of—
>
> (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
>
> (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
>
> (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

51 Many court decisions have confirmed this, e.g. *Church of Scientology of California v. Johnson-Smith* [1972] (UK) I QB 522.

52 E.g. VP 1980–83/908–9 (6.5.1982); VP 1983–84/956 (9.10.1984).

53 E.g. *R v. Lionel Keith Murphy*, *R v. John Murray Foord* (1985) (*see* p. 748).

54 E.g. Royal Commission into the Australian Meat Industry (1982), VP 1980–83/949 (17.8.1982); Royal Commission on Australia's Security and Intelligence Agencies (1983), VP 1983–84/149 (23.8.1983); Royal Commission into Activities of the Nugan Hand Group (1984), VP 1983–84/881 (2.10.1984); Commission of Inquiry concerning HMAS Sydney, VP 2008–10/423–4 (24.6.2008).

55 VP 1998–2001/827 (1.9.1999).

56 VP 1980–83/908–9 (6.5.1982).

57 VP 1980–83/908–9 (6.5.1982); VP 1983–84/881 (2.10.1984).

58 VP 1985–87/1355 (26.11.1986).

59 *R v. Lionel Keith Murphy; R v. John Murray Foord. See also Commonwealth and Chief of Air Force v. Vance* (2005) ACTCA 35 (23.8.2005).

60 VP 1985–87/1355 (26.11.1986); VP 1987–90/965–6 (30.11.1988).

61 VP 2008–10/423–4 (24.6.2008).

62 *O'Chee v. Rowley* [1997] QCA 401.

63 *See*, for example, Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 29, 67, 89, 97, 106, 124.

(4) A court or tribunal shall not—

(a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or

(b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence, unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

The Federal Court has rejected an application to tender an extract from Hansard, characterising it as '. . . by way of or for the purpose of questioning the motive, intention or good faith of the Senator . . .' and as '. . . by way of, or for the purpose of, inviting the drawing of inferences or conclusions from what was said in the Senate . . .'.[64] In 1992 the Federal Court held that an answer by a Minister to a question without notice could not be used in court proceedings in support of an argument as to the Minister's disposition on the matter in dispute, as it would be contrary to paragraphs 16(3)(b) and (c) of the Act.[65] In 1994 the Privy Council gave an interpretation of Article 9 of the Bill of Rights consistent with the articulation of Article 9 in section 16 of the Act.[66]

In 2015 the Federal Court ruled that a Minister's second reading speech could not be used to establish the Minister's intention in making a decision and to invite the drawing of inferences or conclusions from the speech, as such use was forbidden by section 16(3)(b) and (c) of the Parliamentary Privileges Act and, before that Act, by the Bill of Rights 1688.[67]

The effect of the Queensland Court of Appeal decision in *O'Chee v. Rowley* was that a Senator was not required to comply with an order to disclose certain documents which the Senator had claimed were created, brought into existence or had come into his possession for purposes of or incidental to the transacting of the business of the Senate. The Court held that the privilege articulated in section 16 had the effect that the documents did not need to be produced.[68]

In *Laurance v. Katter* the Queensland Court of Appeal held that subsection 16(3) did not prevent Mr Laurance from relying on statements Mr Katter had made in the House in an action for defamation in connection with statements Mr Katter had allegedly made in the course of an interview. (In the interview Mr Katter had referred to his statements in the House, but had not repeated them.) It was argued that the statements could not support an action for defamation unless they could be understood in the context of the statements in the House.[69] The decision was appealed to the High Court, but the case was settled before it was decided.[70]

In the later case of *Rann v. Olsen* the South Australian Supreme Court rejected submissions to the effect that the Parliamentary Privileges Act was invalid because it impermissibly infringed the implied constitutional guarantee of freedom of political communication.[71] In *R v. Theophanous* the Victorian Court of Appeal held that subsection 16(3) had been breached when Dr Theophanous had been questioned about

64 *Amman Aviation Pty Limited v. Commonwealth of Australia* (No. G667 of 1987, p. 15).
65 *Hamsher and ors v. Swift and ors* (1992) 33 FCR 545–67 at 547, 562–5.
66 *Prebble v. Television New Zealand Limited* (1994) 3 All ER 407–420 at 414.
67 *Stretton v. Minister for Immigration and Border Protection* [2015] FCA 559.
68 *O'Chee v. Rowley* [1997] QCA 401.
69 *Laurance v. Katter* [1996] QCA 471.
70 *Laurance v. Katter* B69/1996 (26 June 1997).
71 *Rann v. Olsen* [2000] SASC 83.

statements he had made in the House, even though he had tendered the records, but the Court held that the infringement was not such as to justify reversal of his conviction.[72]

Subsection 16(3) is not infringed if, for example, reference is made to proceedings to prove that a certain event occurred.[73] For a discussion of constitutional issues that could arise in connection with subsection 16(3) *see* Campbell, *Parliamentary privilege* (2003).[74]

The Privy Council has upheld a decision the effect of which was that a Member had been held liable in respect of a statement made out of the House in which the Member did not repeat, but did not resile from, an otherwise defamatory statement the Member had made in the New Zealand House of Representatives.[75]

The Parliamentary Privileges Act provides that in relation to proceedings that relate to a question arising under section 57 of the Constitution or the interpretation of an Act, neither the Parliamentary Privileges Act nor the Bill of Rights shall be taken to prevent or restrict the admission in evidence of a record of proceedings published by or with the authority of the House or a committee, or the making of statements, submissions or comments based on that record. Similar provisions apply in relation to a prosecution for an offence against the Parliamentary Privileges Act or an Act establishing a committee.

Arrangements for the production of parliamentary records

In a second resolution of 26 May 1818 the UK House of Commons resolved:

> That no Clerk, or officer of this House, or short-hand writer employed to take minutes of evidence before this House or any committee thereof do give evidence elsewhere in respect of any proceedings or examination had at the bar, or before any committee of this House, without the special leave of the House.

The terms of the resolution limited it to the question of the attendance of officials. However, until 1980 the House of Commons had followed the practice of requiring leave to be granted both for the attendance of employees and for the production of parliamentary records, although it appears that the usual practice was for leave to be granted without any conditions being attached, presumably in the belief that the requirements of the Bill of Rights would always be observed.[76]

The terms of the House of Commons' resolution of 1818 are applied, in more modern language, by standing order 253:

> Only if the House grants permission, may an employee of the House, or other staff employed to record evidence before the House or one of its committees, give evidence relating to proceedings or give evidence relating to the examination of a witness.

As was previously the case in the House of Commons, in the House of Representatives the usual practice has been to grant permission (formerly referred to as 'leave') for the production of parliamentary records as well as for the attendance of House employees, although technically the standing order is limited to the attendance of employees. Previously petitions have been presented from, or on behalf of, parties asking the House to grant the leave sought,[77] although in some cases motions have been moved in the House without a petition having been presented. In such cases it has been usual for a

72 *And see* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 96–98.
73 E.g. *AMI Australia Holdings Pty Ltd v. Fairfax Media Publications Pty Ltd* [2009] NSW SC 863. *And see* 1963 precedent referred to at p. 746.
74 *Ibid*., pp. 99–104.
75 *Jennings v. Buchanan* [2004] UKPC 36.
76 HC 102 (1978–79) 9.
77 E.g. VP 1985–87/1207 (14.10.1986).

brief explanation to be made.[78] The Speaker has presented a letter conveying a request,[79] and when a motion was moved to grant the request, the Leader of the House made a brief explanation.[80]

In deciding to grant permission, the House has not necessarily granted all that has been requested in a petition; for example, one petition, as well as seeking leave for subpoenas to be served for the production of records, for them to be adduced into evidence, and for the attendance of appropriate officers, also sought leave to interview and obtain proofs of evidence from employees of the Parliamentary Reporting Staff. The House did not grant leave for the employees to be interviewed.[81] In some cases no action has been taken on petitions.[82]

In 1980 the House of Commons discontinued the practice of requiring petitions for leave, and gave leave for reference to be made in future court proceedings to the official report of debate and to the published reports and evidence of committees. The adoption of similar provisions for the Commonwealth Parliament was recommended by the Joint Select Committee on Parliamentary Privilege in its 1984 report. Although resolutions to give effect to the recommendations of the committee were presented, the recommendations were not implemented. The House therefore did not decide that the practice of granting permission should be discontinued. It has, however, been held by some authorities that the granting of permission is not required as a matter of law[83] and the Senate has agreed to a resolution to the effect that leave of the Senate is not required.[84] It should also be noted that the adduction into evidence of evidence taken in private is expressly prohibited by the Parliamentary Privileges Act.[85]

Waiver of privilege by House not possible

The immunity conferred on participants in proceedings in Parliament, and the laws on the use of or reference to records of, or documents concerning, parliamentary proceedings are part of the law of the Commonwealth[86] and, as such, cannot be waived or suspended by either House acting on its own. The Committee of Privileges of the House has expressed the view that 'as a matter of law there is no such thing as a waiver of Parliamentary Privilege'.[87] In relation to the *Prebble v. Television New Zealand* case the New Zealand House of Representatives maintained that 'article 9, as a rule of statute law, cannot be waived collectively by the House or individually by members (or others)'.[88] The Senate has resolved not to accede to a request in a petition that it 'waive privilege' in relation to a submission made to a committee.[89]

Until May 2015 when it was omitted, section 13 of the Defamation Act 1996 (UK) enabled a person effectively to waive, in so far as it concerned that person, the immunity preventing 'proceedings in Parliament' from being impeached or questioned in court

78 E.g. VP 1980–83/791 (18.3.1982); H.R. Deb. (18.3.1982) 1134–5; VP 1983–84/881 (2.10.1984); H.R. Deb. (2.10.1984) 1321–2; VP 1990–93/1334 (27.2.1992); H.R. Deb. (27.2.1992) 390–2; H.R. Deb. (24.6.2008) 5792–3.

79 VP 1998–2001/823 (31.8.1999).

80 H.R. Deb. (1.9.1999) 9565.

81 VP 1983–84/887 (2.10.1984), 956 (9.10.1984) (*see also* VP 1987–90/965–6 (30.11.1988)).

82 E.g. VP 1976–77/563 (9.12.1976); VP 1977/39 (24.3.1977).

83 E.g. *Comalco Limited v. Australian Broadcasting Commission*, (1982) 50 ACTR.

84 J 1987–90/525 (24.2.1988), 536 (25.2.1988).

85 *Parliamentary Privileges Act 1987*, s.16(4). The Act uses the term 'in camera'.

86 *And see* Opinion of Hon. T. E. F. Hughes, QC, appended to Committee of Privileges Report, PP 154 (1980) 96–7 (the opinion noted that a House may choose not to enforce its privileges in particular circumstances).

87 House of Representatives Committee of Privileges, *Report relating to the use of or reference to the records of proceedings of the House in courts*, PP 154 (1980) 6. *See also* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 27, 62 and chapter 8.

88 *Prebble v. Television New Zealand Limited* (1994) 3 All ER 407–20 at 407.

89 J 1985–87/153–4 (16.4.1985).

where the person's conduct in relation to proceedings was an issue in defamation proceedings. The UK Act did not alter the law in respect of the Commonwealth Parliament.

The Parliament of New South Wales has enacted legislation to enable parliamentary privilege to be waived in connection with an inquiry established after a speech by a Member in which she had made certain allegations.[90]

Matters arising when House is not sitting

When the House has not been sitting and the production of parliamentary records has been desired, the Speaker has granted permission, but has noted that it was given on the understanding that proper regard will be had to the law based on Article 9 of the Bill of Rights. The Leader of the House, the Manager of Opposition Business and the Attorney-General have been advised of the decision, and it has been reported to the House as soon as practicable.[91]

Precedents

The more important cases which have arisen are described in the following pages. It should be noted that most pre-date the enactment of the Parliamentary Privileges Act.

On 7 May 1963 the House authorised two Hansard reporters to attend in the Supreme Court of the Australian Capital Territory to give evidence in relation to a proceeding in the House (produce shorthand notebooks to prove the accuracy of a newspaper report of a particular proceeding).[92] No petition was presented to the House in this instance.

'BRISBANE LINE' ROYAL COMMISSION

In 1943 a royal commission was established to inquire, inter alia, into a statement made in the House by a Minister (Mr Ward) in the course of debate concerning the matter known as 'The Brisbane Line' (an alleged plan for the defence of Australia).[93] The Royal Commissioner held that Mr Ward was protected by the privilege of Parliament and could not be questioned in regard to his statement or his sources. However, the Commissioner rejected argument that privilege prevented him from investigating the matter raised by the Minister's statement—that is, whether any such document was in fact missing.[94]

SANKEY 'LOANS AFFAIR' PROSECUTION

In 1975 and 1976 petitions were presented from Mr Danny Sankey seeking leave to issue and serve subpoenas for the production of certain official records of the proceedings of the House held on 9 July 1975 and of documents tabled therein, and further to issue and serve subpoenas for the attendance in court of those persons who took the record of such proceedings. Mr Sankey wished to institute proceedings against three Ministers and a former Senate Minister and the records sought were intended to be adduced in evidence in the prosecution.[95] The 1976 petition sought leave for the petitioner and his legal representatives to inspect the documents tabled during the

90 Lyn Lovelock and John Evans, *New South Wales Legislative Council Practice*, Federation Press, Sydney, 2008, pp. 108–113. Russell Grove (ed.), *New South Wales Legislative Assembly Practice, Procedure and Privilege*, NSW Parliament, 2007, pp. 385–6.

91 E.g. VP 1980–83/949 (17.8.1982); VP 1983–84/149 (23.8.1983); VP 2002–04/83 (11.3.2002); *and see* J 1983–84/203 (23.8.1983).

92 VP 1962–63/464 (7.5.1963); *and see* Ch. on 'Documents'.

93 H.R. Deb. (22.6.1943) 58.

94 ALJ Vol. 18, 1944, pp. 70–76. *See also* Enid Campbell, *Parliamentary privilege in Australia*, Melbourne University Press, 1966, pp. 39–40.

95 VP 1974–75/1002 (21.10.1975); H.R. Deb. (21.10.1975) 2292–3.

proceedings of 9 July 1975, together with the other matters sought in the previous petition.[96]

On 4 June 1976, the House granted leave for the inspection of the tabled documents in question, for a subpoena to be issued and served for the production of the documents and for an appropriate staff member to attend at court and produce the documents.[97] The House did not grant leave for the Hansard report to be used in the proceedings or for the reporters who took the report to appear in the court. Two further petitions were presented on behalf of Mr Sankey, in December 1976 and March 1977.[98] No action was taken by the House in respect of either.

ORDER OF MR JUSTICE BEGG IN THE CASE OF *UREN V. JOHN FAIRFAX & SONS*

In 1979 an order was made by a judge of the Supreme Court of New South Wales in a case in which a Member had commenced an action for defamation against the publishers of a newspaper. On 11 September 1979, the order having been raised as a matter of privilege, the House referred the following matter to the Committee of Privileges:

> The extent to which the House might facilitate the administration of justice with respect to the use of or reference to the records of proceedings of the House in the Courts without derogation from the Privileges of the House, or of its Members.[99]

The judge's order was to the effect that certain interrogatories should be answered and verified by the Member, requiring him to agree that certain speeches in the Parliament shown in photostat copies of Hansard as having been made by him and two other persons were in fact made by him or them. The judge accepted the submission by counsel to the effect that what the defendant was seeking to do did not infringe the privilege of a House of Parliament in relation to proceedings before it, but sought merely to prove as a matter of fact that the plaintiff and others had made certain speeches in the House, not in any way to criticise them nor call them into question in court proceedings, but to prove them as facts upon which the defendants' alleged comments were made in the publication sued upon by the plaintiff. The judge ruled that this use of the fact of what was said in Parliament would not be a breach of the privilege of Parliament.

The Committee of Privileges examined the order and concluded that the judge had been in error. (The judge had expressed views to the effect that the broadcast of proceedings and the publication of those proceedings in Hansard amounted to a waiver of privilege.) The committee expressed concern that, as a consequence of the order, the answers to the interrogatories may have been used by counsel in cross-examination had the case (which was settled out of court) come to trial, and that such a course, if allowed, may have been used for questioning the motives of the Member when he made his speech in the House, a violation of the privilege enshrined in Article 9 of the Bill of Rights. As well as commenting on the judge's order, the committee recommended, inter alia, that the petitioning process be continued and that petitions be referred to the Committee of Privileges,[100] but the recommendation was not implemented.

ROYAL COMMISSION INTO AUSTRALIA'S SECURITY AND INTELLIGENCE AGENCIES

In June 1983 during the winter adjournment the Speaker approved a request for the adduction into evidence before a Royal Commission of Inquiry into Australia's Security and Intelligence Agencies of certain Hansard reports, subject to the condition that proper regard be had to the provisions of Article 9. During the course of its proceedings the

96 VP 1976–77/33 (25.2.1976).
97 VP 1976–77/247 (4.6.1976).
98 VP 1976–77/563 (9.12.1976); VP 1977/39 (24.3.1977).
99 VP 1978–80/975 (11.9.1979).
100 PP 154 (1980) 6.

Royal Commission produced a statement of issues requiring resolution. Concern was expressed that a matter of privilege could arise in connection with two of the issues which could have involved the questioning of statements of Ministers in the House. Although some modifications of the issues in question were made, it was considered that there was still a risk to Parliament's interests, and counsel representing the Speaker, joined by the Deputy President of the Senate, was given leave to appear before the Royal Commission. Counsel addressed the Royal Commission on the law of parliamentary privilege. The Speaker's actions were endorsed when reported to the House when sittings resumed on 23 August 1983.[101]

CASES INVOLVING MR JUSTICE MURPHY AND JUDGE FOORD

In 1985 and 1986 issues of parliamentary privilege arose during trials which followed Senate committee inquiries concerning Mr Justice Murphy. Although the matters concerned the Senate in an immediate sense, the principles involved were considered to be of equal importance to the House of Representatives.

In the first trial of Mr Justice Murphy arguments put by counsel representing the President of the Senate in favour of the traditional parliamentary view of the meaning of Article 9, and to the effect that the presiding judge should intervene of his own volition to ensure the provisions were observed, were rejected.

The judge favoured a narrower view of the term 'impeached or questioned', indicating that there needed to be an adverse effect on freedom of speech or debates or proceedings in Parliament for Article 9 to be breached. The judge stressed the importance of cross-examination of witnesses with regard to previous statements, and referred to the competing interests involved. The judge held that 'questioning of witnesses . . . as to what they said before a committee of the Senate, does not necessarily amount to a breach of privilege as being necessarily contrary to the Bill of Rights'.[102] The cross-examination permitted extended to evidence given in private and not authorised for publication. In a later trial, *R v. Foord*, witnesses were also cross-examined on their committee evidence.[103]

In the second trial a different view was taken of the interpretation of Article 9, although the result was similar. The judge held that Article 9 meant that no court proceedings having legal consequences against a Member, or a witness, which would have the effect of preventing a Member or witness exercising his or her freedom of speech in Parliament or before a committee, or of punishing him or her for having done so, were permissible. It was held that statements to the committees could, without breach, be the subject of comment, used to draw inferences or conclusions, analysed and made the basis of cross-examination or submissions and comparisons made between such statements and statements by the same person outside Parliament.[104] The trial proceeded in light of these decisions.

Members and Senators were informed of these matters and, in due course, it was concluded that only by legislation could the preferred interpretation of Article 9 of the Bill of Rights be guaranteed, and this was one of the principal objects of the Parliamentary Privileges Bill sponsored by the President of the Senate and the Speaker.[105]

101 VP 1983–84/149 (23.8.1983); H.R. Deb. (23.8.1983) 1–3.
102 Judgment of Cantor J, *R v. Lionel Keith Murphy*, N.S.W. Supreme Court, (1986) 64 ALR 498.
103 Parliamentary Privileges Bill 1987, explanatory memorandum, p. 10.
104 Judgment of Hunt J, *R v. Lionel Keith Murphy*, N.S.W. Supreme Court, (1986) 64 ALR 498.
105 S. Deb. (4.6.1986) 3307–8; S. Deb. (7.10.1986) 893–5; H.R. Deb. (4.6.1986) 4552–3; H.R. Deb. (19.3.1987) 1154–6.

CASE INVOLVING CHARGES AGAINST A MEMBER

In 1999 the Speaker presented a request from the National Crime Authority seeking permission for the Votes and Proceedings for 10 November 1998 (the first sitting day of the 39th Parliament) to be produced in committal proceedings against a Member in the Melbourne Magistrates Court, and in any subsequent proceedings.[106] The House gave leave for the Votes and Proceedings to be produced.[107] It was understood that the objective was to establish that the Member in question had in fact been elected, and taken the oath or affirmation of allegiance, as a Member.

Freedom of information

Section 46 of the *Freedom of Information Act 1982* states:

> A document is an exempt document if public disclosure of the document would, apart from this Act and any immunity of the Crown . . . :
>
> . . .
>
> (c) infringe the privileges of the Parliament of the Commonwealth or of a State or of a House of such a Parliament or of the Legislative Assembly of the Northern Territory or of Norfolk Island.

The Department of the House of Representatives, along with the other parliamentary departments, is excluded from the operation of the Freedom of Information Act.[108] The department has sought, however, to comply with the intent of the Act and has released documents unless they would have fallen within an exemption under the Act or where a request would have been refused under the Act.

OTHER PRIVILEGES

Freedom from arrest

Section 14 of the Parliamentary Privileges Act provides that a Member of either House shall not be arrested or detained in a civil cause on any day on which the House of which he or she is a Member meets, on any day on which a committee of which he or she is a member meets or on any day within five days before or after such days.

The following comment has been made about the retention of such an immunity:

> The justification . . . is the need of Parliament to the first claim on the services of its Members, even to the detriment of civil rights of third parties.[109]

Freedom from arrest in civil matters is one of the earliest privileges. The immunity is confined to civil arrest; there is no immunity from arrest for crime.

The imprisonment of a Member was the subject of an inquiry by the Committee of Privileges in 1971. Mr T. Uren MP had been committed for 40 days after his failure to pay costs awarded against him in respect of an unsuccessful action he had brought against a policeman for alleged assault. He was released after serving only a short period when the balance of the costs was paid by another person. The particular question for determination by the Committee of Privileges was whether the commitment of Mr Uren was one in a case which was of a civil or criminal character. Clearly, if the commitment was one in a case which was of a civil character, a breach of parliamentary privilege had

106 VP 1998–2001/823 (31.8.1999).

107 VP 1998–2001/827 (1.9.1999).

108 *Parliamentary Service Act 1999*, s. 68A. This section was inserted in 2013 with retrospective effect, after the Australian Information Commissioner had questioned the previously understood exclusion. Following this intervention the department was subject to the FOI Act for some 12 months from May 2012. The original intent of the FOI Act was that the parliamentary departments were to be excluded, *see* Minister's second reading speech, H.R. Deb. (18.8.1981) 43. The definition of 'Department' in the *Privacy Act 1988* also excludes the Parliamentary Departments.

109 Joint Select Committee on Parliamentary Privilege, *Report*, PP 219 (1984) 70.

occurred. However, if the commitment arose out of a case of a criminal character or which was more of a criminal than a civil character, the Member enjoyed no immunity and no breach of parliamentary privilege had occurred.

The committee received conflicting legal advice, but reported to the House that it had found that the commitment to prison of Mr Uren constituted a breach of parliamentary privilege. It recommended however that:

> . . . having regard to the complexities and circumstances of the case . . . the House would best consult its own dignity by taking no action in regard to the breach of Parliamentary Privilege which had occurred.[110]

On 23 August 1971 the House agreed to take note of the report. During the course of the debate the Minister representing the Attorney-General presented correspondence from the New South Wales Premier and the New South Wales Attorney-General which expressed the strong view that the committee's finding was inconsistent with decisions of New South Wales courts which held that imprisonment for costs was 'criminal in nature'.[111]

House to be informed of the detention of a Member

The committal of a Member for any criminal offence, or in any civil matter, including contempt of court, should be notified to the Speaker by the committing judge or magistrate or some other competent authority. When Mr Uren was committed for 40 days for his failure to pay court costs (*see above*), advice of his imprisonment (and subsequent release) was conveyed to the Speaker and reported to the House at its next sitting.

The Senate has agreed to a resolution relating to the right of the Senate to receive notification of the detention of its members.[112]

In 1984 the Joint Select Committee on Parliamentary Privilege recommended that the court or officer having charge of a detained Member should inform the relevant Presiding Officer but no specific action was taken by the House on this recommendation.[113]

Extension of privilege to others

Section 14 of the Parliamentary Privileges Act also extends the immunity from arrest in civil causes to employees and witnesses in the following terms:

> (**2**) An officer of a House:
>
> . . .
>
> (b) shall not be arrested or detained in a civil cause;
>
> on any day:
>
> (c) on which a House or a committee upon which that officer is required to attend meets; or
>
> (d) which is within 5 days before or 5 days after a day referred to in paragraph (c).
>
> (**3**) A person who is required to attend before a House or a committee on a day:
>
> . . .
>
> (b) shall not be arrested or detained in a civil cause;
>
> on that day.

110 House of Representatives Committee of Privileges, *Commitment to prison of Mr T. Uren, M.P.*, PP 40 (1971) 6.
111 VP 1970–72/667 (23.8.1971); H.R. Deb. (23.8.1971) 526–9.
112 *See* Ch. on 'The Parliament and the role of the House'.
113 Joint Select Committee on Parliamentary Privilege, *Final report*, October 1984, PP 219 (1984) 72.

Exemption from jury service

Based on the House's prior claim to the services of its Members, they are excused from service on juries. This exemption has been incorporated in the *Jury Exemption Act 1965*, which provides that Members of Parliament are not liable, and may not be summoned, to serve as jurors in any Federal, State or Territory court.[114] Certain employees of the Parliament are also exempted from attendance as jurors in Federal, State and Territory courts by regulations made under the Act.[115]

Exemption from attendance as a witness

Section 14 of the Parliamentary Privileges Act provides that Members shall not be required to attend before a court or tribunal on any day on which the House of which the Member is a member meets, on any day on which a committee of which he or she is a member meets or on any day within five days before or after such days. The exemption is also extended to employees of the House required to attend upon the House or a committee and applies on days on which the House or the committee upon which the officer is required to attend meets, or on days within five days before or after such days. Witnesses, that is, 'persons required to attend before a house or a committee on a day', shall not be required to attend before a court or tribunal on that day.

The Parliament claims the right of the service of its Members and employees in priority to a subpoena to attend as a witness in court '. . . upon the same principle as other personal privileges, viz, the paramount right of Parliament to the attendance and service of its Members'.[116] In the House of Representatives, when a Member has received a subpoena requiring his or her attendance in court on a day on which a Member could not be compelled to attend, it has been common for the Speaker to write to the court authorities asking that the Member be excused.[117]

Subsection 15(2) of the *Evidence Act 1995* provides that a Member of a House of an Australian Parliament is not compellable to give evidence if this would prevent the Member from attending a sitting of his or her House, or a joint sitting, or a meeting of a committee of which he or she is a member.

ACTS CONSTITUTING BREACHES OF PRIVILEGE AND CONTEMPTS

By virtue of section 49 of the Constitution, the House has the ability to treat as a contempt:

> . . . any act or omission which obstructs or impedes . . . [it] . . . in the performance of its functions, or which obstructs or impedes any Member or officer . . . in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results . . . even though there is no precedent of the offence.[118]

Whilst the House thus has a degree of flexibility in this area, section 4 of the Parliamentary Privileges Act imposes a significant qualification:

> Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

114 *Jury Exemption Act 1965*, s. 4 and Schedule.
115 Jury Exemption Regulations, SR 186 of 1987.
116 *May*, 24th edn, p. 248.
117 *And see Di Nardo v. Downer* (1966) Victorian Reports 351–2 (Minister excused from attendance).
118 *May*, 24th edn, p. 251.

This provision should be taken into account at all stages in the consideration of possible contempts. It is important also to recognise that the Act does not codify or enumerate acts or omissions that may be held to constitute contempts.[119]

Section 6 of the Act provides that words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a Member, thus abolishing a previous category of contempt. This provision does not apply to words spoken or acts done in the presence of a House or a committee. The Act also contains specific provisions dealing with the protection of witnesses (*see* page 759) and the unauthorised disclosure of evidence (*see* page 761).

In 1984 the Joint Select Committee on Parliamentary Privilege recommended the adoption, by resolution, of detailed guidelines which, whilst they would not prevent the House from pursuing a matter not covered by their provisions, would indicate matters that may be treated as contempts. Whilst draft guidelines were presented in the House in 1987,[120] action was not taken to adopt them. The committee also recommended the adoption of a policy of restraint in the exercise of the penal jurisdiction, proposing that each House should exercise its powers in this area only when satisfied that to do so was essential in order to provide reasonable protection for the House, its Members, its committees or its officers from such improper obstruction, or attempt at or threat of obstruction such as was causing, or likely to cause, substantial interference with their respective functions.[121] Although no action was taken by the House to implement this recommendation, successive Speakers, in giving decisions on complaints raised, have had regard to the policy of restraint and have indicated support for it.[122]

The following paragraphs are confined mainly to a note of matters highlighted in *May* and a record of those matters which the House of Representatives has determined to be acts or conduct constituting breaches of privilege or contempt, some occurring before enactment of the Parliamentary Privileges Act. The experience of the House is not comprehensive and for precedents of acts found to constitute contempt by the UK House of Commons, reference is made to *May*.[123] In assessing the relevance to future cases of the precedents which do exist in the Commonwealth Parliament (and in the House of Commons), regard must be had to the provisions of the Parliamentary Privileges Act and, in particular, to section 4. Appendix 25 contains a full listing of complaints raised in the House.

Misconduct

In the presence of the House or a committee

The most frequent example of disorderly conduct on the part of strangers is the interruption or disturbance of the proceedings of the House by visitors in the galleries, generally seeking to publicise some political cause. In practice, disorderly conduct of this nature would not normally be pursued as a possible contempt but rather dealt with by other means (*see* Chapter on 'Parliament House and access to proceedings').

119 It is sometimes said that the list of possible contempts is not closed. For judicial comment on s. 4 *see R v. Theophanous* [2003] VSCA 70; *see also* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 97–98, 211–2.

120 Proposed resolution incorporated in Hansard at H.R. Deb. (5.5.1987) 2632. The Senate adopted a resolution to give effect to the recommendation on 25 February 1988.

121 PP 219 (1984) 83; H.R. Deb. (5.5.1987) 2632–3.

122 E.g. H.R. Deb. (9.11.1983) 2461; H.R. Deb. (29.4.1986) 2698; H.R. Deb. (16.9.1986) 759; H.R. Deb. (23.10.2008) 10169–70. The Senate has adopted resolutions on this matter, J 1987–90/520–1 (24.2.1988), 536 (25.2.1988).

123 *May*, 24th edn, pp. 250–71. It is stated at p. 250 'It is therefore impossible to list every act which might be considered to amount to a contempt'.

It should also be noted that section 15 of the Parliamentary Privileges Act provides:

> . . . for the avoidance of doubt, that, subject to the provisions of section 49 of the Constitution and this Act, a law in force in the Australian Capital Territory applies according to its tenor (except as otherwise provided by that or any other law) in relation to:
>
> (a) any building in the Territory in which a House meets; and
>
> (b) any part of the precincts as defined by subsection (3)(1) of the *Parliamentary Precincts Act 1988*.

Section 11 of the *Parliamentary Precincts Act 1988* provides that the *Public Order (Protection of Persons and Property) Act 1971* applies to the precincts as if they were Commonwealth premises within the meaning of that Act.

Disobedience to the rules or orders of the House

Examples of this type of contempt include the refusal of a witness or other person to attend the House or a committee after having been summoned to attend and refusing to leave the House or a committee when directed to do so. 'To prevent, delay, obstruct or interfere with the execution of the orders of a committee (or of either House) is also a contempt'.[124]

Curtin Case (1953): On 17 March 1953 the House resolved that contempt of its ruling and authority had taken place by a Member who had failed to observe an order for his exclusion from the Parliament building following his suspension from the House for using an unparliamentary expression. Following the resolution the Member made an apology to the House which the House resolved to accept and no further action was taken.[125]

Abuse of the right of petition

May states 'Any abuse of the right of petition may be treated as a contempt by either House'.[126] Precedents in this area include:

- frivolously, vexatiously or maliciously submitting a petition containing false, scandalous or groundless allegations against any person, whether a Member of such House or not, or contriving, promoting and prosecuting such a petition;
- inducing persons to sign petitions by false representations.[127]

Forged or falsified documents

The presenting of a forged, falsified or fabricated document to either House or to a committee, with intent to deceive, has been treated as a contempt.[128]

In 1907 a committee of the House of Representatives reported that signatures to a petition were found to be forgeries and the House requested the Crown law authorities to take action with a view to criminal prosecution. The House was later advised, however, that prosecution for forgery would be unsuccessful.[129] In 1974 a letter published in a newspaper in the name of a Member was found by the Committee of Privileges to be a forgery and therefore appeared to constitute a criminal offence. As the author of the letter was unknown, no legal action could be taken.[130]

124 *May*, 24th edn, p. 839.
125 VP 1951–53/609 (13.3.1953), 611 (17.3.1953).
126 *May*, 24th edn, p. 253.
127 *May*, 24th edn, p. 253 (footnote 23).
128 *May*, 24th edn, p. 253 (footnote 23).
129 VP 1907–08/165 (15.11.1907), 267 (13.12.1907).
130 House of Representatives Committee of Privileges, *Report relating to a letter fraudulently written in the name of the honourable Member for Casey published in the* Sun-News Pictorial *on 6 December 1973*, PP 65 (1974); VP 1974/98 (9.4.1974).

Conspiracy to deceive

To conspire to deceive either House or a committee of either House could be punished as a contempt. The abuse of the right of petition and forging or falsifying documents could be examples of this type of contempt.

Deliberately misleading the House

May states:

> The Commons may treat the making of a deliberately misleading statement as a contempt. In 1963 the House resolved that in making a personal statement which contained words which he later admitted not to be true, a former Member had been guilty of a grave contempt.[131] (*Profumo's Case*, CJ (1962–63) 246)

The circumstances surrounding the decision of the House of Commons in *Profumo's Case* are of importance because of the guidance provided in cases of alleged misrepresentation by Members. Mr Profumo had sought the opportunity of making a personal statement to the House of Commons to deny the truth of allegations made against him. Later he was forced to admit that in making his personal statement of denial to the House, he had deliberately misled the House. As a consequence of his actions, he resigned from the House which subsequently agreed to a resolution declaring him guilty of a grave contempt.

Whilst claims that Members have deliberately misled the House have been raised as matters of privilege or contempt, the Speaker has, to date, granted priority to a motion in respect of such a claim in only one case.

On 21 May 2012 Mr C. Thomson MP made a statement to the House refuting certain allegations relating to his conduct prior to becoming a Member. On 22 May the question as to whether the Member had deliberately misled the House was raised as a matter of privilege. While the Speaker found that a prima facie case had not been made and did not grant precedence to the matter, he stated that it was still open to the House to determine a course of action. A motion, moved by leave, was then agreed to, referring the matter to the Committee of Privileges and Members' Interests.[132] The Member was later charged with a number of criminal matters and the committee's inquiry was suspended because of sub judice considerations, and then lapsed on the dissolution of the House.

In the following Parliament, on 24 February 2014, the matter of whether the now former Member (who in the interim had been convicted of certain offences) had deliberately misled the House was again raised as a matter of privilege. The Speaker stated that she would give precedence to the matter, in light of the earlier proceedings and the findings of guilt by the court, and the matter was again referred to the committee.[133] The committee reported on 17 March 2016, recommending that the House find Mr Thomson guilty of a contempt of the House in that in the course of his statement to the House on 21 May 2012, as the then Member for Dobell, he deliberately misled the House, and that the House reprimand Mr Thomson for his conduct.[134] On 4 May 2016 the House acted as recommended by the committee and agreed to a resolution reprimanding Mr Thomson.[135]

131 *May*, 24th edn, p. 254.
132 VP 2010–13/1451 (21.5.2012), 1467, 1468–9 (22.5.2012). Appendix 25 has more detail.
133 VP 2013–16/ 309, 311 (24.2.2014). The following day the House agreed to a motion expressing regret for Mr Thomson's statement to the House and apologising to individuals named in his speech, VP 2013–16/320 (25.2.2014).
134 VP 2013–16/2007 (17.3.2016). PP 84 (2016).
135 VP 2016/75 (4.5.2016).

On 16 September 1986 Speaker Child advised the House that she had appraised a statement to the House on 22 August by a Member, following her reference to remarks critical of her attributed to the Member. The Speaker, having examined the transcripts of the remarks in question, claimed that he had misled the House and said this action, in her opinion, constituted a contempt of the House. The Member then addressed the House on the matter. The Chairman of Committees then moved a motion to the effect that the Member's statement to the House on 22 August had misled the House, and thus constituted a contempt of the House. After debate, and the Member having again withdrawn the remarks to which attention had been drawn, and having again apologised, the motion was withdrawn, by leave.[136] The House has agreed to motions censuring[137] and condemning[138] Members for 'misleading the House' and for having 'intentionally misled the House', but in neither case was it said that a contempt had been committed. (*See also* 'Apology by Member' at page 768, and Chapters on 'The Speaker, Deputy Speakers and officers' and 'Motions'.)

Corruption in the execution of their office as Members

Section 141.1 of the Criminal Code deals with the offences of bribery of Commonwealth public officials. It provides for penalties of 10 years imprisonment for both giving and receiving bribes. Members of Parliament are encompassed by the term 'Commonwealth public official'.[139]

As well as being a crime, corruption in connection with the performance of a Member's duties as a Member could also be punished as a contempt.

May states:

> The acceptance by a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee is a contempt.[140]

In Australia section 45 of the Constitution also applies—*see* 'Qualifications and disqualifications' in Chapter on 'Members'.

Lobbying for reward or consideration

May records that in 1995 the House of Commons, adding to a 1947 resolution, resolved that:

> no Members of the House shall, in consideration of any remuneration, fee, payment, reward or benefit in kind, direct or indirect, . . . 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.[141]

In Australia section 45 of the Constitution also applies—*see* 'Qualifications and disqualifications' in Chapter on 'Members'.

In 2017 the acceptance by Mr B. Billson, the former Member for Dunkley, of an appointment as paid Director of the Franchise Council of Australia, while still a Member of the House, was referred to the Committee of Privileges and Members Interests. While

136 VP 1985–87/1089, 1090 (22.8.1986), 1101–2 (16.9.1986).

137 VP 1993–96/1906 (7.3.1995).

138 VP 1993–96/2345 (30.8.1995).

139 Formerly covered by s. 73A of the *Crimes Act 1914*. In June 2002 a person was convicted and imprisoned for a number of offences, including a breach of section 73A, committed when he had been a Member, although an appeal succeeded in respect of one charge (*R v. Theophanous*, County Court, Victoria). *And see* p. 743 for comments re subsection 16(3) of the Parliamentary Privileges Act.

140 *May*, 24th edn, p. 254. *See also May,* p. 257.

141 *May*, 24th edn, p. 79.

the committee did not make a finding of contempt, it recommended that the House censure Mr Billson for failing to discharge his obligations as a Member to the House in taking up paid employment for services to represent the interests of an organisation while he was a Member of the House, and failing to fulfil his responsibilities as a Member by appropriately declaring his personal and pecuniary interests, in respect of this paid employment, in accordance with the resolutions and standing orders of the House. The committee also recommended that the standing orders be amended to include an express prohibition on a member of the House engaging in services of a lobbying nature for reward or consideration.[142] A motion of censure in the terms recommended by the committee was subsequently moved in the House and agreed to.[143]

Improper interference with and obstruction of Members and House employees

Improper interference with the free performance by a Member of his or her duties as a Member is a contempt.[144] An example of this category of offence is the issuance of documents fraudulently and inaccurately written in a Member's name.[145]

The arrest of a Member in a civil cause during periods when the immunity conferred by the Parliamentary Privileges Act applies could be pursued as a contempt (*see* page 749); so too could molestation of a Member while attending, coming to, or going from the House.

In 1986 the Committee of Privileges considered a case in which the work of a Member's electorate office had been disrupted as a result of a considerable number of telephone calls received in response to false advertisements in a newspaper. The committee's report stated that the actions in question were to be deprecated; that in all the circumstances it did not believe that further action should be taken; but that harassment of a Member in the performance of his or her work by means of repeated or nuisance or orchestrated telephone calls could be judged a contempt.[146]

The Committee of Privileges has also considered the effect of industrial action which involved bans on mail services to Members' electorate offices. It found that the actions had disrupted the work of electorate offices, and impeded the ability of constituents to communicate with Members, but that as the actions were not taken with any specific intention to infringe the law concerning the protection of Parliament an adverse finding should not be made.[147]

In 1995 the committee reported on a complaint following the execution, by officers of the Australian Federal Police, of a search warrant on the electorate office of a Member. The committee concluded that, although the work of the Member's electorate office had undoubtedly been disrupted, and that although the actions complained of amounted to interference in the free performance by the Member of his duties as a Member, the interference could not be regarded as improper interference as required by section 4 of the Act and so no contempt had been committed.[148]

142 *Inquiry concerning the former Member for Dunkley in the 44th Parliament: possible contempts of the House and appropriate conduct of a Member*, March 2018, PP 106 (2018).

143 VP 2016–18/1462 (27.3.2018).

144 *Parliamentary Privileges Act 1987*, s. 4.

145 VP 2004–07/1954 (14.6.2007) (House resolution agreeing with Committee of Privileges recommendation).

146 House of Representatives Committee of Privileges, *Disruption caused to the work of the electorate office of the honourable Member for Wentworth made in response to false advertisements in the* Sydney Morning Herald *of 20 September 1986*, PP 282 (1986) 5–6.

147 PP (122) 1994.

148 PP 376 (1995); *and see* p. 739 re the status of Members' records.

The Parliamentary Privileges Act also confers, by section 14, immunity from arrest in civil causes of officers required to attend on a House or a committee for certain periods (*see* page 750). The obstruction of House employees in the execution of their duty, or other people entrusted with the execution of its orders, or the molestation of those people on account of their having carried out their duties, could be found to be a contempt. To commence proceedings against such people for their conduct in obedience to the orders of the House could be pursued as a possible contempt.

Attempts by improper means to influence Members in the performance of their duties

The offer of a benefit or bribe

As well as being a criminal offence,[149] punishable by up to 10 years imprisonment and/or a substantial fine, the offering of bribes to Members to influence them in their parliamentary conduct is a contempt.

Intimidation etc. of Members

To attempt to influence a Member in his or her conduct as a Member by threats, or to molest any Member on account of his or her conduct in the Parliament, is a contempt. So too is any conduct having a tendency to impair a Member's independence in the future performance of his or her duty, subject, since 1987, to the provisions of the Parliamentary Privileges Act.

'BANKSTOWN OBSERVER' (BROWNE/FITZPATRICK) CASE

On 8 June 1955 the Committee of Privileges reported to the House that it had found:

- That Messrs Fitzpatrick and Browne were guilty of a serious breach of privilege by publishing articles intended to influence and intimidate a Member (Mr Morgan), in his conduct in the House, and in deliberately attempting to impute corrupt conduct as a Member against him, for the express purpose of discrediting and silencing him. The committee recommended that the House should take appropriate action.
- That there was no evidence of improper conduct by the Member in his capacity as a Member of the House.
- That some of the references to the Parliament and the Committee of Privileges contained in the newspaper articles constituted a contempt of the Parliament. However, the committee considered the House would best consult its own dignity by taking no action in this regard.[150]

The committee's inquiry and report followed a complaint made by a Member (Mr Morgan) on 3 May 1955 that an article published on 28 April 1955 in a weekly newspaper known as the *Bankstown Observer*, circulating in his electorate, had impugned his personal honour as a Member of Parliament and was a direct attack on his integrity and conduct as a Member of the House.[151]

The committee's report and findings were considered by the House on 9 June 1955 and a motion moved by the Prime Minister 'That the House agrees with the Committee in its Report' was agreed to without division. On a further motion of the Prime Minister it was resolved that Messrs Browne and Fitzpatrick be notified that at 10 a.m. the

149 *Criminal Code Act 1995*, s. 141.1.

150 H of R 2 (1954–55) 7. For a full account of this case *see* J. A. Pettifer, 'The case of the *Bankstown Observer*', *The Table* XXIV, 1955, pp. 83–92.

151 VP 1954–55/184 (3.5.1955); H.R. Deb. (3.5.1955) 352–5.

following day the House would hear them at the Bar before proceeding to decide what action it would take in respect of their breaches of privilege.[152]

On being brought to the Bar of the House the following morning[153] Mr Fitzpatrick sought permission for his counsel to act on his behalf. The request was refused by the Speaker and Mr Fitzpatrick apologised to the House for his actions and withdrew. Mr Browne was then brought to the Bar and addressed the House at some length without apologising and withdrew.

Following a suspension of 51 minutes, the House resumed and the Prime Minister moved motions in respect of Messrs Browne and Fitzpatrick to the effect that, being guilty of a serious breach of privilege, they should be imprisoned for three months and that the Speaker should issue warrants accordingly. The Leader of the Opposition moved, as an amendment, that both motions be amended to read:

> That this House is of opinion that the appropriate action to be taken in these cases is the imposition of substantial fines and that the amount of such fines and the procedure of enforcing them be determined by the House forthwith.

Following considerable debate, the amendment was defeated, on division, and the motions of the Prime Minister agreed to, on division.

The action taken by the legal representatives of Messrs Browne and Fitzpatrick to apply to the High Court for writs of habeas corpus and their subsequent petition to the Judicial Committee of the Privy Council for special leave to appeal against the decision of the High Court is referred to earlier (*see* page 734).

CASE INVOLVING HON. G. SCHOLES MP

In 1990 the Committee of Privileges reported on actions taken by a solicitor in respect of the Hon. G. Scholes MP. Mr Scholes had distributed certain information within his electorate, and had subsequently received a letter from a solicitor acting on behalf of a client affected by the information. The letter, inter alia, asked that Mr Scholes refrain from making such statements in the future, and stated that if assurances sought were not forthcoming, the solicitor would advise his client to initiate proceedings. Mr Scholes argued that the threat would inhibit him in carrying out his duties as a Member, but the committee found that there was not sufficient evidence to lead it to a conclusion that the statement should be found to constitute an attempt by improper means to influence Mr Scholes in respect of his participation in proceedings in Parliament.[154]

CASES INVOLVING LETTERS WRITTEN BY MEMBERS

In the *Nugent Case* (1992) and the *Sciacca Case* (1994) the Committee of Privileges considered complaints about actions or threatened actions to sue Members on account of statements made in letters to Ministers. The substance of the Members' complaints was that they had been subject to improper interference in the performance of their duties as Members. In the case of Mr Nugent, the committee found that the terms of the letter containing the threat and the circumstances of its receipt had a tendency to impair Mr Nugent's independence in the performance of his duties, although it did not find that a contempt had been committed.[155] The House subsequently resolved that the persons responsible should be required to apologise[156] and they did so.[157] In the case of Mr Sciacca, the committee found that although Mr Sciacca had felt constrained, there was

152 VP 1954–55/267 (9.6.1955).
153 For proceedings on this day *see* VP 1954–55/269–71 (10.6.1955), H.R. Deb. (10.6.1955) 1625–65.
154 PP 428 (1990) 7.
155 PP 118 (1992).
156 VP 1990–93/1487 (7.5.1992), 1540 (1.6.1992), 1551 (3.6.1992).
157 VP 1990–93/1633 (18.8.1992).

no evidence of an attempt to interfere improperly in the performance of his duties and a finding of contempt should not be made.[158]

CASE INVOLVING MR KATTER MP

In this case the committee considered a complaint that action to sue a person who had sworn a statutory declaration and given it to a Member (who had used it in the course of proceedings in the House) amounted to improper interference in the performance of the Member's duties. The committee concluded that no evidence had been produced which would establish that the actions complained of amounted to or were intended or likely to amount to improper interference in the free performance by Mr Katter of his duties as a Member. Accordingly, it found that a contempt had not been committed.[159]

BROWN CASE (UK)

In 1947 the House of Commons Committee of Privileges inquired into a complaint that certain actions of the Executive Committee of a union were calculated, improperly, to influence a Member (Mr Brown) in the exercise of his parliamentary duties. The Member had for many years been employed by the union. On his election to Parliament, the union entered into a contractual relationship with him that, whilst remaining a Member, he would hold an appointment with the union and would continue to receive a salary and certain other advantages, although his contract entitled him 'to engage in his political activities with complete freedom'. The Member complained that the effect of a sequence of events was such as to bring pressure on him to alter his conduct as a Member and to change the free expression of his views under the threat that, if he did not do so, his position as an official of the union would be terminated or rendered intolerable. The Committee of Privileges found that, in the particular circumstances, the action of the union did not in fact affect the Member in the discharge of his parliamentary duties. However, in its report the committee stated:

> Your Committee think that the true nature of the privilege involved in the present case can be stated as follows:
>
> It is a breach of privilege to take or threaten action which is not merely calculated to affect the Member's course of action in Parliament, but is of a kind against which it is absolutely necessary that Members should be protected if they are to discharge their duties as such independently and without fear of punishment or hope of reward.[160]

CHAIRMAN OF THE SYDNEY STOCK EXCHANGE CASE

The House resolved on 28 March 1935 that a letter written by the Chairman of the Sydney Stock Exchange, allegedly making a threat and reflecting on the motives and actions of a Member, did not amount to a breach of privilege but was, in effect, an exercise of the right of an individual to defend himself. The House considered, however, that the Chairman was in error in addressing a letter to the Speaker instead of direct to the Member concerned.[161]

Offences against witnesses

Standing order 256 states that:

> Any witness giving evidence to the House or one of its committees is entitled to the protection of the House in relation to his or her evidence.

As well as being able to be punished as a statutory offence (*see below*), intimidation, punishment, harassment of or discrimination against witnesses or prospective witnesses

158 PP 78 (1994).
159 PP 407 (1994). (*See also* p. 739).
160 House of Commons Committee of Privileges, *Report*, HC 118 (1947) xii.
161 VP 1934–37/149–50 (28.3.1935).

can be punished as a contempt and, technically, there is no prohibition on a person being punished for such a contempt as well as being prosecuted under the Parliamentary Privileges Act. *May* states:

> It is a contempt to deter prospective witnesses from giving evidence before either House or a committee, or to molest any persons attending either House as witnesses, during their attendance in such House or committee. . . . On the same principle, molestation or threats against those who have previously given evidence before either House or a committee will be treated as a contempt.[162]
>
> Both Houses will treat the bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or before one of its committees as a contempt.[163]

Section 12 of the Parliamentary Privileges Act provides that a person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence. Further, under the Act a person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of the giving or proposed giving of any evidence or any evidence given or to be given, before a House or a committee. The penalties, in each case, are imprisonment for six months or a fine for natural persons and a larger fine for corporations. These provisions do not prevent the imposition of a penalty in respect of an offence against an Act establishing a committee.[164]

Breach of the immunity of persons required to attend before the House or a committee from arrest in civil causes (and from compulsory attendance before a court or a tribunal as a witness) on days when they are required by the House or committee could be regarded as a contempt.[165]

Berthelsen Case and other cases

A matter of alleged discrimination against and intimidation of a witness who had given evidence to a parliamentary subcommittee was referred to the Committee of Privileges in 1980.[166] Although the committee was not satisfied, on the evidence, that a breach of privilege had been proved against any person, it found that the witness had been disadvantaged in his career prospects in the public service. The House, on the recommendation of the committee, and being of the opinion that the report be given full consideration early in the 32nd Parliament, resolved that the Public Service Board be requested to do all within its power to restore the career prospects of the witness and ensure that no further disadvantage was suffered as a result of the case. A document from the Public Service Board informing the House of action taken in respect of Mr Berthelsen was presented on 24 February 1981.[167]

On three other occasions the Committee of Privileges has considered allegations that witnesses had been discriminated against or penalised on account of their participation in committee inquiries, but in no case did the committee find that a contempt had been

162 *May*, 24th edn, p. 840.

163 *May*, 24th edn, p. 841.

164 *Parliamentary Privileges Act 1987*, s. 12(3).

165 Section 14 of the Parliamentary Privileges Act provides that persons required to attend before a House or a committee, shall not be required to attend before a court or a tribunal, or be arrested or detained in a civil cause, on that day.

166 House of Representatives Committee of Privileges, *Report relating to the alleged discrimination and intimidation of Mr David E. Berthelsen in his public service employment because of evidence given by him in a subcommittee of the Joint Committee on Foreign Affairs and Defence*, PP 158 (1980); VP 1978–80/1372, 1375 (1.4.1980), 1417, 1422 (23.4.1980), 1672–3 (17.9.1980).

167 VP 1980–83/80 (24.2.1981).

committed.[168] The Senate Committee of Privileges has also reported on a number of complaints of this nature.[169] (*And see* Chapter on 'Parliamentary committees').

Acts tending indirectly to obstruct Members in the discharge of their duty

Reflections on Members

Following a recommendation of the Joint Select Committee on Parliamentary Privilege, the Commonwealth Parliament, in 1987 with the enactment of the Parliamentary Privileges Act, 'abolished' the previous category of contempt constituted by reflections on Parliament, a House or a Member. Section 6 of the Act provides:

> Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.

This provision does not apply to words spoken or acts done in the presence of a House or a committee. This qualification would enable a House or a committee to take action if, for instance, a member of the public made insulting or offensive remarks during a sitting or meeting. Under the Act words or acts could also be pursued if, for example, they constituted intimidation. The section is confined to preventing the punishment of defamatory or critical remarks by reason only that they are defamatory or critical.

Premature publication or disclosure of committee proceedings, evidence and reports

Standing order 242 provides (in part) that:

> (b) A committee's or subcommittee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a member of the committee or parliamentary employee assigned to the committee) unless they have been:
>
> (i) reported to the House; or
>
> (ii) authorised by the House, the committee or the subcommittee.

The standing order further provides that a committee may resolve to publish press releases, discussion or other papers or preliminary findings. It also provides that a committee may resolve to divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment.[170] In addition, the standing order allows a committee to resolve to authorise Members to give public briefings on matters related to an inquiry. The committee must determine the limits of the authorisation.[171] A Member must not disclose proceedings, evidence or documents not specifically authorised.

Most evidence taken by parliamentary committees is taken in public and publication of the evidence is expressly authorised. However, the publication or disclosure of evidence taken in private, of private deliberations and of draft reports of a committee before their presentation to the House, have been pursued as matters of contempt.

A Member wishing to raise a complaint in this area must raise it in the House at the first appropriate opportunity. The Member is not required to go into the detail of the matter, but must identify the committee and the nature of the concern. The committee in question must then consider the matter—in particular it must consider whether the matter has caused or is likely to cause substantial interference with its work, with the committee system or with the functioning of the House. It must also take whatever steps it can to ascertain the source(s) of the disclosure(s). The committee must inform

168 PP 455 (1991); PP 136 (1994); PP (208) 2001.

169 *See* Senate Committee of Privileges, *Parliamentary privilege: Precedents, procedure and practice in the Australian Senate 1966—2005*, PP 3 (2006); a*nd see Odgers*.

170 S.O. 242(c).

171 S.O. 242(d).

the House of the results of its consideration and, if it finds that substantial interference has occurred, it must explain why it has reached that conclusion.[172] The issue is then considered by the Speaker, who determines whether or not to allow precedence to a motion on the matter.[173] Should a committee conclude that substantial interference has not occurred the House should be informed accordingly.[174]

Joint committees in these circumstances follow a similar process in accordance with the Senate procedural order of continuing effect relating to unauthorised disclosure of committee proceedings, documents or evidence.[175]

Appendix 25 contains a list of complaints in this area and a precis of the committee's findings in each case referred to the Committee of Privileges (Privileges and Members' Interests from 2008). The committee's reports indicate the difficulty of reaching a satisfactory outcome in such inquiries. The committee has expressed the view that complaints in this area should not be given precedence unless the Speaker is of the opinion that there is sufficient evidence to enable the source(s) of disclosure to be identified or that there are such special circumstances (for example, the protection of sources or witnesses) as would warrant reference to the committee.[176]

The Parliamentary Privileges Act provides that:

> A person shall not, without the authority of a House or a committee, publish or disclose—
>
> (a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or
>
> (b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence,
>
> unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.[177]

Penalties under the section are imprisonment for six months or a fine in the case of a natural person and a larger fine in the case of a corporation. Technically, a breach could be pursued both as a contempt and a statutory offence, but this is unlikely in most circumstances.

See also Chapter on 'Parliamentary committees'.

Other offences

May states:

> Other acts besides words spoken or writings published reflecting upon either House or its proceedings which, though they do not tend directly to obstruct or impede either House in the performance of its functions, yet have a tendency to produce this result indirectly by bringing such House into odium, contempt or ridicule or by lowering its authority may constitute contempts.[178]

An instance of this type of contempt would be disorderly conduct within the precincts of either House while such House is sitting or during committee proceedings, although, as

172 These requirements were first applied in 1990, but were set out more comprehensively in a statement by Speaker McLeay in 1992—H.R. Deb. (17.9.1990) 1989–90; H.R. Deb. (7.5.1992) 2661–2; VP 1990–93/187 (17.9.1990), 1489 (7.5.1992); for precedents *see*, for example, H.R. Deb. (18.9.1990), 2087–8; H.R. Deb. (27.10.1993) 2654; H.R. Deb. (8.11.1997) 10630–1; H.R. Deb. (24.3.1999) 4268–9; H.R. Deb. (9.11.2000) 22635–7.

173 In 2013, although a committee had found that substantial interference had occurred and had identified a source, the Speaker noted that the committee had not found that its immediate work had been interfered with and, having regard to the need for self-restraint in the exercise of the penal jurisdiction, decided not to give precedence to a motion on the matter. H.R. Deb. (29.5.2013) 4213–15.

174 H.R. Deb. (7.5.1992) 2661–2. For precedents *see* e.g. H.R. Deb. (23.11.1993) 3401–2; H.R. Deb. (5.5.1994) 367; H.R. Deb. (2.10.1997) 9104 (2). A detailed statement has been made on such an occasion—H.R. Deb. (29.6.1994) 2292–3.

175 For example, *see* Parliamentary Standing Committee on Public Works, *Unauthorised disclosure of committee proceedings and evidence*, PP 41 (2010); and statement by the Deputy Chair of the Joint Standing Committee on Electoral Matters, H.R. Deb. (30.3.2017) 3907–8.

176 PP 26 (1995) 7.

177 *Parliamentary Privileges Act 1987*, s. 13.

178 *May*, 24th edn, p. 261.

indicated earlier in this chapter, such conduct is usually dealt with by other means. In the assessment of any complaint in this area, regard would need to be had to the provisions of section 4 of the Parliamentary Privileges Act.

May also cites in this category of contempt 'serving or executing civil or criminal process within the precincts of either House while the House is sitting without obtaining the leave of the House'.[179] Parliament House is not considered to be an appropriate place in which to serve such documents and, for example, service, or attempted service, on a Member on a sitting day, or on a day on which a Member was to participate in a committee meeting, could be complained of as a contempt.

On 6 October 1922 a complaint was made that a summons had been served on a Member in the precincts of the House while the House was sitting.[180] The Attorney-General expressed the opinion that it was not desirable to proceed further in the case but that 'those entrusted with the service of process of the Court should take steps to have summonses served in the ordinary way, as it is not a desirable practice that service should, under any circumstances, be made within the precincts of this House while the House is sitting'.

Interference with the administration of the Parliament

On 24 October 1919 the Speaker drew to the attention of the House a matter concerning the Economies Royal Commission 'as it affected the privileges of Parliament'. The Royal Commission proposed to investigate expenditure in connection with parliamentary services and the Speaker said that as it had no authority from the Parliament to interfere in any way with the various services of Parliament, it was his duty to call attention to the proposed serious encroachment on the rights and privileges of Parliament by a tribunal to inquire into matters over which the legislature had absolute and sole control. The Government gave an assurance that no privileges of the Parliament would be in any way infringed by the operation of the Royal Commission.[181]

PENAL JURISDICTION OF THE HOUSE

Power and source

By section 49 of the Constitution the House of Representatives acquired the powers, privileges and immunities of the UK House of Commons as at 1 January 1901, until the Parliament otherwise declared. In the absence of such a declaration of those powers, privileges and immunities until 1987 with the enactment of the Parliamentary Privileges Act, they remained those of the House of Commons as at 1 January 1901.

The High Court judgment in the case of Browne and Fitzpatrick (*see* page 757) left no doubt that the House of Representatives possessed all of the powers, privileges and immunities of the Commons, and the Parliamentary Privileges Act provides that, except to the extent that the Act expressly provides otherwise, the powers, privileges and immunities of each House, and the committees and Members of each House, as in force under section 49 before the commencement of the Act, continue.

The power of the House to punish by means of imposing a fine on persons found to have committed a breach of privilege or a contempt was problematic, but the issue was

179 *May*, 24th edn, p. 261.
180 VP 1922/190 (6.10.1922), 201 (11.10.1922); H.R. Deb. (6.10.1922) 3337–8; H.R. Deb. (11.10.1922) 3555.
181 VP 1917–19/587 (24.10.1919); *see also* Ch. on 'Parliament House and access to proceedings'.

resolved by the provisions of section 7 of the Parliamentary Privileges Act (*see* page 765).

The means by which the Houses may enforce the observance of their privileges and immunities, and punish people found guilty of contempt, include:

- commitment to prison (*see* page 764);
- imposition of a fine (*see* page 765);
- (public) reprimand or admonishment (*see* page 766);
- exclusion from the precincts (*see* page 767); or
- requirement for an apology—publicly, if appropriate (*see* page 766).

In a case in which an offence may be adjudged a breach of privilege or a contempt but also an offence at law, or in which penalties available to the House are considered inadequate, or for some other reason, the House may choose not to exercise its power of punishment. Alternatively, it would be open to a House to request government law officers to prosecute an alleged offender and it would also be possible to initiate a private prosecution. Section 10 of the *Parliamentary Precincts Act 1988* provides that the functions of the Director of Public Prosecutions in respect of offences committed in the precincts shall be performed in accordance with general arrangements agreed between the Presiding Officers and the Director of Public Prosecutions.

There is no case of the House directing or requesting the law officers to prosecute, per se.[182] In 1907 a committee of the House reported that signatures to a petition were found to be forgeries and the House 'requested' the Crown law authorities to take action with a view to criminal prosecution. The House was later advised, however, that prosecution for forgery would be unsuccessful.[183] In 1974 a letter published in a newspaper in the name of a Member was found by the Committee of Privileges to be a forgery and therefore appeared to constitute a criminal offence. As the author of the letter was unknown no legal action could be taken.[184]

Although the House may consider that a breach of privilege or a contempt has been committed it may take no further action[185] or it may decide, having regard to the circumstances of the case, to 'consult its own dignity' by taking no punitive action[186] (*and see Browne/Fitzpatrick Case* at page 757).

Another course of action adopted by the House in respect of enforcing its decision on a matter of privilege was by resolution requesting that remedial action be taken by the Public Service Board to restore the career prospects of a public service witness who was found by the Committee of Privileges to have been disadvantaged as a result of his involvement with a parliamentary committee.[187]

Commitment

Section 7 of the Parliamentary Privileges Act provides that the House may impose a penalty of imprisonment for a period not exceeding six months for an offence against it.

182 It is of interest to note that in 1922 the Attorney-General, having promised to do so, examined and advised the House concerning the service of a summons on a Member in the precincts of Parliament House, VP 1922/190 (6.10.1922), 201 (11.10.1922).

183 VP 1907–08/165 (15.11.1907), 267 (13.12.1907).

184 *'Sun News Pictorial' Case* (1973), PP 65 (1974); VP 1974/98 (9.4.1974).

185 E.g. *'South Australian Worker' Case* (1931), VP 1929–31/613 (12.5.1931); *'Sunday Sun' Case* (1933), VP 1932–34/755 (26.10.1933).

186 E.g. *'Sun' Case* (1951), VP 1951–53/171 (13.11.1951); '*Daily Telegraph' Case* (1971), VP 1970–72/901–2 (8.12.1971). For other examples *see Uren Case* (1971), PP 40 (1971), VP 1970–72/667 (23.8.1971); *'Sunday Observer' Case* (1978) 'actions of editor not worthy of occupying the time of the House', PP 120 (1978), VP 1978–80/147–8 (13.4.1978).

187 *Berthelsen Case* (1980), PP 158 (1980), VP 1978–80/1672–3 (17.9.1980), *and see* p. 760.

Such a penalty is not affected by prorogation or dissolution. Before the enactment of this provision, the House, under section 49 of the Constitution, possessed the same power in this area as the House of Commons in 1901; the Commons was considered to be without the power to imprison for a period beyond the session, although apart from this constraint there were no other limits in terms of the length of committal.[188]

On the only occasion when the House of Representatives has exercised its power of commitment (*see* page 757), Messrs Browne and Fitzpatrick, in 1955, were committed for three months. No prorogation or dissolution of the Parliament intervened during the period of their imprisonment and they served the full period of their commitment.

Form of warrant

Section 9 of the Parliamentary Privileges Act states:

> Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to constitute that offence.

In the House of Commons warrants for commitment issued by the Speaker on the order of the House have sometimes been expressed in general terms to the effect that the person is committed for a 'high contempt' or a breach of privilege. On other occasions, particular facts constituting the contempt have been stated. If the form of the warrant is general, it has been held that it is not competent for the courts to inquire further into the matter. If the particular facts have been stated on the warrant, the courts have taken divergent views as to their duty of inquiry.

The High Court decision in the *Browne/Fitzpatrick Case* (1955) stated:

> If the warrant specifies the ground of the commitment the court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms. This statement of law appears to be in accordance with cases by which it was finally established, namely, the *Case of the Sheriff of Middlesex*.[189]

Because particulars of the matters determined to constitute the offence must, by virtue of section 9 of the Parliamentary Privileges Act, be set out in the resolution imposing the penalty and the warrant committing the person, the effect of the law that has been established is therefore that a court may review a decision to impose a penalty of imprisonment to determine whether the conduct or action in question was capable of constituting an offence.[190]

Subsection 7(4) of the Act enables the House to delegate to the Speaker the authority to have a person released from prison when the House is not sitting. Such authority could, for example, be used if a person was committed following a refusal to give information to a committee but then, after being committed, agreed to provide the information sought.

Imposition of a fine

The House, under section 7 of the Parliamentary Privileges Act, may impose a fine not exceeding $5 000 in the case of a natural person, and not exceeding $25 000 in the case of a corporation. Subsection 7(6) provides that such fines are debts due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of

188 *See also May*, 24th edn, p. 195.
189 *R v. Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 162; (*and see* p. 757).
190 Parliamentary Privileges Bill 1987—explanatory memorandum.

competent jurisdiction by any person appointed by the House for that purpose. A fine and imprisonment may not be imposed for the same offence (subsection 7(1)).

For many years there had been substantial doubt as to whether the Houses had the power to impose fines, the issue turning, because of the provisions of section 49 of the Constitution, on whether the House of Commons had such power in 1901. This was because the House of Commons had not imposed fines on persons found guilty of breach of privilege or contempt since 1666. The matter was finally resolved by the insertion of a provision conferring the power to fine in the Parliamentary Privileges Act. At the time of publication neither House had exercised this power.

Reprimand or admonishment

A traditional form of penalty available to the Houses is that of public reprimand, or of admonishment at the Bar of the House or Senate by the Speaker or President, as the case may be. The House has not used the procedure of requiring the attendance of persons at the Bar of the House to receive a reprimand by the Speaker. In 1965 it considered a report from the Committee of Privileges concerning the publication of an advertisement in which a photograph of the Leader of the Opposition addressing the House had been misused.[191] The House resolved that it should '. . . record its censure of the advertisement and its reprimand of those concerned . . . '.[192] In 2007, having considered a report from the Committee of Privileges which had found a person guilty of a contempt, the House agreed to a resolution that it '. . . finds Ms . . . guilty of a contempt . . . and . . . reprimands Ms . . . for her conduct'.[193] The reprimand was conveyed by letter from the Clerk of the House.

In 2016, having considered a report from the Committee of Privileges and Members' interests which had found a former Member guilty of a contempt, the House agreed to a resolution that it ' . . . finds Mr Craig Thomson, the former Member for Dobell, guilty of a contempt of the House in that, in the course of his statement to the House on 21 May 2012, as the then Member for Dobell, he deliberately misled the House; and . . . reprimands Mr Thomson for his conduct.'[194] As in the earlier case the reprimand was conveyed by letter from the Clerk of the House. (For more detail of the case *see* page 754; *and see* Billson case at page 755.)

In 1971 two people found guilty of a breach of privilege were called to the Bar of the Senate and were reprimanded by the Deputy President.[195] In 2001 the Senate agreed to a motion, taken as formal, that it 'impose the penalty recommended at paragraph 61(b) of the report of the Committee of Privileges'. (The report had found that a corporation had committed a contempt and recommended that the Senate 'resolve to administer a serious reprimand' to the corporation.[196])

Apology

Before the current provisions concerning defamatory contempts were enacted, there were precedents in the House for the publication of a suitable apology from offenders in a class of cases involving reflections on the House or its Members being considered an

191 PP 210 (1964–66).
192 VP 1964–66/386 (23.9.1965). The resolution named the persons concerned.
193 VP 2004–07/1954 (14.6.2007).
194 VP 2016/75 (4.5.2016).
195 Senate Committee of Privileges, *Report upon articles in the* Sunday Australian *and the* Sunday Review *of 2 May 1971*, PP 163 (1971) 3. J 1970–72/606 (13.5.1971), 612 (14.5.1971).
196 J 1998–2001/4866 (18.9.2001).

acceptable action. While not inflicting punishment, in its strict sense, the House presumably considered this course sufficient vindication of its authority.

On a number of occasions under the previous provisions comments published in newspapers or other publications have been regarded by the House as reflections on itself and its Members and those responsible have been adjudged guilty of contempt.[197] An apology may also be considered appropriate in relation to other categories of contempt.

In 1992 the Committee of Privileges reported that the terms of a letter threatening legal action against a Member (following a letter the Member had written to a Minister) and the circumstances of its receipt had had a tendency to impair the Member's performance of his duties. Although the committee did not make a finding that a contempt had been committed, the House resolved that the persons responsible should be required to apologise, and they did so, a letter of apology being received and reported by the Speaker.[198]

See also 'Apology by Member' at page 768.

Exclusion of persons from precincts

In respect of persons working in or using the facilities of the Parliament, including those of the parliamentary press gallery, a person's pass may be withdrawn, thereby depriving the person or the person's organisation of access to the Parliament building. Control of access to such facilities is under the authority of the Presiding Officers (*and see* Chapter on 'The Speaker, Deputy Speakers and officers').

In 1912 a notice of motion proposing the exclusion of representatives of the *Age* newspaper from the press gallery for statements concerning a Member was withdrawn following an apology.[199] Later that year the House agreed, without debate, to a motion concerning misrepresentation of Members in newspapers. The motion proposed that if the House accepted a statement by a Member to the effect that an article was erroneous, misleading or injurious, representatives of the newspaper concerned should be excluded from the premises until the newspaper published the Member's explanation.[200]

In June 1942 the President as 'custodian of the rights and privileges of the Senate' demanded an apology from certain newspaper representatives for the publication of an article reflecting on the Senate. When no apology was forthcoming, action was taken to exclude the persons from the precincts of the Senate, after which similar action was taken by the Speaker in respect of the precincts of the House.[201]

PUNISHMENT OF MEMBERS

In respect of Members whom the House determines have committed contempts, the House's power to punish includes commitment or reprimand but has been considered to have a further dimension, namely, suspension for a period from the service of the House.[202]

197 For details *see* the 1st, 2nd and 3rd editions and Appendix 25.

198 PP 118 (1992); VP 1990–93/1487 (7.5.1992), 1540 (1.6.1992), 1551 (3.6.1992), 1633 (18.8.1992).

199 VP 1912/91 (13.8.1912).

200 VP 1912/305 (20.12.1912).

201 S. Deb. (2.6.1942) 1806, 1818–19; S. Deb. (3.6.1942) 1897; H.R. Deb. (3–4.6.1942) 2187. Press passes may be withdrawn for other reasons *see* Ch. on 'Parliament House and access to proceedings'.

202 Professor Campbell has referred to the possibility of review by a court of an order that a Member be suspended. Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 210–13.

Action may be taken by the House to discipline its Members for offensive actions or words in the House,[203] but in practice these offences are dealt with as matters of order (offences and penalties under the standing orders) rather than as matters of privilege or contempt.[204] The House has also expressed its opinion on a Member's conduct by a motion of censure.[205]

Apology by Member

A Member has apologised for remarks reflecting on the Chairman of Committees which were published in a newspaper, and in view of the apology a motion that he be suspended from the service of the House was withdrawn.[206] When (before the enactment of the Parliamentary Privileges Act) a Member reflected on the Speaker outside the House, a motion was moved that the comments constituted a breach of the privileges of the House. The motion was withdrawn by leave when the Member again withdrew the remarks and apologised.[207]

In the *Curtin Case* (*see* page 753) a Member apologised for an action the House had resolved was a contempt (disobeying an order of the House). The House resolved to accept the apology and took no further action.

Suspension

In the *McGrath Case* (1913) a Member was suspended from the service of the House for a statement made outside the House which reflected on the Speaker. The Member was suspended '. . . for the remainder of the Session unless he sooner unreservedly retracts the words uttered by him at Ballarat . . . and reflecting on the Speaker, and apologises to the House'. However, in the next Parliament the House resolved to expunge the resolution of suspension from the journals of the House 'as being subversive of the right of an honourable Member to freely address his constituents'.[208]

In the *Tuckey Case* (1987) a Member was suspended for seven sitting days, including the day of suspension, following remarks critical of the Speaker made outside the House.[209]

In the *Aldred Case* (1989) a Member was suspended for two sitting days. The Committee of Privileges had found that the Member had offended against the rules of the House in making certain statements about another Member which the committee concluded should have been put forward in a substantive motion. The House adopted the report and called on the Member to withdraw the allegation and apologise. He declined to do so and was suspended for two sitting days.[210]

Former power of expulsion

The only occasion the House has exercised the power of expulsion was in the *Mahon Case* (1920) when a Member was expelled for 'seditious and disloyal utterances' made

203 VP 1913/151–3 (11.11.1913); VP 1914–17/181 (29.4.1915); *see also* VP 1929–31/413 (13.11.1930); VP 1945–46/63 (3.5.1945).

204 Notwithstanding Members' right to freedom of speech the Committee of Privileges has found that the remarks of a Member in the House making allegations against other Members were not a matter of privilege but one of order. The committee stated that all words in the House are privileged, but the House is able to place restraint on the conduct of Members including their offensive accusations against other Members, *'Argus' Case* (1955) (report not printed, *see* Appendix 25, item 42).

205 *See* 'Censure of a Member or Senator' in Ch. on 'Motions'.

206 The matter was raised as a matter of privilege. VP 1945–46/63 (3.5.1945); *see also* H.R. Deb. (9.3.1929) 856–65.

207 VP 1985–87/1089, 1090 (22.8.1986), 1101–2 (16.9.1986).

208 VP 1913/151–3 (11.11.1913); VP 1914–17/181 (29.4.1915).

209 VP 1985–87/1467–8 (24.2.1987).

210 PP 498 (1989); VP 1987–90/1695–8 (21.12.1989).

outside the House making him, in the judgment of the House, 'guilty of conduct unfitting him to remain a Member'.[211]

Since the enactment of the Parliamentary Privileges Act neither House has had the power to expel a Member from its membership.[212]

MANNER OF DEALING WITH PRIVILEGE AND CONTEMPT

Raising of matter

A Member may raise a matter of privilege at any time during a sitting. The Member raising a matter must be prepared to move without notice, immediately or subsequently, a motion declaring that a contempt or breach of privilege has been committed, or referring the matter to the Committee of Privileges and Members' Interests.[213]

When a Member raises a matter of privilege the Speaker may reserve the matter for further consideration, or may give the matter precedence and invite the Member to move one of the motions above.[214] It is the practice of the House that no seconder is required for either of these motions.

If the matter is given precedence, consideration and decision of every other question is suspended until the matter of privilege has been disposed of, or until debate on any motion related to the matter of privilege has been adjourned.[215]

In order to grant precedence to a privilege motion over other business the Speaker must be satisfied that:

- a prima facie case of contempt or breach of privilege has been made out, and
- the matter has been raised at the earliest opportunity.[216]

If a matter of privilege related to the proceedings of the Federation Chamber is raised in the Federation Chamber, the Chair must suspend the proceedings and report the matter to the House at the first opportunity.[217]

The Member raising and stating the matter of privilege or contempt may speak on the matter, although the Speaker may intervene to indicate that sufficient information has been provided. The Speaker may also permit another Member to speak to the matter.[218]Although it is irregular for debate to ensue on the matter raised until a motion has been moved,[219] for the purposes of clarification Members have sometimes been allowed to speak by leave or indulgence to a matter raised, before the Speaker's opinion has been given and without a motion having been moved.[220] The Speaker may obtain information or advice to assist in clarification of an issue.[221] A Member may refer to a

211 VP 1920–21/423 (9.11.1920), 425 (10.11.1920), 431–3 (11.11.1920); *and see* Ch. on 'Members'.

212 *Parliamentary Privileges Act 1987*, s. 8. *See also* Enid Campbell, *Parliamentary privilege*, Federation Press, Sydney, 2003, pp. 213–21.

213 S.O. 51(a).

214 S.O. 51(b). Although on one occasion a Member moved immediately, before the Speaker had responded to the matter raised, that a Member be suspended 'for contempt and for deliberately misleading the House', H.R. Deb. (27.11.2008) 11643.

215 S.O. 51(c).

216 S.O. 51(d); VP 1978–80/1168 (8.11.1979).

217 S.O. 51(e).

218 E.g. H.R. Deb. (3.6.1997) 4675.

219 As difficulties had arisen in the past (H.R. Deb. (11.11.1913) 2987, 2993) the requirement for a motion was adopted in the 1950 standing orders and clarified in the 1963 amendments, H of R 1 (1962–63) 25.

220 VP 1980–83/26 (27.11.1980). Members have also spoken after the Chair's opinion has been given, VP 1978–80/990 (13.9.1979).

221 H.R. Deb. (26.2.2001) 24319.

matter of privilege without raising a formal complaint.[222] Two separate matters have been raised by a Member at the same time.[223]

It has been held that a Member may not raise a matter on behalf of another Member.[224] However, the Speaker has considered a matter raised by the Leader of the House relating to another Member, after the Member concerned had also spoken on the matter by indulgence, indicating support for the matter being raised.[225] The Speaker, normally by way of a statement, has also raised matters coming within his or her knowledge for the consideration and action of the House as it deems necessary.[226] It has also been held that a matter should not be raised by way of a question to the Chair.[227] A personal explanation should not be made under the guise of a matter of privilege.[228] A matter of order or a matter coming within the standing orders or practice should not be raised as a matter of privilege.[229] Likewise, if a question of privilege is raised, it must be in connection with something affecting the House or its Members in their capacity as such.[230]

A matter may be raised at any time. While the standing orders refer to complaints being raised at the earliest opportunity, it is often more convenient, with the Speaker's agreement, for a matter to be raised at an appropriate opportunity later in a day's proceedings.[231] There have been cases of matters not being granted precedence because they had not been raised at the earliest opportunity.[232] Business before the House has been interrupted to raise matters.[233] An exception to this rule is that a matter of privilege cannot be raised during the course of a division.[234]

If a Member cites a statement in a published document in connection with a contempt or breach of privilege, he or she must present to the House an extract of the publication containing the statement and be able to identify the author, printer or publisher.[235] Leave is not required for a Member to present a document relating to the matter he or she is raising.

Determination of whether a matter can be accorded precedence

When a matter is raised by a Member (unless the Speaker has held that the matter has not been raised at the earliest opportunity) the Speaker may give an opinion immediately as to whether a prima facie case of breach of privilege exists[236] or state that he or she will consider the matter and give an opinion later. This may be later in the same sitting[237] or at a subsequent sitting.[238] Establishing a prima facie case is, in a technical sense, only

222 E.g. H.R. Deb. (21.6.2004) 30952–4.
223 VP 1976–77/123 (7.4.1976).
224 E.g. H.R. Deb. (25.5.1955) 1060; VP 2002–04/1070 (13.8.2003).
225 VP 2008–10/1797 (31.5.2010), 1819 (2.6.2010), 1825–6 (3.6.2010).
226 VP 1917–19/177–8 (5.4.1918), 587 (24.10.1919); VP 1951–53/131 (18.10.1951), 609 (13.3.1953).
227 H.R. Deb. (22.10.1948) 2039.
228 *See* H.R. Deb. (27.9.1904) 4916–17.
229 H.R. Deb. (20.5.1914) 1131.
230 H.R. Deb. (16.3.1917) 11699.
231 E.g. VP 1993–96/909 (3.5.1994); VP 1998–2001/681 (29.6.1999); H.R. Deb. (6.11.2000) 2219 (on matter being raised at start of proceedings, Speaker suggested that rather than take up private Members' business, the matter could be proceeded with after question time). A delay in the raising of a matter because of the serious illness of a Member's spouse has not been regarded as breaching the first opportunity requirement, H.R. Deb. (10.8.2005) 81, 140.
232 E.g. VP 1974–75/310 (14.11.1974); H.R. Deb. (12.8.2003) 18215–23, VP 2002–04/1062–3 (12.8.2003).
233 VP 1978–80/714 (29.3.1979), 1100 (23.10.1979).
234 The Chair has refused to proceed with a matter of privilege raised between the moving of the closure motion and the putting of the question until after this question and the further question were resolved by the House, H.R. Deb. (8.6.1978) 3245–6.
235 S.O. 53; VP 1978–80/27 (28.2.1978).
236 E.g. VP 1978–80/1035 (27.9.1979); VP 2002–04/1126 (21.8.2003).
237 E.g. VP 1978–80/1372, 1375 (1.4.1980); VP 2008–10/1711, 1718 (18.3.2010).
238 E.g. VP 1998–2001/681 (29.6.1999), 702–3 (30.6.1999); VP 2008–10/675–6 (23.10.2008); VP 2010–13/1131 (23.11.2011).

for the purpose of precedence being given to a motion in relation to the matter, but the practice usually provides the House with some guidance as to the nature and substance of the complaint.

The Speaker may not necessarily use the term 'prima facie' in giving his or her opinion on a matter, but simply indicate whether or not precedence will be accorded to a motion. This decision indicates whether or not the requirements of the standing orders for precedence to be given have been met. In addition, since 1990 Speakers have required complaints concerning unauthorised disclosure of information concerning committees to be considered in the first instance by the committees themselves (*see* page 761). This approach has also been taken in respect of other matters concerning committees, such as the possible intimidation of witnesses.

In determining that a prima facie case exists, the Speaker typically refers to the matter briefly, but does not express concluded views on the issues themselves, as it is for the House to decide, in practice after examination by the Committee of Privileges and Members' Interests, whether a contempt or breach of privilege has been committed.

An opinion by the Speaker that a prima facie case has been made out does not imply a conclusion that a breach of privilege or a contempt has occurred, or even that the matter should necessarily be investigated.[239] Although the Speaker may find that a prima facie case has been made out, or that precedence may be given to a motion in respect of a complaint, this does not compel the Member who raised the complaint, or any other Member, to move a motion on the matter. For instance, it may be considered inappropriate or inconsistent with the dignity of the House either to give further consideration to a matter or to refer the matter to the Committee of Privileges and Members' Interests for inquiry.[240]

The Speaker may give reasons or make comments if, in his or her opinion, a prima facie case does not exist.[241] Although not finding a prima facie case, the Speaker may consider the matter sufficiently important to take other action, such as writing to a statutory authority.[242] Even though a matter could be pursued as a matter of privilege, the Speaker may have regard to the availability of other means of dealing with it (for example, as a matter of order[243]).

An opinion by the Speaker on a complaint raised under standing order 51 is not a ruling and so a dissent motion, as provided for in standing order 87, is not in order.[244]

Matter not accorded precedence

Although the Speaker may be of the opinion that a prima facie case has not been made out, this does not prevent a Member from lodging a notice of motion in relation to the matter, but such a motion is not entitled to any precedence. Motions to refer matters for inquiry have also been moved by leave. This has occurred when a matter has not

239 VP 1980–83/449 (8.9.1981); H.R. Deb. (8.9.1981) 976; VP 1985–87/319 (23.5.1985); H.R. Deb. (23.5.1985) 3080–1; VP 1985–87/649 (29.11.1985); H.R. Deb. (29.11.1985) 3981.

240 VP 1980–83/449 (8.9.1981); H.R. Deb. (8.9.1981) 976; VP 1985–87/319 (23.5.1985); H.R. Deb. (23.5.1985) 3080–1; VP 1985–87/649 (29.11.1985); H.R. Deb. (29.11.1985) 3981; VP 1985–87/650 (29.11.1985); H.R. Deb. (29.11.1985) 3982; VP 1996–98/2109 (2.10.1997).

241 E.g. VP 1976–77/129 (8.4.1976); VP 1978–80/76 (15.3.1978), 471 (17.10.1978); VP 1998–2001/702–3 (30.6.1999); VP 2008–10/1718 (18.3.2010).

242 VP 1993–96/1330–1 (22.9.1994), 1352 (11.10.1994).

243 *See* p. 752 (misconduct in presence of House or committee); *and also* H.R. Deb. (18.3.2010) 3011.

244 Submission of Mr L. A. Abraham to House of Commons Select Committee in 1967 refers, HC 34 (1967) 108. There is, however, an example of a motion of dissent having been moved and debated on such a matter, VP 1985–87/203 (8.5.1985).

been raised as a complaint with the Speaker,[245] and also after the Speaker has given a decision not to allow precedence.[246]

Matter arising in committee proceedings

If a question of privilege arises in connection with proceedings of a select or standing committee the committee reports the matter to the House, by special report if necessary.[247]

Matter arising when the House is not sitting

During a period when the House is not sitting and is not expected to meet for a further period of at least two weeks, a Member may bring to the attention of the Speaker a matter of privilege which has arisen since the House last met and which he or she proposes should be referred to the Committee of Privileges and Members' Interests. If satisfied that a prima facie case of breach of privilege has been made out and the matter requires urgent action, the Speaker must refer it immediately to the Committee of Privileges and Members' Interests and report the referral to the House at its next sitting. Immediately after the Speaker's report the Member who raised the matter must move (without notice) that the referral be endorsed by the House. If this motion is not agreed to, the Committee of Privileges and Members' Interests may take no further action on the matter.[248]

Recommended changes

The (former) Standing Orders Committee and the Joint Select Committee on Parliamentary Privilege recommended that complaints of breach of privilege or contempt should be raised in writing with the Speaker, in the first instance, with the Speaker then advising the Member whether or not he or she would allow precedence to a matter. The House has not, however, adopted these proposals. For more details *see* pages 718–9 of the third edition.

Committee of Privileges and Members' Interests

In order to assist the House in its examination of issues of privilege the House appoints a Committee of Privileges and Members' Interests at the commencement of each Parliament. The Committee of Privileges was first established, by standing order, on 7 March 1944.[249] The committee's current name dates from 2008 when it absorbed the functions of the former Committee of Members' Interests. The committee's functions in relation to Members' interests are covered in the Chapter on 'Members'.

Membership

The committee consists of the Leader of the House or his or her nominee, the Deputy Leader of the Opposition or his or her nominee and nine other Members (five government and four non-government). The chair of the committee is normally a backbench Member of considerable parliamentary experience. During the 28th Parliament (1973–1974) the chair was also a Minister (Mr Enderby) and the Prime Minister (Mr Whitlam) was a member of the committee. The committee often has a

245 VP 2008–10/386–9 (17.6.2008).
246 VP 2008–10/1718 (18.3.2010) (motion for reference was in more general terms than matter raised); VP 2010–13/1468 (22.5.2012).
247 For the application of privilege in relation to select and standing committees *see also* Ch. on 'Committee inquiries'.
248 S.O. 52; VP 1993–96/2303–4 (22.8.1995).
249 S.O. 216; VP 1943–44/80 (7.3.1944).

number of lawyers among its members. A member may be discharged from the committee and another appointed in his or her place for the consideration of particular inquiries.[250] This has occurred when a member of the committee has raised the matter being inquired into in the House,[251] and when a member has been expected to be absent for a significant part of the inquiry, or for some other reason such as a member having had some prior involvement in respect of a particular issue. The special procedures adopted in 2009 (*see* page 774) require that a Member who has instigated an allegation of contempt or who is directly implicated shall not serve as a member of the committee for the inquiry. A member on being elected Speaker withdraws from the committee and another Member is appointed to fill the vacancy.[252] In other cases members have not participated in inquiries (for example, because they were also members of a committee involved in the inquiry), but they have not been replaced. In respect of certain inquiries the committee has resolved that any statements to the press were to be made by the chairman after being authorised by the committee.[253]

Authority and jurisdiction

The committee's purpose in relation to privilege matters is to inquire into and report on complaints of breach of privilege or contempt referred to it by the House under standing order 51 or by the Speaker under standing order 52 (matters arising when the House is not sitting), or any other related matter referred to it by or in accordance with a resolution of the House.[254] On the basis that privilege questions are matters for each House alone, the committee has no power to confer with the Senate Committee of Privileges, although it has been recommended that the two committees should be empowered to confer.[255] In 1982 the House and the Senate resolved to appoint a joint select committee to review and report whether any changes were desirable, inter alia, in respect of 'the law and practice of parliamentary privilege as they affect the Senate and the House of Representatives, and the Members and the committees of each House . . .' and substantial changes, described elsewhere in this chapter, followed this inquiry.[256]

The House of Representatives Committee of Privileges has inquired into complaints arising from inquiries conducted by joint committees. In 1973 it inquired into the unauthorised publication of the contents of a draft report of the Joint Committee on Prices;[257] in 1980 the committee gave careful consideration to the question of its jurisdiction before determining that it had the power to inquire into matters arising from an inquiry conducted by a subcommittee of the Joint Committee on Foreign Affairs and Defence;[258] inquiries into matters involving joint committees were also conducted in 1987, 1994 and 2001. The Senate Committee of Privileges has also inquired into matters concerning joint committees.[259]

250 E.g. VP 1973–74/432 (15.10.1973).
251 VP 1978–80/35 (1.3.1978).
252 VP 1956–57/341 (25.10.1956).
253 *See 'Daily Telegraph' Case* (1971), PP 242 (1971) 8.
254 S.O. 216(a). For example, references concerning the use of House documents in the courts, PP 154 (1980), and public interest immunity, PP 408 (1995). In 1999 the committee reported on the release of evidence from the *Bankstown Observer* inquiry of 1955, PP 371 (1999), and in 2000, on the status of Members' records, PP 417 (2000).
255 PP 219 (1984) 127; *and see* J 1987–90/525 (24.2.1988), 536 (25.2.1988).
256 VP 1980–83/805–6 (23.3.1982); J 1980–83/884 (29.4.1982).
257 *'Sun' Case* (1973), PP 217 (1973).
258 *Berthelsen Case*, PP 158 (1980) 3.
259 E.g. Senate Committee of Privileges, *Possible unauthorised disclosure of a submission to the Parliamentary Joint Committee on Corporations and Securities,* PP 177 (2001).

The committee may investigate not only the specific matter referred but also the facts relevant to it.[260] The committee has also reported on matters arising during, or as a consequence of, its inquiry, such as refusal of witnesses to provide information, without first seeking a separate reference from the House.[261]

The Committee of Privileges and Members' Interests has not accepted a submission by a Member to the effect that it did not have the authority to assess and comment on her conduct in proceedings in the House beyond determining whether there had been a breach of privilege or contempt.[262]

In the *Browne/Fitzpatrick Case* (1955) the Committee of Privileges, in a special report to the House, sought and received authority to investigate articles in editions of the *Bankstown Observer* in addition to the edition referred to it for investigation and report.[263] In the *Censorship of Members' Correspondence Case* (1944), the committee regarded itself as having no jurisdiction or authority to report on a number of matters raised during the course of the inquiry.[264] The committee inquiring into the *'Century' Case* (1954), acting in accordance with the practice of the House of Commons of inquiring into facts surrounding and reasonably connected with the matter of the particular complaint, commented on aspects of the production of Hansard existing at the time.[265] In 1955 two separate but related matters referred by the House were considered together by the committee and one report made.[266]

Procedures

In the consideration of matters which may involve a contempt, the Committee of Privileges and Members' Interests is required to observe special procedures for the protection of witnesses in addition to those applying to all House committees.[267] These procedures adopted in 2009[268] followed a review of procedures that had been adopted by the Committee of Privileges and presented to the House in 2002.[269] The procedures, recognising the significance of inquiries by the Committee of Privileges and Members' Interests, seek to ensure that principles of natural justice and procedural fairness are observed. Among the special procedures are requirements that persons subject to proposed investigation be notified in advance of the specific nature of allegations against them and be given all reasonable opportunity to respond by making written submissions, giving oral evidence, having other evidence presented and having witnesses examined before the committee. Having considered written submissions received, the committee may then invite persons to appear before it. It has the power to compel persons to attend before it and to require that documents be produced.[270]

It is usual for the Clerk of the House to prepare a memorandum for the consideration of the committee. The Clerk is acknowledged as the committee's principal adviser on the

260 *May*, 24th edn, p. 847, states that for the House of Commons Committee on Standards and Privileges 'The scope of any inquiry [into matters relating to privilege] comprises all matters relevant to the matter referred'.

261 PP 135 (1987) 12–13.

262 *Report on the issue of the exchange between the Member for Robertson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008*, PP 499 (2008) paras 1.12–1.13.

263 VP 1954–55/225 (26.5.1955), 239 (31.5.1955).

264 H of R 1 (1943–44) 3.

265 VP 1954–55/81 (29.9.1954), 94 (12.10.1954) (report not printed).

266 *'Argus' Case* (1955), VP 1954–55/245 (2.6.1955) (report not printed).

267 In the event of inconsistency the special procedures prevail.

268 Committee of Privileges and Members' Interests, *Procedures of the committee and the House in relation to privilege matters and procedural fairness*, PP 193 (2009). Resolutions adopted by the House, VP 2008–10/1506–8 (25.11.2009)—*Procedures for the protection of witnesses before the Committee of Privileges and Members' Interests* and *Procedures of the House of Representatives for dealing with matters of contempt*.

269 H.R. Deb. (12.12.2002) 10370–1.

270 S.O. 236.

principles and law of parliamentary privilege and has given evidence to, or conferred informally with, the committee at its request in respect of its inquiries. The Clerk on other occasions has been permitted to attend meetings as an observer. The Speaker and law officers of the Crown have also given evidence to, or conferred informally with, the committee. During its 1980 inquiry into the use of House documents in the courts, a leading barrister served as a specialist adviser to the committee. The special procedures adopted in 2009 allow the committee to appoint counsel to assist it.

Since 1987 the practice of the committee has been to permit witnesses to be accompanied by an adviser when giving evidence. Normally witnesses have chosen to be accompanied by lawyers,[271] but on other occasions persons such as a Member's assistant[272] or another Member[273] have accompanied witnesses. Witnesses are permitted to consult freely with their advisers when giving evidence. Traditionally advisers were not permitted to make submissions themselves or to question other witnesses, but the special procedures adopted in 2009 allow a person against whom evidence has been given to examine witnesses, by counsel or personally, in relation to the evidence. The committee may authorise, subject to rules determined by the committee, the examination of witnesses by counsel.

Evidence is taken in public except where the committee determines, on its own initiative or at the request of a witness, that the interests of the witness or the interests of the public warrant the hearing of the evidence in private. A witness is not required to answer in public any question where the committee has reason to believe that the answer may incriminate the witness. A person affected by findings determined by the committee must be informed of them and given all reasonable opportunity to make submissions on the proposed findings, and the committee must consider such submissions before making its report to the House.[274] Similar requirements apply in respect of proposals to recommend penalties.

Witnesses, including Members, are normally examined on oath or asked to make an affirmation. The committee is not bound by the rules of evidence applying in courts, although the practice of the committee is to avoid receiving hearsay evidence, and to advise witnesses that it wishes to obtain information from witnesses about matters within their direct or personal knowledge. Witnesses are given the opportunity to make an opening statement if they wish before questioning commences and, at the conclusion of questioning, they are given a further opportunity to make additional comments.[275]

During the course of inquiries into matters concerning joint committees the committee has advised the House by special report or statement that it wished to be able to take evidence from Senators, and it proposed that the House should communicate with the Senate by message asking it to grant leave for Senators to appear. This advice has been acted upon, and Senators have been given leave to appear if they thought fit.[276] The Senate has added qualification to a motion authorising Senators to attend, drawing

271 PP 78 (1994) (minutes).

272 PP 77 (1994) (minutes).

273 PP 498 (1989) (minutes).

274 E.g. *Report on the issue of the exchange between the Member for Robertson and the Member for Indi on 28 May 2008 and the subsequent withdrawal and apology by the Member for Robertson on 29 May 2008*, PP 499 (2008) paras 1.12–1.13.

275 E.g. *Telecommunications Interception Case* (1986–87), Transcript of evidence, pp. 175–9.

276 House of Representatives Committee of Privileges, *Special report dated 26 November 1986, relating to the matter referred to the committee on 18 November 1986*; VP 1985–87/1361 (26.11.1986), 1365 (27.11.1986), 1430 (17.2.1987); J 1985–87/1576 (5.12.1986); VP 1993–96/596 (15.12.1993), 649 (17.12.1993); PP 77 (1994).

attention to the principle that one House should not inquire into or adjudge the conduct of a member of the other House.[277]

If the committee is satisfied that a person would suffer substantial hardship due to the costs associated with an inquiry, or if it believes that the interests of justice require it, it may recommend the reimbursement of all or part of the costs incurred by the person.

It is traditionally observed that, in the consideration and determination of privilege matters, members of the committee do not act along party lines. In reaching a decision as to whether a breach of privilege or contempt had been committed in the *Daily Telegraph Case*, two earlier decisions of the committee were recommitted due to the votes being taken when certain members of the committee were absent.[278]

Reports

A report of the Committee of Privileges and Members' Interests usually makes a finding as to whether or not a breach of privilege or a contempt of the House has been committed and usually recommends to the House what action, if any, should be taken in each case. In the consideration of matters of possible contempts the committee has regard to the requirements of section 4 of the *Parliamentary Privileges Act 1987* and to the intentions of the person(s) involved, although technically it is not necessary that culpable intent be established in order for a finding to be made that a contempt has been committed.[279]

The minutes of proceedings of the committee are always presented with its report. (*And see* page 777 regarding release of the committee's records.)

Proceedings following report

On presentation of the committee's report to the House by the chair, the practice is for the report to be ordered to be made a Parliamentary Paper.[280] The House may then order that it be taken into consideration at the next sitting[281] or on a specified day.[282] In order that Members may consider the report and the questions of privilege involved, the practice of the House has been to consider the report at a future time,[283] but in cases where persons have been found by the committee to be guilty of committing a breach of privilege or contempt, early consideration is usually given by the House.[284] However, seven sitting days notice must be given for any motion that makes a finding of contempt or that imposes any sanction for contempt.[285]

If consideration is made an order of the day for a future day, the order of the day takes precedence over other notices and orders of the day.[286] Alternatively, consideration of a report may be scheduled by informal means and a motion moved by leave in connection with it.[287]

277 VP 1998–2001/2157 (7.3.2001).
278 PP 242 (1971) 13–14, 19–20.
279 E.g. Committee of Privileges, *Report on allegations of documents fraudulently and inaccurately written and issued in a Member's name*, PP 111 (2007) 8–10.
280 E.g. VP 1978–80/1613 (9.9.1980); VP 1993–96/1697 (8.12.1994), 2567 (26.10.1995); VP 2004–07/1927 (31.5.2007). The report's details should not be debated on this motion.
281 E.g. VP 1974/84 (4.4.1974).
282 E.g. VP 1978–80/1613 (9.9.1980).
283 For comment on this general view with respect to privilege questions *see* H.R. Deb. (29.5.1908) 11701–2; H.R. Deb. (27.3.1935) 326.
284 *See* H.R. Deb. (11.9.1980) 1178–84.
285 *Procedures of the House of Representatives for dealing with matters of contempt,* resolution adopted 25 November 2009.
286 NP 186 (17.9.1980) 11681; VP 1978–80/1672–3 (17.9.1980); unless the order of the day is postponed, VP 1964–66/377 (21.9.1965).
287 E.g. VP 2004–07/1954 (14.6.2007).

A motion or motions may be moved declaratory of the House's view on the committee's report and recommendations and in respect of the House's proposed action. A motion of this kind is normally debated and decided at that time,[288] although debate may be adjourned and resumed later.[289] If the committee finds that no breach of privilege or contempt has been committed, the House may take no action in respect of the report after it has been presented.[290] The House has agreed to a resolution, on the recommendation of the Committee of Privileges, requesting the Speaker to initiate discussions with the Minister for Justice on a matter.[291] The House does not necessarily follow the committee's findings and recommendations in declaring itself in relation to the matter or any penalty that may be decided.[292] However, where the Committee of Privileges and Members' Interests makes no finding of contempt, the House cannot make a finding of contempt, and the House cannot impose a penalty which exceeds that recommended by the committee.[293]

Any motion proposed is subject to amendment.[294]

In respect of the reports on two inquiries conducted by the Committee of Privileges in 1980 (the *Use of House Records Case* and the *Berthelsen Case*), which were presented towards the end of the 31st Parliament, the House resolved, at its second last sitting, that it was of the opinion that the reports should be considered early in the next Parliament. The general issues were dealt with in the 1984 report of the Joint Select Committee on Parliamentary Privilege.

Records of the committee

The House has agreed to a motion authorising the publication of all evidence or documents taken in-camera or submitted on a confidential or restricted basis and which have been in the custody of the Committee of Privileges or the Committee of Privileges and Members' Interests for at least 30 years. The motion authorises the transfer of the records to the National Archives of Australia to enable public access. It also provides that, where the Speaker accepts advice that the release of a particular record would affect the national security interest, or represent an unreasonable intrusion upon the personal affairs of any person, alive or dead, or would otherwise be an exempt record under section 33 of the Archives Act if the Act applied, the release and transfer of the record is not authorised.[295] This motion was put forward on the recommendation of the committee.

CITIZEN'S RIGHT OF REPLY

Submissions from persons referred to in debate

A person who has been referred to in a debate in the House may make a submission, claiming that he or she has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or

288 E.g. VP 1978–80/147–8 (13.4.1978); VP 2004–07/1954 (14.6.2007).
289 VP 1990–93/1540 (1.6.1992).
290 That is, other than order that the report be printed/made a Parliamentary Paper, e.g. VP 1973–74/562 (22.11.1973); VP 1985–87/1272 (23.10.1986); VP 1993–96/1697 (8.12.1994).
291 VP 1993–96/2664 (29.11.1995).
292 E.g. VP 1970–72/901–2 (8.12.1971); VP 1990–93/1487 (7.5.1992), 1540 (1.6.1992), 1551 (3.6.1992), 1633 (18.8.1992), PP 118 (1992).
293 *Procedures of the House of Representatives for dealing with matters of contempt,* resolution adopted 25 November 2009.
294 VP 1954–55/270 (10.6.1955).
295 VP 1998–2001/2021 (7.12.2000); motion amended to cover change of committee name, VP 2008–10/20–1 (12.2.2008).

that his or her privacy has been unreasonably invaded, by reason of that reference, and requesting that an appropriate response be incorporated in the parliamentary record. Submissions must be sent to the Speaker.[296] If the Speaker is satisfied that the matter is not obviously trivial, or frivolous, vexatious or offensive, and that it is practicable for the committee to consider the submission under the procedure adopted, he or she must refer it to the Committee of Privileges and Members' Interests. The Committee of Privileges and Members' Interests may decide not to consider a submission if it considers that the submission is not sufficiently serious or that it is frivolous, vexatious or offensive. Such a decision must be reported to the House.

When it considers a submission, the Committee of Privileges and Members' Interests:

- may confer with the person who has lodged it, and the Member(s) who referred to the person;
- may meet in private session;
- may not consider or judge the truth of any statements made in the House or in the submission;
- may not publish the submission or its proceedings in relation to the submission, but may present minutes of its proceedings and all or part of the submission to the House.

In a report under the procedure the committee can only recommend that a response by the person, in terms agreed by the person and the committee and specified in the report, be published by the House and incorporated in Hansard, or that no further action be taken by the House or the committee. The committee may not make any other recommendation. A recommended response must be succinct and strictly relevant to the questions in issue and must not contain anything offensive in character. A recommended response must not contain any matter the publication of which would unreasonably adversely affect or injure a person, or unreasonably invade a person's privacy; nor may it contain material which would unreasonably add to or aggravate any such adverse effect.[297]

The Committee of Privileges and Members' Interests is authorised to agree to guidelines and procedures, not inconsistent with the resolution establishing the procedure, to apply to the consideration of submissions. Guidelines adopted in 1997,[298] revised in October 2003,[299] provide that:

- an application must be received within 3 months of the making of the statement to which the person wishes to respond unless, because of exceptional circumstances, the committee agrees to consider an application received later;
- applications should only be considered from natural persons, they should not be considered if lodged by or on behalf of corporations, businesses, firms, organisations or institutions;
- applications should only be considered from persons who are Australian citizens or residents;

296 Resolution of 27 Aug. 1997 (amended 13 Feb. 2008 with change of committee name). The terms of the resolution are reproduced as an attachment to the Standing Orders.

297 For examples of reports *see* VP 1996–98/2513 (26.11.1997), 2957 (8.4.1998); VP 1998–2001/488 (31.3.1999), 897 (27.9.1999).

298 VP 1996–98/2513 (26.11.1997).

299 H.R. Deb. (7.10.2003) 20652 (here adjusted for the change of name from Main Committee to Federation Chamber).

- an application must demonstrate that a person, who is named, or readily identified, has been subject to clear, direct and personal attack or criticism, and has been damaged as a result;
- applications must be concise, be in the character of a refutation or explanation only and must be confined to showing the statement complained of and the person's response and must not contain any offensive material;
- applications concerning statements made in the Federation Chamber may be considered;
- applications should not be considered from persons who wish to respond to a statement or remarks made in connection with the proceedings of a standing or select committee—such persons should contact the committee direct on the matter; and
- in considering applications, the committee will have regard to the existence of other remedies that may be available to a person referred to in the House and whether they have been exercised.

The first committee recommendation for the incorporation of a response in Hansard was made in November 2003 and adopted by the House.[300] Neither the recommendation, nor the agreement of the House to the question 'That the report be adopted' and the subsequent incorporation, can be taken as implying that either the committee or the House agrees with the content of the response.

LIMITATIONS AND SAFEGUARDS IN THE USE OF PRIVILEGE

An important duty rests with each Member, and the House as a whole, to refrain from any course of action prejudicial to the privilege of freedom of speech or prejudicial to continued respect for its other rights and immunities. This duty can be expressed in the following ways:

- First, the existence of Members' privileges imposes a responsibility on Members not to abuse them, for example, by raising trivial matters as matters of privilege or contempt. Speaker Snedden stated in 1979:

  > The privileges of the House are precious rights which must be preserved. The collateral obligation to this privilege of freedom of speech in the Parliament and the essential complementary privileges of the House will be challenged unless all members exercise the most stringent responsibility in relation to them. I reiterate . . . that when matters of privilege are raised I will consider them but if I come to the conclusion that there is clearly no basis whatever for the claim of privilege then I will have to report to the House that I believe that the member has misused its forms.[301]

- Secondly, and analogous to the previous point, is the obligation on Members not to use the privilege of freedom of speech to be unfairly critical of the character or conduct of individuals in debate.[302] This view, however, requires some qualification and an added perspective was given by Speaker Snedden in the following statement:

  > In regard to freedom of speech, I think it is important for us to understand that there are occasions on which a Member in this House, exercising the freedom of absolute privilege of what he says in this House, can and does attack persons who apparently are defenceless. This privilege in the past has been used outrageously by individual Members. But . . . there is a

300 VP 2002–04/1304–5 (6.11.2003); H.R. Deb. (6.11.2003) 22296. This was the 13th submission under the procedure.
301 H.R. Deb. (8.11.1979) 2819–20.
302 *See* Chs on 'Motions' and 'Control and conduct of debate' for rules imposed by the House on the control of speech in the House.

> fundamental sense of justice in a House and if a Member is acting badly the House will recognise it and treat him accordingly. The public will also recognise it and rob him of his credibility. So I feel that we do not need to invent any rules whereby a Speaker or anybody else should make the judgment as to whether a Member should be allowed to proceed with his privileged attack on an individual. It would not be within the capacity of a Speaker to make the right judgment because he would not have the facts. He would not know. Therefore the person raising the matter must bear the consequences himself. But I would not like to see that privilege limited or diminished in any way. All of us can think of not one, but many examples where, if it had not been for the freedom of speech and the attack on an individual in Parliament crime would have gone undetected and unpunished. Some people who were being seriously disadvantaged by rapacious people would not have been protected had it not been for the freedom and absolute privilege that this Chamber has to raise matters and to ventilate them so that inquisitorial efforts could be taken by other people and so that the matter could be circulated with the qualified privilege of the media.[303]

The Joint Select Committee on Parliamentary Privilege recommended the adoption of resolutions stressing the need to exercise the privileges of Parliament in a responsible manner. In a 1994 report the Committee of Privileges, having noted that the judgment exhibited by a Member in raising certain allegations in the House had been questioned, stated:

> . . . In the final analysis, however, it is for the Member to resolve whether or not it is in the public interest to raise a matter in the House, and his or her actions will be judged accordingly.[304]

- Thirdly, the House should exercise or invoke its powers in respect of matters of contempt and privilege sparingly.[305] As noted, the Joint Select Committee on Parliamentary Privilege recommended the adoption by the House of a policy of restraint in these matters. Although this recommendation has not been formally adopted by the House, the Committee of Privileges[306] and Speakers[307] have had regard to the policy.
- Finally, the House should be careful to ensure that, in exercising its power to punish for contempt, its punitive action is appropriate to the offence committed (*see* comment on previous point).

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303 *Report of 5th Conference of Commonwealth Speakers and Presiding Officers*, Govt Pr., Canberra, 1978, pp. 70–1 (*see also* comments by Speaker Thomas at p. 62).

304 PP 407 (1994) 5 (for lengthier quotation *see* p. 737). *See also* comments by Committee of Privileges on Members' obligations; PP 609 (2002) 16.

305 From the establishment of the Committee of Privileges in 1944 to April 2017, 48 matters were referred to the committee; of these matters 21 were found to contain some kind of breach of privilege or contempt; and of these in only seven cases did the House impose or insist on any significant punitive measure; namely, in one case imprisonment, in three cases a form of reprimand and in the other three the demand of a suitable apology; *and see* Appendix 25.

306 E.g. H.R. Deb. (23.10.86) 2700–1, PP 282 (1986); PP 122 (1994); PP 376 (1995).

307 E.g. H.R. Deb. (9.11.1983) 2461; H.R. Deb. (29.4.1986) 2698; H.R. Deb. (16.9.1986) 759; H.R. Deb. (16.5.1990) 684; H.R. Deb. (23.10.2008) 10169–70; H.R. Deb. (18.3.2010) 3011: *and see* J 1987–90/520 (24.2.1988), 536 (25.2.1988).

21
The Federation Chamber

Introduction

The Federation Chamber is an alternative venue to the Chamber of the House for debate of a restricted range of business—principally the second reading and consideration in detail stages of bills, and resumption of debate on motions moved in the House (generally relating to committee and delegation reports and documents). The Federation Chamber operates in parallel to the Chamber of the House to allow two streams of business to be debated concurrently.

The Federation Chamber was established in 1994 with the title 'Main Committee'. Despite the change of name in 2012 it is still technically a committee of the House. However, it is purely a debating committee. It is not an investigatory committee and does not hear witnesses or take evidence. For further discussion of the history of the Federation Chamber and its status as a committee *see* page 790.

Location and description

The Federation Chamber meets in the largest of the House of Representatives committee rooms on the second floor of Parliament House. This room has been dedicated to its role and is fitted out in a small-scale chamber setting. Like the Chamber of the House the Federation Chamber has a horseshoe shaped seating configuration. Seating is provided for 38 Members, and there is room for additional seating if required. Members do not have fixed seats, but in practice government and non-government Members almost always sit on the right and left of the Chair respectively. There are galleries (at floor level) for advisers, the media and the public. Proceedings are televised on ParlTV.

Meeting and adjournment

Although the Federation Chamber is permitted to meet at any time during a sitting of the House[1] (including during a suspension of the House), in practice it does not meet during Question Time or at other times when all or most Members' presence might be expected in the House. The Deputy Speaker sets the meeting times for the Federation Chamber,[2] although in practice he or she is informed of the Government's wishes as to meeting times. Even if the Federation Chamber has previously adjourned until a certain day and time, the time fixed may be changed, and Members are notified accordingly.[3] The Deputy Speaker usually takes the chair at the commencement of proceedings, but other members of the Speaker's panel may do so.[4]

1 S.O. 186.
2 S.O. 186.
3 E.g. VP 2004–07/1391 (7.9.2006); VP 2004–07/2092 (16.8.2007); VP 2004–07/2115 (12.9.2007). The Federation Chamber has met a second time on the same day pursuant to the determination of the Deputy Speaker, after having earlier adjourned and the Deputy Speaker having fixed the following day for the next meeting, VP 2010–13/1315–6 (14.3.2012); VP 2010–13/1863–4 (10.10.2012).
4 E.g. H.R. Deb. (26.2.2007) 133.

The Federation Chamber is adjourned on the completion of the consideration of all matters referred to it by the House, upon the adjournment of the House, or by motion moved without notice by any Member.[5]

Federation Chamber proceedings are suspended to enable Members to attend divisions in the House.[6] The Chair of the Federation Chamber is informed by an indicator light at the Table when a division has been called.

The Federation Chamber must be adjourned or its proceedings suspended in the case of a lack of quorum—*see below*. Proceedings are also adjourned or suspended in cases of disorder—*see* page 788.

On occasion the Chair may exercise discretion to suspend proceedings for other reasons, for example, to permit Members to attend important debates in the House, or while awaiting business referred from the House.

The Federation Chamber continues to meet during a suspension of the House, for example because of the lack of a quorum.[7]

Following any suspension or adjournment of the Federation Chamber, it may resume proceedings at the point at which they were interrupted.[8]

On the adjournment of the Federation Chamber the Deputy Speaker announces that the Federation Chamber is adjourned to a stated day and time, or until a time to be fixed. In the latter case the time of the next meeting fixed by the Deputy Speaker is announced in a statement in the House.

Quorum

The quorum of the Federation Chamber is three Members, comprising the Deputy Speaker (that is, the occupant of the Chair), one government Member and one non-government Member.[9] This quorum should be present at all times. In practice each side of the House rosters Members to represent it and to ensure that the quorum is maintained. If a quorum is not present the Chair is obliged to immediately suspend proceedings until a stated time or adjourn the Federation Chamber.[10] The House has suspended standing orders to remove the requirement for a Member from both sides of the House to be present during debate on a bill.[11]

5 S.O. 190(c), 190(e).
6 S.O. 190(a), e.g. VP 2013–16/1924 (22.2.2016); VP 2013–16/95 (5.5.2016).
7 E.g. H.R. Deb. (24.5.2006) 94, 196–200.
8 S.O. 196.
9 S.O. 184(b).
10 S.O. 190(b), e.g. VP 1998–2001/1942 (30.11.2000); VP 2004–07/590 (7.9.2005) (the Opposition announced that it was 'suspending its cooperation in the [then] Main Committee', H.R. Deb. (7.9.2005) 151); VP 2008–10/653 (22.10.2008), 840 (4.2.2009) (quorum not present at time of meeting); VP 2013–16/1493 (11.8.2015) (quorum not present at time of meeting, the Federation Chamber did not meet), 1820 (3.12.2015).
11 VP 1996–98/551–5 (8.10.1996); VP 2002–04/357–8 (26.8.2002).

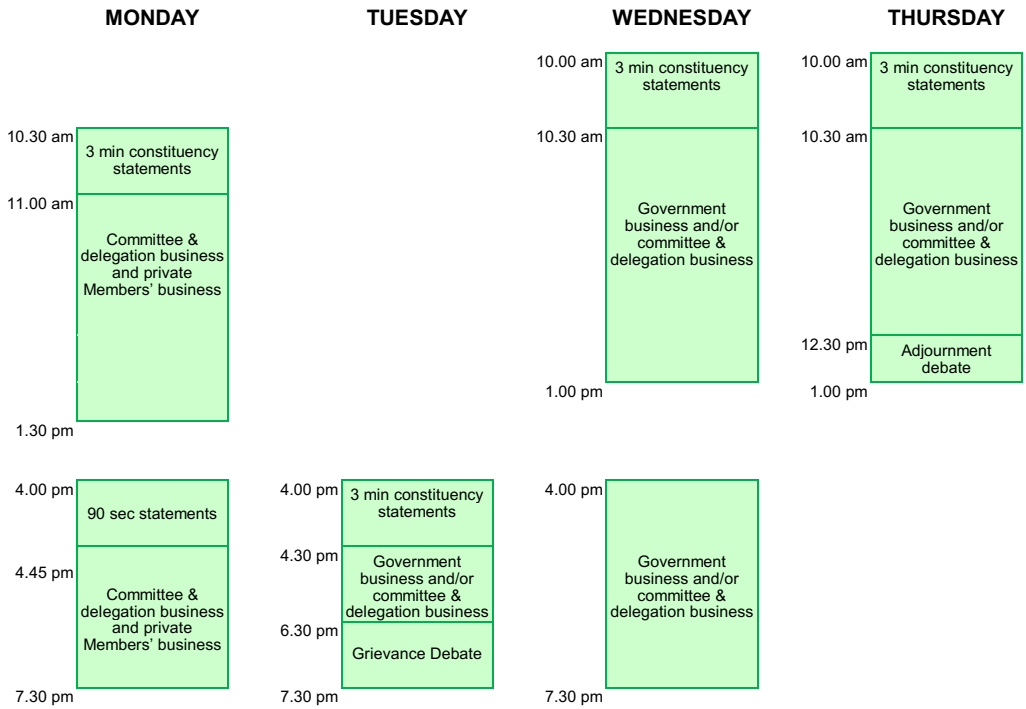
Order of business

Business that has been referred to the Federation Chamber is listed separately on the Notice Paper as Business of the Federation Chamber, under the subheadings: Government Business; Committee and Delegation Business; and Private Members' Business. An attachment to the Daily Program lists the proposed Federation Chamber order of business.

The normal order of business of the Federation Chamber is shown in the diagram below. Times are given in the standing orders as indicative, to allow for adjustment and for shorter or longer sittings, depending on the amount of business in hand. For example, it is common for the Federation Chamber to sit for additional hours during consideration of the Budget.

Federation Chamber indicative order of business

(Operating from September 2016)



The meeting times of the Federation Chamber are fixed by the Deputy Speaker and are subject to change. Times shown for the start and finish of items of business are approximate. Adjournment debates can occur on days other than Thursdays by agreement between the Whips.

Business periods on Mondays

Business periods on Mondays in the Federation Chamber may be used either for private Members' business or for committee and delegation business, as follows:

- moving and debate of private Members' motions;
- resumption of debate on private Members' motions;
- resumption of debate on private Members' bills;[12]
- presentation of committee and delegation reports;
- resumption of debate on committee and delegation reports previously presented;
- statements by the chair or deputy chair of a committee concerning a committee inquiry.

The Selection Committee selects private Members' notices and other items of private Members' and committee and delegation business for referral to the Federation Chamber, or for return to the House. Such a referral by determination of the Selection Committee, once the determination has been reported to the House, is deemed to be a referral by the House.[13] The Selection Committee also determines the order of consideration of matters, and the times allotted for debate on each item and for each Member speaking.

See Chapter on 'Non-government business' for more detail generally on private Members' business and committee and delegation business.

Business periods on other days

Business periods on Tuesdays, Wednesdays and Thursdays in the Federation Chamber may be used either for government business or for committee and delegation business, as follows:

- resumption of debate on government legislation;
- resumption of debate on government motions;
- resumption of debate on committee and delegation reports;
- further statements on matters where statements have commenced in the House.[14]

Other periods—opportunities for private Members

Several periods are available each week in the Federation Chamber which provide opportunities for Members to speak for varying lengths of time (ranging from 90 seconds to 10 minutes) on matters of their own choice.

Constituency statements

The first item of business on any day that the Federation Chamber meets is constituency statements by Members.[15] This opportunity lasts for 30 minutes, irrespective of suspensions for divisions in the House. Any Member (including Parliamentary Secretaries and Ministers, and the Speaker[16] and Deputy Speaker) may speak for no longer than three minutes.[17] If no other Member rises, a Member who has already spoken

12 Bills can be referred only after the first reading in the House, S.O. 143.
13 S.O.s 183, 222.
14 That is, matters originating by way of a statement by indulgence in the House, following which the Leader of the House has moved that further statements on the matter be referred to the Federation Chamber. Further statements were initially listed as items of business on the Notice Paper but this practice was discontinued in 2013. A speech time limit of 10 minutes applies.
15 S.O. 193. Prior to 2008 known simply as 'Members' statements' (and Ministers were excluded).
16 H.R. Deb. (26.6.2013) 7192 (first time).
17 S.O. 193.

may speak a second time. The period for statements is sometimes extended (by motion moved in the House) when there is no other business to be considered by the Federation Chamber.[18] The standing orders do not define 'constituency statements', and matters of more general interest have been raised without objection.[19]

90 second statements

During this period any Member other than a Minister (or Parliamentary Secretary) may be called by the Chair to make a statement on any topic of concern for no longer than 90 seconds.[20] In recent Parliaments a 45 minute period has been scheduled in the Federation Chamber at 4 p.m. on Mondays.

Periods for 90 second statements occur daily in the House—for further detail *see* Chapter on 'Non-government business'.

Adjournment debate

The Federation Chamber may be adjourned on motion moved without notice by any Member 'That the Federation Chamber do now adjourn',[21] which may be debated.[22] In practice the timing of the motion is agreed between the whips.

It is now well-established practice that a regular 30 minute adjournment debate takes place on Thursdays in the Federation Chamber. However, the timing and duration of the debate are not fixed by the standing orders,[23] and the debate may be extended or occur on a day other than Thursday by agreement between the whips. The Deputy Speaker has stated that unless advised of an agreement for extended debate, after 30 minutes the Chair would cease to recognise Members seeking the call and put the question,[24] although in practice some flexibility is often allowed.

The rules applying to the adjournment debate in the House apply, as appropriate. However, any Member (rather than only a Minister) may require the question 'That the Federation Chamber do now adjourn' to be put immediately without debate.[25] For coverage of adjournment debate procedures generally *see* Chapter on 'Non-government business'.

Grievance debate

The motion 'That grievances be noted' is now a standing referral to the Federation Chamber.[26] In the 45th Parliament the grievance debate was the final order of the day on each sitting Tuesday. The question proposed by the Chair is 'That grievances be noted', to which question any Member may address the Chair for up to 10 minutes. If consideration of the question has not concluded after one hour, the debate is interrupted by the Chair. The debate is then adjourned, and its resumption made an order of the day for the next sitting.

For further detail on the grievance debate *see* Chapter on 'Non-government business'.

18 E.g. VP 2004–07/1813 (27.3.2007), (to 90 minutes); VP 2013–16/1495 (12.8.2015), (to 60 minutes).
19 E.g. H.R. Deb. (12.2.2009) 1314.
20 S.O. 43.
21 S.O. 190(e).
22 S.O. 191(a).
23 S.O. 191. Prior to September 2002 former S.O. 274 fixed the time of the debate as 12.30 p.m. on Thursdays.
24 *See* statement by Deputy Speaker, H.R. Deb. (17.9.2002) 6471.
25 S.O. 191(b), e.g. VP 1998–2001/273 (10.12.1998), 892 (23.9.1999); VP 2002–04/283 (20.6.2002); VP 2010–13/616 (2.6.2011).
26 S.O. 192B. (Before 2008 the grievance debate occurred in the House—see earlier editions for details.)

Presentation of petitions

A Member may present a petition during any of these periods (that is, constituency statements; 90 second statements; grievance debate; adjournment debate) provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.[27]

Procedures

Motions

The range of motions which can be moved in the Federation Chamber is limited, as the Federation Chamber can only consider matters referred to it by the House,[28] including matters deemed to be referred by a Selection Committee determination,[29] and items of government business referred by a programming declaration.[30] Motions referred for debate are not resolved in the Federation Chamber, in accordance with the philosophy that it is a forum for debate of such matters and not their determination.

Unless otherwise provided in the standing orders, Federation Chamber procedure in respect of motions is the same as that applying in the House.[31] Where the standing orders 'otherwise provide' it is to reflect the principle that the House itself is the proper forum for the resolution of contentious matters.

A Minister may move without notice, at any time,[32] in relation to a bill or other order of the day being considered 'That further proceedings be conducted in the House'. This motion must be put without amendment or debate, and the bill or order of the day must be returned to the House (anyway) in the event of the Federation Chamber being unable to resolve the question.[33] The House may require a matter referred to the Federation Chamber to be returned to the House, on motion moved without notice by a Minister.[34] An item of government business may also be returned to the House by a programming declaration.[35]

The standing orders are orders of the House and motions to suspend them may not be moved in the Federation Chamber, which is a subsidiary body. Any decision taken in the Federation Chamber is subject to the approval of the House.

Unresolved questions

A unique feature of Federation Chamber procedure is the provision for unresolved questions. Decisions in the Federation Chamber are taken only 'on the voices'. If any Member dissents from the result announced by the Chair—that is, in situations which would cause a division in the House—the Federation Chamber must report the matter back to the House as 'unresolved'.[36] In practice, in some circumstances it may make no sense for the House to determine an unresolved question—for example, on a motion that

27 S.O.s 206, 207(b)—*see* section on 'Petitions' in Chapter on 'Documents'.
28 S.O. 183. In addition to motions and bills, the House may also refer further statements on a matter to the Federation Chamber, when statements have commenced in the House.
29 S.O. 222.
30 S.O. 45.
31 S.O. 185. *See* Chapter on 'Motions'.
32 In practice, this motion is not moved so as to interrupt a Member's speech.
33 S.O. 197(a), e.g. VP 1993–96/2470, 2477 (18.10.1995); *but see* VP 1996–98/273 (19.6.1996) (question put again and negatived).
34 S.O. 197(b).
35 S.O. 197(c).
36 S.O. 188(b), e.g. VP 1993–96/2470, 2478 (18.10.1995), 2504–5, 2516 (19.10.1995); VP 1996–98/380, 387 (21.8.1996); VP 2008–10/1750 (12.5.2010).

a Member speaking on the adjournment be no longer heard—and in such a case the matter is not put to the House.[37] The House has suspended standing orders to permit debate on a bill to continue in the Main Committee (now Federation Chamber) regardless of any unresolved questions.[38] When an unresolved question that the question be now put has been referred to the House and resolved in the negative, debate on the question has continued in the House.[39]

Legislation

After their first reading in the House, bills may be referred to the Federation Chamber by motion, by programming declaration in the case of government bills, or by Selection Committee determination in the case of private Members' bills. For more detail on referral procedures see 'Referral to the Federation Chamber' in Chapter on 'Legislation'.

Proceedings in the Federation Chamber in respect of legislation are substantially the same as they are for the same stage in the House. A significant difference, stemming from the lack of opportunity in the Federation Chamber for divisions, is the provision for the 'unresolved question'. Proceedings on a bill may be continued regardless of unresolved questions unless agreement to an unresolved question is necessary to enable further questions to be considered. If progress cannot be made the bill is returned to the House.[40] The view has been taken that an unresolved question on a second reading amendment prevents further consideration of a bill in the Federation Chamber.[41]

At the conclusion of the bill's consideration in detail the question is put, immediately and without debate, 'That this bill be reported to the House, without amendment' or 'with (an) amendment(s)' ('and with (an) unresolved question (s)'), as appropriate.[42] If the Federation Chamber does not desire to consider the bill in detail it may grant leave for the question 'That this bill be reported to the House without amendment' to be moved immediately following the second reading.[43]

When the Federation Chamber has fully considered a bill, a certified copy of the bill, together with schedules of any amendments made by the Federation Chamber and any questions which the Federation Chamber was unable to resolve, is provided for the Speaker to report to the House.[44]

A bill may be returned to the House at any time during its consideration by the Federation Chamber by a Minister moving 'That further proceedings be conducted in the House'.[45] A bill may also be recalled to the House at any time by motion moved by a

37 E.g. VP 1998–2001/2034 (7.12.2000)—matter not referred to House. VP 2002–04/386 (29.8.2002); H.R. Deb. (29.8.2002) 6192–3—several unresolved questions not put to House; statement by Speaker (standing orders had been suspended to allow progress despite unresolved questions).

38 VP 1996–98/551–5 (8.10.1996); the context was the referral to the Main Committee of a bill which many Members wished to debate in the House. Subsequent proceedings (suspended because of disorder, VP 1996–98/765 (31.10.1996) emphasised the extent to which Main Committee operations depended on general co-operation. VP 2002–04/357–8, 367 (26.8.2002), also for a bill which some Members wished to debate in the House; on this occasion debate continued despite a series of unresolved questions on procedural matters. In each of these cases the quorum requirement for a Member from both sides of the House was also suspended.

39 VP 2002–04/742 (13.2.2003).

40 S.O. 195.

41 VP 1993–96/2504–5, 2516 (19.10.1995);VP 1996–98/363 (27.6.1996).

42 S.O. 198.

43 S.O. 148(b).

44 S.O. 198.

45 S.O. 197(a). The motion is successful in having the matter returned to the House even if opposed (because it becomes an unresolved question for resolution by the House), e.g. VP 1993–96/2470, 2478 (18.10.1995) (motion that further proceedings be conducted in the House moved immediately after second reading speech).

Minister in the House. However, referral to and from the Federation Chamber now often occurs by way of a programming declaration.[46]

Chair

The Deputy Speaker chairs the Federation Chamber and sets its meeting times.[47] In other respects, the Deputy Speaker's functions in the Federation Chamber are basically the same as those of the Speaker in the House. He or she calls Members to speak, proposes and puts questions and declares the decision, enforces the rules of debate, rules on points of order and ensures that the provisions of the standing orders in their application to the Federation Chamber are applied. The Chair of the Federation Chamber has no casting vote (the unresolved question procedure makes this unnecessary).

While the standing orders make no specific provision for a Member to move dissent to a ruling of the Chair in the Federation Chamber (as they used to in relation to the committee of the whole),[48] a dissent motion may occur. However, the factors referred to below which work to minimise disorder in the Federation Chamber, would also work to minimise both the likelihood of dissent and the likelihood of a ruling which might lead to dissent. Rarely, dissent motions have been moved in the Federation Chamber/Main Committee. These have generally followed (and have been in relation to) the suspension of the unresolved question procedure.[49] No dissent moved in the Federation Chamber/Main Committee has ever been voted on by the House.[50]

A motion of no confidence in the Chair of the Federation Chamber cannot be moved in the Federation Chamber, which essentially can only consider matters referred by the House. Additionally, the Chair of the Federation Chamber is appointed pursuant to the standing orders, and a resolution of the Federation Chamber cannot prevail over the standing orders. Such a motion could be moved in the House pursuant to notice or by leave.[51]

The Deputy Speaker may be relieved in the Chair of the Federation Chamber by the Second Deputy Speaker or a member of the Speaker's panel.[52] In practice a roster is maintained.

Disorder

In practice there are several factors which minimise the likelihood of disorder in the Federation Chamber—the general ethos of co-operation in respect of its proceedings, the ability of any Member to move the adjournment, and the unresolved question mechanism whereby opposed votes are referred to the House for decision. Disorder has arisen in the Federation Chamber[53] when these characteristics have not been evident, for example,

46 S.O. 45(b).

47 S.O. 186.

48 *See* pp. 236–7 of the 2nd edition.

49 Because of disorder the proceedings were suspended by the Chair, VP 1996–98/765 (31.10.1996), H.R. Deb. (31.10.1996) 6346–51. On resumption the dissent motion was not proceeded with by the Member who had moved it, H.R. Deb. (6.11.1996) 6733. On the second comparable occasion, by the time the dissent was reported to the House it had become meaningless in view of later proceedings, and the question was not put to the House. H.R. Deb. (26.8.2002) 5676–8; (29.8.2002) 6192.

50 In the normal course a dissent in the Federation Chamber would be expected to be reported to the House as an unresolved question, or more probably, to be closured and the closure reported as unresolved, e.g. VP 1996–98/1829, 1834 (26.6.1997) (Main Committee), when the closure was reported to the House the dissent motion was withdrawn, by leave.

51 H.R. Deb. (29.8.2002) 6192.

52 S.O.s 16(c), 17(c).

53 E.g. VP 1996–98/765 (31.10.1996); VP 2002–04/137–8 (21.3.2002) (Main Committee).

following the suspension of standing orders to allow debate in the Federation Chamber to continue regardless of any unresolved questions.[54]

The Deputy Speaker, or the occupier of the Chair at the time, is responsible for keeping order in the Federation Chamber. The House may address disorder in the Federation Chamber after receiving a report from the Deputy Speaker.[55] In the Federation Chamber the Deputy Speaker has the same responsibility for the preservation of order as the Speaker has in the House.[56] However, the Chair of the Federation Chamber does not have the power to name a Member. If disorder occurs in the Federation Chamber the Deputy Speaker may direct the Member or Members concerned to leave the room for 15 minutes.[57] Alternatively he or she may, or on motion moved without notice by any Member must, suspend or adjourn the sitting. If the sitting is adjourned, any business under discussion and not disposed of at the time of the adjournment is set down on the Notice Paper for the next sitting.[58] Following the suspension or adjournment or the refusal of a Member to leave when so directed, the Deputy Speaker must, or in other cases may, report the disorder to the House. Any subsequent action against a Member under standing order 94 may only be taken in the House.[59]

Sittings of the Federation Chamber (then named Main Committee) have been suspended because of disorder arising. On the first occasion, in reporting the suspension to the House the Main Committee Chair further reported that a Member had disregarded the authority of and reflected on the Chair. Following the report the Member concerned was named by the Speaker and was suspended.[60] On a later occasion the Member concerned was named and suspended after the Main Committee Chair reported that the Member had defied the Chair by continuing to interject after having been called to order.[61] In 2002 disorder arose when a Member defied the Chair by refusing to withdraw a remark. Instead of suspending the sitting[62] the Deputy Speaker requested another Member to move that the Committee adjourn.[63] On another occasion the offending Member, having withdrawn and apologised when the matter was reported to the House, the Speaker stated that he had discussed the matter with the Deputy Speaker and no further action was taken.[64] In such cases the matter considered in the House is the defiance of the Chair, rather than any matter which gave rise to it.

54 E.g. VP 1996–98/551–5 (8.10.1996). The context was the referral to the Main Committee (now Federation Chamber) of a bill (the Euthanasia Laws Bill 1996) which many Members wished to debate in the House.

55 S.O. 60(b).

56 S.O. 187(a).

57 S.O. 187(b), e.g. VP 2013–16/304 (13.2.2014), H.R. Deb. (13.2.2014) 483 (first occasion).

58 S.O. 187(b).

59 S.O. 187(c). E.g. Member named and suspended for serious and disorderly behaviour in Federation Chamber, VP 2013–16/1238 (25.3.2015)—the Member had brought bottles of fuel oil into the Federation Chamber to illustrate a speech, and had caused damage by pouring the oil and spilling it.

60 VP 1996–98/751, 765. *See also* VP 1926–28/421–2 (former committee of the whole).

61 VP 1998–2001/2076–7, 2090.

62 Before September 2002 the standing order provided only the option of suspension.

63 VP 2002–04/135 (20.3.2002), H.R. Deb. (20.3.2002) 1830. On report of the matter to the House the offending Member was named and suspended, VP 2002–04/137 (21.3.2002).

64 VP 2002–04/507, 502 (17.10.2002); H.R. Deb. (17.10.2002) 7973.

History of the Federation Chamber

Origin

The idea for a parallel chamber originated in a proposal by the Procedure Committee in its 1993 *About Time* report '. . . aimed at making more time available for the consideration of legislation and allowing increased opportunities for Members to contribute to debate on bills. This would be achieved by considering legislation in two concurrent streams—in the House and in a single main committee on legislation'.[65] The House adopted the report's recommendations for changes to the legislative process, which included detailed proposals for the nature and operation of a Main Committee (Legislation), also referred to in the report as simply the Main Committee.[66] However, the further potential of parallel processing had been recognised even before the Main Committee was established, and committee and delegation reports and motions to take note of papers were included as matters that could be referred to it.[67]

The Main Committee was renamed the Federation Chamber in February 2012.[68] The change had been recommended by the Procedure Committee some years earlier because of concerns about the name 'Main Committee' being confused with the Parliament House main committee room, use of which is shared by the Senate and the House.[69]

Development

Since 1995 the main appropriation bills have been referred to the Main Committee, later Federation Chamber, for the continuation of the second reading (Budget debate) and for the whole of the consideration in detail (estimates debates) stages. 1998 saw the introduction of 3 minute constituency statements in the Main Committee and an adjournment debate. The 2004 rewrite of the standing orders enabled orders of the day for the resumption of debate on any motion to be referred to the Main Committee.[70] 2008 saw the transfer of the grievance debate from the House, an allotment of time in the Main Committee for 90 second statements, and the Main Committee becoming an additional venue for private Members' and committee and delegation business on Mondays.[71] As noted above, the Main Committee became the Federation Chamber in February 2012. In November 2013 the process of referring private Members' business and committee and delegation reports to the Federation Chamber was simplified,[72] and explicit provision was

65 Standing Committee on Procedure, *About time—Bills, questions and working hours: report of the inquiry into reform of the House of Representatives*. October 1993, p. 7.

66 *About time, op cit,* pp. 6–20.

67 VP 1993–6/766–7 (10.2.1994).

68 From 27 February 2012, VP 2010–13/1179 (8.2.2012).

69 Standing Committee on Procedure, *Renaming the Main Committee—Celebrating the 10th anniversary of the Main Committee*, June 2004. The committee also recommended a purpose-built venue located adjacent to the Chamber.

70 S.O. 183. Earlier years had seen much procedural ingenuity in widening the scope of matters able to be referred for debate, as only motions moved in connection with committee and delegation reports and motions to take note of papers were provided for. The Address in Reply debate was referred (VP 1998–2001/129 (2.12.1998))—the motion 'That the Address (reported by the Address in Reply Committee) be agreed to', being regarded as a motion in connection with a committee report. Restrictions on Main Committee (Federation Chamber) business were circumvented by the device of presenting and moving to take note of a range of documents to enable debate or further debate on various matters to be referred. Examples of this practice included copies of motions moved (and already passed) in the House (VP 2002–04/691 (4.2.2003), 1233–4 (9.10.2003), 1552 (30.3.2004)), and copies of announcements of the death of a former Member or other notable person, to provide, in effect, the opportunity for a condolence debate (VP 2002–04/1401 (10.2.2004), 1428(12.2.2004), 1713 (21.6.2004)).

71 The items of business concerned were presented to the House by the Speaker first thing on Monday morning and, on presentation, deemed to be referred to the Main Committee.

72 Private Members' notices and other items of private Members' and committee and delegation business were now able to be referred directly by a Selection Committee determination—a referral by a determination of the Selection Committee that has been reported to the House is deemed to be a referral of the House (S.O. 222).

made for the referral of further statements on a matter to the Federation Chamber when statements had commenced in the House.[73]

In summary, the Federation Chamber, as well as increasing the time the House has available to debate legislation, has provided steadily increasing opportunities for private Members to raise matters and make statements on matters of concern to them and their electorates.[74]

Status as a committee

The Federation Chamber is conceptually a committee of the whole House, that is, a committee in which all Members may participate. Other than this, committees of the whole no longer feature in the House of Representatives. Until 1994 the detail stage of bills (then referred to as the committee stage) was taken in a committee of the whole, and until 1963 the Committee of Supply and the Committee of Ways and Means, also committees of the whole, were used to consider financial proposals. These committees operated in the Chamber of the House. The innovation of the Main Committee (now Federation Chamber) in 1994 was that it met outside the Chamber of the House and at the same time as the House, thereby enabling parallel rather than consecutive proceedings.

While the United Kingdom House of Commons sittings in Westminster Hall[75] could be said to have been inspired by the model provided by the House of Representatives Main Committee,[76] as the Federation Chamber was then named, there are essential differences between the functions of the two parallel chambers. Westminster Hall is for debate (debates on topics proposed by private Members[77] and debates on committee reports) rather than for the transaction of substantive business.[78] In contrast, in the House of Representatives the Main Committee's major function was intended to be that of a legislation committee, in which stages of bills could be taken.

Westminster Hall was designed as a parallel chamber, to be 'seen not as a committee of the House but as the House itself, sitting in another location'.[79] House of Commons standing orders state that any order or resolution made in Westminster Hall is deemed to be an order or resolution of the House.[80] The Federation Chamber, although also providing a parallel chamber for debate, is expressly established as a subordinate body. Any substantive decision it makes must be confirmed by the House.

73 This practice had become established from 2008, e.g. VP 2008–10/592–3 (14.10.2008); NP 50 (14.10.2008) 27 (Main Committee). Previously, motions to take note of statements had been referred, e.g. VP 2004–07/1401, 1406 (12.9.2006). Initially such further statements were listed as items of business on the Notice Paper but this practice was discontinued in 2013.

74 In 2015 the Procedure Committee reviewed the operation of the Federation Chamber on its 20th anniversary, and noted the decline in the number of government bills being considered. Standing Committee on Procedure, *Role of the Federation Chamber: celebrating 20 years of operation*, June 2015.This process has continued. In 2016 only 15% of the time of the Federation Chamber was spent on government legislation, and about 70% on private Members' business and the various other opportunities for private Members.

75 In the Grand Committee Room off Westminster Hall, rather than in the Hall itself. Another committee room has been used when the Grand Committee Room has been unavailable.

76 *See* Select Committee on Modernisation of the House of Commons, *First report: The parliamentary calendar: initial proposals*, HC 60 (1998–99), 'Part II: The establishment of a "Main Committee" '; and *Second report: Sittings of the House in Westminster Hall*, HC 194 (1998–99).

77 On the question 'That the sitting be now adjourned'.

78 *May,* 24th edn, 2011, 'Sittings in Westminster Hall', pp. 322–5. Business may also include questions for oral answer, but this had not occurred since 2003–04.

79 Select Committee on Modernisation of the House of Commons, *Second report*, HC 194 (1998–99), para 17.

80 House of Commons S.O. 10.

APPENDIXES AND ATTACHMENTS

Appendix 1

GOVERNORS-GENERAL

	Term of office
Hope, Rt Hon. John Adrian Louis, 7th Earl of Hopetoun, KT, GCMG, GCVO, PC (afterwards 1st Marquis of Linlithgow)	1.1.1901 to 9.1.1903
Tennyson, Rt Hon. Hallam, 2nd Baron Tennyson, GCMG, PC	9.1.1903 to 21.1.1904
Northcote, Rt Hon. Henry Stafford, 1st Baron Northcote, GCMG, GCIE, CB, PC	21.1.1904 to 9.9.1908
Ward, Rt Hon. William Humble, 2nd Earl of Dudley, GCB, GCMG, GCVO, PC	9.9.1908 to 31.7.1911
Denman, Rt Hon. Thomas, 3rd Baron Denman, GCMG, KCVO, PC	31.7.1911 to 18.5.1914
Munro-Ferguson, Rt Hon. Sir Ronald Craufurd, GCMG, PC (afterwards 1st Viscount Novar)	18.5.1914 to 6.10.1920
Forster, Rt Hon. Henry William, 1st Baron Forster, GCMG, PC	6.10.1920 to 8.10.1925
Baird, Rt Hon. John Lawrence, 1st Baron Stonehaven, GCMG, PC, DSO (afterwards 1st Viscount Stonehaven)	8.10.1925 to 22.1.1931
Isaacs, Rt Hon. Sir Isaac Alfred, GCB, GCMG, KC	22.1.1931 to 23.1.1936
Hore-Ruthven, Brigadier General the Rt Hon. Alexander Gore Arkwright, 1st Baron Gowrie, VC, GCMG, CB, PC, DSO (afterwards 1st Earl of Gowrie)	23.1.1936 to 30.1.1945
Henry, Duke of Gloucester, HRH Prince William Frederick Albert, Earl of Ulster and Baron Culloden, KG, KT, KP, GCB, GCMG, GCVO, PC	30.1.1945 to 11.3.1947
McKell, Rt Hon. Sir William John, GCMG, QC	11.3.1947 to 8.5.1953
Slim, Field Marshal Sir William Joseph, KG, GCB, GCMG, GCVO, GBE, DSO, MC (afterwards 1st Viscount Slim)	8.5.1953 to 2.2.1960
Morrison, Rt Hon. William Shepherd, 1st Viscount Dunrossil, GCMG, PC, MC, QC	2.2.1960 to 3.2.1961
Sidney, Rt Hon. William Philip, 1st Viscount De L'Isle, VC, GCMG, GCVO, PC	3.8.1961 to 22.9.1965
Casey, Rt Hon. Richard Gardiner, Baron Casey, KG, GCMG, CH, PC, DSO, MC	22.9.1965 to 30.4.1969
Hasluck, Rt Hon. Sir Paul Meernaa Caedwalla, KG, GCMG, GCVO	30.4.1969 to 11.7.1974
Kerr, Rt Hon. Sir John Robert, AK, GCMG, GCVO, QC	11.7.1974 to 8.12.1977
Cowen, Rt Hon. Sir Zelman, AK, GCMG, GCVO, QC	8.12.1977 to 29.7.1982
Stephen, Rt Hon. Sir Ninian Martin, KG, AK, GCMG, GCVO, KBE	29.7.1982 to 16.2.1989
Hayden, Hon. William George, AC	16.2.1989 to 16.2.1996
Deane, Hon. Sir William Patrick, AC, KBE, QC	16.2.1996 to 29.6.2001
Hollingworth, Rt Reverend Dr Peter John, AC, OBE	29.6.2001 to 29.5.2003
Jeffery, Major General Philip Michael, AC, CVO, MC (Retd)	11.8.2003 to 5.9.2008
Bryce, Ms Quentin Alice Louise, AC	5.9.2008 to 28.3.2014
Cosgrove, Hon. Sir Peter, AK MC (Retd)	28.3.2014 –

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Appendix 2

SPEAKERS OF THE HOUSE OF REPRESENTATIVES

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
HOLDER, Hon. Sir Frederick William, KCMG, (Knighted June 1902) SA (from 30.3.1901) Wakefield, SA (16.12.1903 – 23.7.1909)	Free Trade Protectionist (from 1903) Anti-Socialist (from 1906)	Protectionist (from 1.1.1901) ALP (from 27.4.1904) Free Trade – Protectionist (from 18.8.1904) Protectionist (from 5.7.1905) ALP (from 13.11.1908) Fusion (from 2.6.1909)	1st 9.5.1901 – 23.11.1903 2nd 2.3.1904 – 5.11.1906 3rd 20.2.1907 – 19.2.1910	9.5.1901 – 23.11.1903 2.3.1904 – 5.11.1906 20.2.1907 – 23.7.1909	Elected 9.5.1901, unopposed Re-elected 2.3.1904, unopposed Re-elected 20.2.1907, unopposed Died in office, 23.7.1909
SALMON, Hon. Charles Carty Laanecoorie, Vic. (29.3.1901 – 23.4.1913 Grampians, Vic. (20.2.1915 – 15.9.1917)	Protectionist Liberal (from 1910) Nationalist (from 1917)	ALP (from 29.4.1910)		28.7.1909 – 19.2.1910	Elected 28.7.1909, opposed by 2 Members Nominated as Speaker, but not re-elected in 4th Parliament
McDONALD, Hon. Charles Kennedy, Qld (30.3.1901 – 3.10.1925)	ALP		4th 1.7.1910 – 23.4.1913	1.7.1910 – 23.4.1913	Elected 1.7.1910, opposed by previous Speaker Change of government at general election. Declined invitation to continue in office and not nominated for re-election as Speaker in 5th Parliament

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
JOHNSON, William Elliot Lang, NSW (16.12.1903 – 9.10.1928)	Free Trade Anti-Socialist (from 1906) Liberal (from 1910)	Liberal (from 24.6.1913)	5th 9.7.1913 – 30.7.1914	9.7.1913 – 30.7.1914	Elected 9.7.1913, unopposed Change of government at general election. Nominated but not re-elected as Speaker in 6th Parliament
McDONALD, Hon. Charles Kennedy, Qld (30.3.1901 – 3.10.1925)	ALP	ALP (from 17.9.1914) National Labour (from 14.11.1916) Nationalist (from 17.2.1917)	6th 8.10.1914 – 26.3.1917	8.10.1914 – 26.3.1917	Elected 8.10.1914, opposed by previous Speaker Not nominated for re-election as Speaker in 7th Parliament
JOHNSON, Sir William Elliot, KCMG (Knighted June 1920) Lang, NSW (16.12.1903 – 9.10.1928)	Free Trade Anti-Socialist (from 1906) Liberal (from 1910) Nationalist (from 1917)		7th 14.6.1917 – 3.11.1919 8th 26.2.1920 – 6.11.1922	14.6.1917 – 3.11.1919 26.2.1920 – 6.11.1922	Elected 14.6.1917, unopposed Re-elected 26.2.1920, opposed by one Member Not nominated for re-election as Speaker in 9th Parliament
WATT, Rt Hon. William Alexander Balaclava, Vic. (5.9.1914 – 5.7.1929)	Liberal Nationalist (from 1917) Liberal (from 1922) Nationalist (from 1925)	Nationalist – CP (from 9.2.1923)	9th 28.2.1923 – 3.10.1925	28.2.1923 – 3.10.1925	Elected 28.2.1923, unopposed Not nominated for re-election as Speaker in 10th Parliament

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
GROOM, Hon. Sir Littleton Ernest, KCMG, KC, (Knighted Jan. 1924) Darling Downs, Qld (14.9.1901 – 16.9.1929 and 19.12.1931 – 6.11.1936)	Protectionist Liberal (from 1910) Nationalist (from 1917) Independent (from 1931) UAP (from 1934)		10th 13.1.1926 – 9.10.1928 11th 6.2.1929 – 16.9.1929	13.1.1926 – 9.10.1928 6.2.1929 – 16.9.1929	Elected 13.1.1926, unopposed Re-elected 6.2.1929, unopposed Defeated at general election 12.10.29
MAKIN, Hon. Norman John Oswald, AO Hindmarsh, SA (13.12.1919 – 14.8.1946) Sturt, SA (from 29.5.1954) Bonython, SA (10.12.1955 – 1.11.1963)	ALP Federal Labour Party (from 1931) ALP (from 1936)	ALP (from 22.10.1929)	12th 20.11.1929– 27.11.1931	20.11.1929– 27.11.1931	Elected 20.11.1929, unopposed Change of government at general election. Not nominated for re-election as Speaker in 13th Parliament
MACKAY, George Hugh Lilley, Qld (5.5.1917 – 7.8.1934)	Nationalist UAP (from 1931)	UAP (from 6.1.1932)	13th 17.2.1932 – 7.8.1934	17.2.1932 – 7.8.1934	Elected 17.2.1932, unopposed Retired from Parliament
BELL, Hon. Sir George John, KCMG, DSO, VD (Knighted June1941) Darwin, Tas. (13.12.1919 – 6.11.1922 and 14.11.1925 – 7.7.1943)	Nationalist UAP (from 1931	UAP – CP (from 9.11.1934) UAP (from 26.4.1939) UAP – CP (from 14.3.1940)	14th 23.10.1934 – 21.9.1937 15th 30.11.1937 – 27.8.1940	23.10.1934 – 21.9.1937 30.11.1937 – 27.8.1940	Elected 23.10.1934, unopposed Re-elected 30.11.1937, unopposed Not nominated for re-election as Speaker in 16th Parliament

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
NAIRN, Walter Maxwell Perth, WA (12.10.1929 – 7.7.1943)	Nationalist UAP (from 1931)	CP – UAP (from 29.8.1941 ALP (from 7.10.1941)	16th 20.11.1940 – 7.7.1943	20.11.1940 – 21.6.1943	Elected 20.11.1940, unopposed Resigned 21.6.1943
ROSEVEAR, Hon. John Solomon Dalley, NSW (19.12.1931 – 21.3.1953)	NSW Labor ALP (from 1936) Non-Communist Labour Party (from 1940) ALP (from 1943)		17th 23.9.1943 – 16.8.1946 18th 6.11.1946 – 31.10.1949	22.6.1943 – 7.7.1943 23.9.1943 – 16.8.1946 6.11.1946 – 31.10.1949	Elected 22.6.1943, unopposed Re-elected 23.9.1943, unopposed Re-elected 6.11.1946, opposed by one Member Change of government at general election. Not nominated for re-election as Speaker in 19th Parliament
CAMERON, Hon. Archie Galbraith Barker, SA (15.9.1934 – 9.8.1956)	CP, Liberal (from 1944) Liberal Country League (from 1951) Liberal (from 1954)	Lib – CP (from 19.12.1949)	19th 22.2.1950 – 19.3.1951 20th 12.6.1951 – 21.4.1954 21st 4.8.1954 – 4.11.1955 22nd 15.2.1956 – 14.10.1958	22.2.1950 – 19.3.1951 12.6.1951 – 21.4.1954 4.8.1954 – 4.11.1955 15.2.1956 – 9.8.1956	Elected 22.2.1950, unopposed Re-elected 12.6.1951, opposed by previous Speaker Re-elected 4.8.1954, opposed by one Member Re-elected 15.2.1956, opposed by one Member Died in office

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
McLEAY, Hon. Sir John, KCMG, MM, (Knighted Jan. 1962)	Liberal			29.8.1956 – 14.10.1958	Elected 29.8.1956, opposed by one Member
Boothby, SA (10.12.1949 – 31.10.1966)	Liberal Country League (from 1951)		23rd 17.2.1959 – 2.11.1961	17.2.1959 – 2.11.1961	Re-elected 17.2.1959, unopposed
	Liberal (from 1954)		24th 20.2.1962 – 1.11.1963	20.2.1962 – 1.11.1963	Re-elected 20.2.1962, unopposed
			25th 25.2.1964 – 31.10.1966	25.2.1964 – 31.10.1966	Re-elected 25.2.1964, unopposed
					Retired from Parliament
ASTON, Hon. Sir William John, KCMG, (Knighted Jan. 1970)	Liberal		26th 21.2.1967 – 29.9.1969	21.2.1967 – 29.9.1969	Elected 21.2.1967, opposed by one Member
Phillip, NSW (10.12.1955 – 2.11.1961 and 30.11.1963 – 2.11.1972)			27th 25.11.1969 – 2.11.1972	25.11.1969– 2.11.1972	Re-elected 25.11.1969, opposed by one Member
					Defeated at general election 1.12.1972
COPE, Hon. James Francis, CMG	ALP	ALP (from 5.12.1972)	28th 27.2.1973 – 11.4.1974	27.2.1973 – 11.4.1974	Elected 27.2.1973, unopposed
Cook, NSW (from 21.5.1955)			29th 9.7.1974 – 11.11.1975	9.7.1974 – 27.2.1975	Re-elected 9.7.1974, opposed by one Member
Watson, NSW (from 10.12.1955)					Resigned 27.2.1975 (resignation received by Administrator)
Sydney, NSW (25.10.1969 – 11.11.1975)					

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
SCHOLES, Hon. Gordon Glen Denton, AO Corio, Vic. (22.7.1967 – 8.2.1993)	ALP			27.2.1975 – 11.11.1975	Elected 27.2.1975, opposed by one Member Change of government affirmed at general election. Nominated for Speakership but not re-elected in 30th Parliament
SNEDDEN, Rt Hon. Sir Billy Mackie, KCMG, QC (Knighted Jan.1978) Bruce, Vic. (10.12.1955 – 21.4.1983)	Liberal	Lib – NCP (from 11.11.1975)	30th 17.2.1976 – 10.11.1977	17.2.1976 – 10.11.1977	Elected 17.2.1976, opposed by previous Speaker
			31st 21.2.1978 – 19.9.1980	21.2.1978 – 19.9.1980	Re-elected 21.2.1978, opposed by one Member
			32nd 25.11.1980 – 4.2.1983	25.11.1980 – 4.2.1983	Re-elected 25.11.1980, opposed by one Member Change of government at general election. Not nominated for re-election as Speaker in 33rd Parliament
JENKINS, Hon. Dr Henry Alfred, AM Scullin, Vic. (25.10.1969 – 20.12.1985)	ALP	ALP (from 11.3.1983)	33rd 21.4.1983 – 26.10.1984	21.4.1983 – 26.10.1984	Elected 21.4.1983, unopposed
			34th 21.2.1985 – 5.6.1987	21.2.1985 – 20.12.1985	Re-elected 21.2.1985, opposed by one Member Resigned from Parliament 20.12.1985
CHILD, Hon. Joan, AO Henty, Vic. (18.5.1974 – 13.12.1975 and 18.10.1980 – 19.2.1990)	ALP			11.2.1986 – 5.6.1987	Elected 11.2.1986, opposed by one Member
			35th 14.9.1987 – 19.2.1990	14.9.1987 – 28.8.1989	Re-elected 14.9.1987, opposed by one Member Resigned 28.8.1989

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
McLEAY, Hon. Leo Boyce Grayndler, NSW (23.6.1979 – 13.3.1993) Watson, NSW (13.3.1993 – 31.8.2004)	ALP			29.8.1989 – 22.12.1989	Elected 29.8.1989, opposed by one Member
			36th 8.5.1990 – 8.2.1993	8.5.1990 – 8.2.1993	Re-elected 8.5.1990, opposed by one Member Resigned 8.2.1993
MARTIN, Hon. Stephen Paul Macarthur, NSW (1.12.1984 – 13.3.1993) Cunningham, NSW (from 13.3.1993 – 16.8.2002)	ALP		37th 4.5.1993 – 29.1.1996	4.5.1993 – 29.1.1996	Elected 4.5.1993, opposed by one Member Change of government at general election. Not nominated for re-election as Speaker in 38th Parliament
HALVERSON, Hon. Robert George, OBE Casey, Vic. (1.12.1984 – 31.8.98)	Liberal	Lib – NP (from 11.3.1996)	38th 30.4.1996 – 31.8.1998	30.4.1996 – 3.3.1998	Elected 30.4.1996, unopposed Resigned 3.3.1998
SINCLAIR, Rt Hon. Ian McCahon, AC New England, NSW (30.11.1963 – 31.8.1998)	Country Party National Country Party (from May 1975) National (from October 1982)			4.3.1998 – 31.8.1998	Elected 4.3.1998, opposed by one Member Retired from Parliament
ANDREW, Hon. John Neil, AO, FTSE Wakefield, SA (5.3.1983 – 31.8.2004)	Liberal		39th 10.11.1998 – 8.10.2001	10.11.1998 – 8.10.2001	Elected 10.11.1998 unopposed
			40th 12.2.2002 – 31.8.2004	12.2.2002 – 31.8.2004	Re-elected 12.2.2002 unopposed Retired from Parliament

Name and Division	*Party*	*Government Party*	*Parliament*	*Periods of office* *	*Elected to Speakership and reason for vacating office*
HAWKER, Hon. David Peter Maxwell, AO Wannon, Vic. (7.5.1983 – 19.7.2010)	Liberal		41st 16.11.2004 – 17.10.2007	16.11.2004 – 17.10.2007	Elected 16.11.2004 unopposed Change of government at general election. Not nominated for re-election as Speaker in 42nd Parliament
JENKINS, Harry Alfred, AO Scullin, Vic. (8.2.1986 – 5.8.2013)	ALP	ALP (from 3.12.2007)	42nd 12.2.2008 – 19.7.2010 43rd 28.9.2010 – 5.8.2013	12.2.2008 – 19.7.2010 28.9.2010 – 24.11.2011	Elected 12.2.2008 unopposed Re-elected 28.9.2010 unopposed Resigned 24.11.2011
SLIPPER, Hon. Peter Neil Fisher, Qld (1.12.1984 – 11.7.1987 and 13.3.1993 – 5.8.2013)	National Liberal (from 1989) Independent (from 24.11.2011)			24.11.2011– 9.10.2012	Elected 24.11.2011 unopposed Resigned 9.10.2012
BURKE, Anna Elizabeth Chisholm, Vic. (3.10.1998 – 9.5.2016)	ALP			9.10.2012 – 5.8.2013	Elected 9.10.2012 unopposed Change of government at general election. Not nominated for re-election as Speaker in 44th Parliament
BISHOP, Hon. Bronwyn Kathleen Mackellar, NSW (26.3.1994 – 9.5.2016)	Liberal	Lib – NP (from 18.9.2013)	44th 12.11.2013 – 9.5.2016	12.11.2013– 2.8.2015	Elected 12.11.2013, opposed by one Member Resigned 2.8.2015
SMITH, Hon. Anthony David Hawthorn Casey, Vic. (10.11.2001 –	Liberal		45th 30.8.2016 –	10.8.2015 – 9.5.2016 30.8.2016 –	Elected 10.8.2015 unopposed Re-elected 30.8.2016 unopposed

* The *Parliamentary Presiding Officers Act 1965* provides that the person who was Presiding Officer immediately before a dissolution shall, for the purposes of the exercise of any powers or functions by the Presiding Officer under a law of the Commonwealth, be deemed to continue to be the Presiding Officer until a Presiding Officer is chosen by the House. Similarly, if the Speaker resigns his or her office or seat, he or she is deemed to continue to be Presiding Officer until a Presiding Officer is chosen by the House.

Appendix 3

DEPUTY SPEAKERS

	Period of office
CHANTER, John Moore	5.6.1901 to 10.10.1902;† 4.6.1903 to 22.10.1903
SALMON, Hon. Charles Carty	17.3.1904 to 15.12.1904;† 2.8.1905 to 21.12.1905
McDONALD, Hon. Charles	20.6.1906 to 12.10.1906;† 10.7.1907 to 19.2.1910
POYNTON, Hon. Alexander	1.7.1910 to 23.4.1913
FOWLER, Hon. James Mackinnon	9.7.1913 to 30.7.1914
CHANTER, Hon. John Moore	9.10.1914 to 26.3.1917; 14.6.1917 to 3.11.1919; 27.2.1920 to 6.11.1922
BAMFORD, Hon. Frederick William	28.2.1923 to 3.10.1925
BAYLEY, James Garfield	14.1.1926 to 9.10.1928; 7.2.1929 to 16.9.1929
McGRATH, David Charles	20.11.1929 to 27.11.1931
BELL, George John, CMG, DSO, VD	17.2.1932 to 7.8.1934
PROWSE, John Henry	23.10.1934 to 21.9.1937; 30.11.1937 to 27.8.1940; 21.11.1940 to 21.6.1943
RIORDAN, William James Frederick	22.6.1943 to 7.7.1943; 24.9.1943 to 16.8.1946
CLARK, Joseph James	7.11.1946 to 31.10.1949
ADERMANN, Charles Frederick	22.2.1950 to 19.3.1951; 20.6.1951 to 21.4.1954; 4.8.1954 to 4.11.1955; 15.2.1956 to 14.10.1958
BOWDEN, George James, MC	17.2.1959 to 7.3.1961
LUCOCK, Philip Ernest, CBE	8.3.1961 to 2.11.1961; 20.2.1962 to 1.11.1963; 25.2.1964 to 31.10.1966; 21.2.1967 to 29.9.1969; 25.11.1969 to 2.11.1972
SCHOLES, Gordon Glen Denton	28.2.1973 to 11.4.1974; 9.7.1974 to 27.2.1975
BERINSON, Joseph Max	27.2.1975 to 14.7.1975
JENKINS, Henry Alfred	19.8.1975 to 11.11.1975
LUCOCK, Philip Ernest, CBE	17.2.1976 to 10.11.1977
MILLAR, Percival Clarence	21.2.1978 to 19.9.1980; 25.11.1980 to 4.2.1983
JOHNSON, Hon. Leslie Royston	21.4.1983 to 19.12.1983
CHILD, Joan	28.2.1984 to 11.10.1984; 21.2.1985 to 11.2.1986
McLEAY, Leo Boyce	11.2.1986 to 4.6.1987; 14.9.1987 to 29.8.1989
EDWARDS, Ronald Frederick	29.8.1989 to 19.2.1990; 8.5.1990 to 8.2.1993
JENKINS, Harry Alfred	4.5.1993 to 29.1.1996
ROCHER, Allan Charles (*Second Deputy*)	3.3.1994 to 29.1.1996
NEHL, Garry Barr	30.4.1996 to 31.8.1998; 10.11.1998 to 8.10.2001
JENKINS, Harry Alfred (*Second Deputy*)	30.4.1996 to 31.8.1998; 10.11.1998 to 8.10.2001; 12.2.2002 to 31.8.2004; 16.11.2004 to 17.10.2007
CAUSLEY, Hon. Ian Raymond	12.2.2002 to 31.8.2004; 16.11.2004 to 17.10.2007
BURKE, Anna Elizabeth	12.2.2008 to 19.7.2010
SCOTT, Hon. Bruce Craig (*Second Deputy*)	12.2.2008 to 19.7.2010; 28.9.2010 to 9.10.2012
SLIPPER, Hon. Peter Neil	28.9.2010 to 24.11.2011
BURKE, Anna Elizabeth	24.11.2011 to 9.10.2012
SCOTT, Hon. Bruce Craig	9.10.2012 to 5.8.2013; 12.11.2013 to 9.5.2016
GEORGANAS, Steven (*Second Deputy*)	10.10.2012 to 5.8.2013
MITCHELL, Robert George (*Second Deputy*)	12.11.2013 to 9.5.2016; 30.8.2016 –
COULTON, Mark Maclean	30.8.2016 to 5.3.2018
HOGAN, Kevin John	26.3.2018 –

* Title changed from Chairman of Committees to Deputy Speaker and Chairman of Committees on 3 November 1992 and to Deputy Speaker on 21 February 1994. The position of Second Deputy Speaker was created on 21 February 1994.

† Before 10 July 1907 the Chairman of Committees was appointed on a sessional basis.

Appendix 4

LEADERS OF THE OPPOSITION

Name	*Party*	*Dates*
REID, Rt Hon. George Houstoun, KC	Free Trade	May 1901 to 18.8.1904[1]
WATSON, Hon. John Christian	ALP	18.8.1904 to 5.7.1905
REID, Rt Hon. George Houstoun, KC	Free Trade, Anti-Socialist from 1906	7.7.1905 to 16.11.1908
COOK, Hon. Joseph	Anti-Socialist	17.11.1908 to 26.5.1909
DEAKIN, Hon. Alfred	Fusion	26.5.1909 to 2.6.1909[1]
FISHER, Hon. Andrew	ALP	2.6.1909 to 29.4.1910[1]
DEAKIN, Hon. Alfred	Liberal	1.7.1910 to 20.1.1913
COOK, Hon. Joseph	Liberal	20.1.1913 to 24.6.1913[1]
FISHER, Rt Hon. Andrew	ALP	8.7.1913 to 17.9.1914[1]
COOK, Rt Hon. Joseph	Liberal	8.10.1914 to 17.2.1917
TUDOR, Hon. Frank Gwynne	ALP	17.2.1917 to 10.1.1922[2]
CHARLTON, Matthew	ALP	16.5.1922 to 29.3.1928
SCULLIN, James Henry	ALP	26.4.1928 to 22.10.1929[1]
LATHAM, Hon. John Greig, CMG, KC	Nationalist	20.11.1929 to 7.5.1931
LYONS, Hon. Joseph Aloysius	UAP	7.5.1931 to 6.1.1932[1]
SCULLIN, Rt Hon. James Henry	ALP	7.1.1932 to 1.10.1935
CURTIN, John	ALP	1.10.1935 to 7.10.1941[1]
FADDEN, Rt Hon. Arthur William	CP	8.10.1941 to 23.9.1943
MENZIES, Rt Hon. Robert Gordon, KC	UAP Liberal from 1945	23.9.1943 to 19.12.1949[1]
CHIFLEY, Rt Hon. Joseph Benedict	ALP	21.2.1950 to 13.6.1951[2]
EVATT, Rt Hon. Herbert Vere, QC	ALP	20.6.1951 to 9.2.1960
CALWELL, Hon. Arthur Augustus	ALP	7.3.1960 to 8.2.1967
WHITLAM, Edward Gough, QC	ALP	8.2.1967 to 5.12.1972[1]
SNEDDEN, Rt Hon. Billy Mackie, QC	Liberal	20.12.1972 to 21.3.1975
FRASER, Hon. John Malcolm	Liberal	21.3.1975 to 11.11.1975[1]
WHITLAM, Hon. Edward Gough, QC	ALP	27.1.1976 to 22.12.1977
HAYDEN, Hon. William George	ALP	22.12.1977 to 3.2.1983
HAWKE, Robert James Lee, AC	ALP	8.2.1983 to 11.3.1983[1]
PEACOCK, Hon. Andrew Sharp	Liberal	11.3.1983 to 5.9.1985
HOWARD, Hon. John Winston	Liberal	5.9.1985 to 9.5.1989
PEACOCK, Hon. Andrew Sharp	Liberal	9.5.1989 to 3.4.1990
HEWSON, John Robert	Liberal	3.4.1990 to 23.5.1994
DOWNER, Alexander John Gosse	Liberal	23.5.1994 to 30.1.1995
HOWARD, Hon. John Winston	Liberal	30.1.1995 to 11.3.1996[1]
BEAZLEY, Hon. Kim Christian	ALP	19.3.1996 to 22.11.2001
CREAN, Hon. Simon Findlay	ALP	22.11.2001 to 2.12.2003
LATHAM, Mark William	ALP	2.12.2003 to 18.1.2005
BEAZLEY, Hon. Kim Christian	ALP	28.1.2005 to 4.12.2006
RUDD, Kevin Michael	ALP	4.12.2006 to 3.12.2007[1]
NELSON, Hon. Brendan John	Liberal	3.12.2007 to 16.9.2008
TURNBULL, Hon. Malcolm Bligh	Liberal	16.9.2008 to 1.12.2009

Name	*Party*	*Dates*
ABBOTT, Hon. Anthony John	Liberal	1.12.2009 to 18.9.2013[1]
BOWEN, Hon. Christopher Eyles	ALP	18.9.2013 to 13.10.2013[3]
SHORTEN, Hon. William Richard	ALP	13.10.2013 –

1. Date of appointment as Prime Minister.
2. Date of death.
3. Interim Leader pending Australian Labor Party leadership election.

Appendix 5

CLERKS OF THE HOUSE OF REPRESENTATIVES

	Period of office
JENKINS, George Henry, CMG (Acting*) (Sir George after retirement)	1.5.1901 to 6.7.1901
DUFFY, Charles Gavan, CMG	8.7.1901 to 31.1.1917
GALE, Walter Augustus, CMG	1.2.1917 to 27.7.1927
McGREGOR, John Robert	1.9.1927 to 28.9.1927
PARKES, Ernest William, CMG	27.10.1927 to 22.3.1937
GREEN, Frank Clifton, MC (CBE after retirement)	23.3.1937 to 25.6.1955
TREGEAR, Albert Allan (CBE after retirement)	27.6.1955 to 31.12.1958
TURNER, Alan George, CBE (Sir Alan after retirement)	1.1.1959 to 10.12.1971
PARKES, Norman James, CBE	11.12.1971 to 31.12.1976
PETTIFER, John Athol, CBE	1.1.1977 to 15.7.1982
BLAKE, Douglas Maurice, VRD (AM after retirement)	16.7.1982 to 30.7.1985
BROWNING, Alan Robert	31.7.1985 to 22.3.1991
BARLIN, Lyndal McAlpin, AM	23.3.1991 to 26.7.1997
HARRIS, Ian Charles AO	27.7.1997 to 4.12.2009
WRIGHT, Bernard Clive (AO after retirement)	5.12.2009 to 31.12.2013
ELDER, David Russell	1.1.2014 –

* Mr Jenkins was never formally appointed Clerk of the House, was paid no salary during his term as Acting Clerk and resigned to resume his office of Clerk of the Parliaments of Victoria.

Appendix 6

PRIME MINISTERS

Name	*Period of office*	*Length of term*
BARTON, Rt Hon. Sir Edmund, GCMG, KC	1.1.1901 to 24.9.1903	2 years, 8 months, 24 days
DEAKIN, Hon. Alfred	24.9.1903 to 27.4.1904	7 months, 4 days
WATSON, Hon. John Christian	27.4.1904 to 17.8.1904	3 months, 21 days
REID, Rt Hon. George Houstoun, KC (later Sir George)	18.8.1904 to 5.7.1905	10 months, 18 days
DEAKIN, Hon. Alfred	5.7.1905 to 13.11.1908	3 years, 4 months, 9 days
FISHER, Hon. Andrew	13.11.1908 to 2.6.1909	6 months, 21 days
DEAKIN, Hon. Alfred	2.6.1909 to 29.4.1910	10 months, 28 days
FISHER, Rt Hon. Andrew	29.4.1910 to 24.6.1913	3 years, 1 month, 26 days
COOK, Rt Hon. Joseph (later Sir Joseph)	24.6.1913 to 17.9.1914	1 year, 2 months, 25 days
FISHER, Rt Hon. Andrew	17.9.1914 to 27.10.1915	1 year, 1 month, 11 days
HUGHES, Rt Hon. William Morris	27.10.1915 to 9.2.1923	7 years, 3 months, 14 days
BRUCE, Rt Hon. Stanley Melbourne, CH, MC	9.2.1923 to 22.10.1929	6 years, 8 months, 14 days
SCULLIN, Rt Hon. James Henry	22.10.1929 to 6.1.1932	2 years, 2 months, 16 days
LYONS, Rt Hon. Joseph Aloysius, CH	6.1.1932 to 7.4.1939	7 years, 3 months, 2 days
PAGE, Rt Hon. Sir Earle Christmas Grafton, GCMG	7.4.1939 to 26.4.1939	20 days
MENZIES, Rt Hon. Robert Gordon, KC	26.4.1939 to 29.8.1941	2 years, 4 months, 4 days
FADDEN, Hon. Arthur William (later Sir Arthur, GCMG)	29.8.1941 to 7.10.1941	1 month, 9 days
CURTIN, Rt Hon. John	7.10.1941 to 5.7.1945	3 years, 8 months, 29 days
FORDE, Rt Hon. Francis Michael	6.7.1945 to 13.7.1945	8 days
CHIFLEY, Rt Hon. Joseph Benedict	13.7.1945 to 19.12.1949	4 years, 5 months, 7 days
MENZIES, Rt Hon. Robert Gordon, KC (later Sir Robert, KT, CH, QC)	19.12.1949 to 26.1.1966	16 years, 1 month, 8 days
HOLT, Rt Hon. Harold Edward, CH	26.1.1966 to 19.12.1967	1 year, 10 months, 23 days
McEWEN, Rt Hon. John (later Sir John)	19.12.1967 to 10.1.1968	23 days
GORTON, Rt Hon. John Grey (later Sir John, AC)	10.1.1968 to 10.3.1971	3 years, 2 months
McMAHON, Rt Hon. William, CH (later Sir William)	10.3.1971 to 5.12.1972	1 year, 8 months, 25 days
WHITLAM, Hon. Edward Gough, QC	5.12.1972 to 11.11.1975	2 years, 11 months, 7 days
FRASER, Rt Hon. John Malcolm, CH (later AC)	11.11.1975 to 11.3.1983	7 years, 4 months
HAWKE, Hon. Robert James Lee, AC	11.3.1983 to 20.12.1991	8 years, 9 months, 9 days
KEATING, Hon. Paul John	20.12.1991 to 11.3.1996	4 years, 2 months, 20 days
HOWARD, Hon. John Winston	11.3.1996 to 3.12.2007	11 years, 8 months, 23 days
RUDD, Hon. Kevin Michael	3.12.2007 to 24.6.2010	2 years, 6 months, 22 days
GILLARD, Hon. Julia Eileen	24.6.2010 to 27.6.2013	3 years, 4 days
RUDD, Hon. Kevin Michael	27.6.2013 to 18.9.2013	2 months, 23 days
ABBOTT, Hon. Anthony John	18.9.2013 to 15.9.2015	1 year, 11 months, 29 days
TURNBULL, Hon. Malcolm Bligh	15.9.2015	

Source: Parliamentary Library, *Parliamentary Handbook of the Commonwealth of Australia*.

Appendix 7

CHRONOLOGICAL LIST OF MINISTRIES

The following list shows each Ministry and its term of office since 1901. The termination date of each Ministry coincides with the date on which the Prime Minister submitted their resignation and that of each of their Ministers to the Governor-General. In a number of instances, however, such resignations have been the occasion for the Prime Minister of the day to request the Governor-General for a commission to form a new Ministry and thus remain in office. W. M. Hughes was the first Australian Prime Minister to follow this procedure, which he did on three separate occasions between 1915 and 1923.

Ministry	*Period of office*	*Ministry*	*Period of office*
1 Barton	1.1.1901 to 24.9.1903	35 Holt	14.12.1966 to 19.12.1967
2 Deakin	24.9.1903 to 27.4.1904	36 McEwen	19.12.1967 to 10.1.1968
3 Watson	27.4.1904 to 17.8.1904	37 Gorton	10.1.1968 to 28.2.1968
4 Reid–McLean	18.8.1904 to 5.7.1905	38 Gorton	28.2.1968 to 12.11.1969
5 Deakin	5.7.1905 to 13.11.1908	39 Gorton	12.11.1969 to 10.3.1971
6 Fisher	13.11.1908 to 2.6.1909	40 McMahon	10.3.1971 to 5.12.1972
7 Deakin	2.6.1909 to 29.4.1910	41 Whitlam	5.12.1972 to 19.12.1972
8 Fisher	29.4.1910 to 24.6.1913	42 Whitlam	19.12.1972 to 12.6.1974
9 Cook	24.6.1913 to 17.9.1914	43 Whitlam	12.6.1974 to 11.11.1975
10 Fisher	17.9.1914 to 27.10.1915	44 Fraser	11.11.1975 to 22.12.1975
11 Hughes	27.10.1915 to 14.11.1916	45 Fraser	22.12.1975 to 20.12.1977
12 Hughes	14.11.1916 to 17.2.1917	46 Fraser	20.12.1977 to 3.11.1980
13 Hughes	17.2.1917 to 8.1.1918	47 Fraser	3.11.1980 to 7.5.1982
14 Hughes	10.1.1918 to 9.2.1923	48 Fraser	7.5.1982 to 11.3.1983
15 Bruce–Page	9.2.1923 to 22.10.1929	49 Hawke	11.3.1983 to 13.12.1984
16 Scullin	22.10.1929 to 6.1.1932	50 Hawke	13.12.1984 to 24.7.1987
17 Lyons	6.1.1932 to 7.11.1938	51 Hawke	24.7.1987 to 4.4.1990
18 Lyons	7.11.1938 to7.4.1939	52 Hawke	4.4.1990 to 20.12.1991
19 Page	7.4.1939 to 26.4.1939	53 Keating	20.12.1991 to 27.12.1991
20 Menzies	26.4.1939 to 14.3.1940	54 Keating	27.12.1991 to 24.3.1993
21 Menzies	14.3.1940 to 28.10.1940	55 Keating	24.3.1993 to 11.3.1996
22 Menzies	28.10.1940 to 29.8.1941	56 Howard	11.3.1996 to 21.10.1998
23 Fadden	29.8.1941 to 7.10.1941	57 Howard	21.10.1998 to 26.11.2001
24 Curtin	7.10.1941 to 21.9.1943	58 Howard	26.11.2001 to 26.10.2004
25 Curtin	21.9.1943 to 6.7.1945	59 Howard	26.10.2004 to 3.12.2007
26 Forde	6.7.1945 to 13.7.1945	60 Rudd	3.12.2007 to 24.6.2010
27 Chifley	13.7.1945 to 1.11.1946	61 Gillard	24.6.2010 to 28.6.2010
28 Chifley	1.11.1946 to 19.12.1949	62 Gillard	28.6.2010 to 14.9.2010
29 Menzies	19.12.1949 to 11.5.1951	63 Gillard	14.9.2010 to 27.6.2013
30 Menzies	11.5.1951 to 11.1.1956	64 Rudd	27.6.2013 to 1.7.2013
31 Menzies	11.1.1956 to 10.12.1958	65 Rudd	1.7.2013 to 18.9.2013
32 Menzies	10.12.1958 to 18.12.1963	66 Abbott	18.9.2013 to 15.9.2015
33 Menzies	18.12.1963 to 26.1.1966	67 Turnbull	15.9.2015 to 19.7.2016
34 Holt	26.1.1966 to 14.12.1966	68 Turnbull	19.7.2016

Source: Parliamentary Library, *Parliamentary Handbook of the Commonwealth of Australia*.

Appendix 8

LEADERS OF THE HOUSE

	Term of office *
Rt Hon. E. J. (later Sir Eric) Harrison, Vice President of the Executive Council and Minister for Defence Production, later Minister for the Navy and Minister for the Army	May 1951 to September 1956
Rt Hon. H. E. Holt, Minister for Labour and National Service, later Treasurer	September 1956 to December 1965
Hon. D. E. Fairbairn, Minister for National Development	March to October 1966
Hon. B. M. Snedden, Minister for Immigration	February 1967 to November 1968
Hon. G. D. Erwin, Minister for Air	February to September 1969
Hon. B. M. Snedden, Minister for Labour and National Service	November 1969 to March 1971
Hon. R. W. C. (later Sir Reginald) Swartz, Minister for National Development	March 1971 to August 1972
Hon. D. L. Chipp, Minister for Customs and Excise	August to October 1972
Hon. F. M. Daly, Minister for Services and Property, later Minister for Administrative Services	February 1973 to November 1975
Hon. L. F. Bowen was appointed Deputy Leader of the House in May 1973	
Hon. (later Rt Hon.) I. McC. Sinclair, Minister for Primary Industry	February 1976 to September 1979
Hon. I. Viner, Minister for Employment and Youth Affairs	September 1979 to August 1980
Rt Hon. I. McC. Sinclair, Minister for Special Trade Representations, later Minister for Communications	August 1980 to May 1982
Hon. Sir James Killen, Vice-President of the Executive Council	August to December 1982
Hon. M. J. Young, Special Minister of State and Vice-President of the Executive Council	April to May 1983
Hon. L. F. Bowen, Deputy Prime Minister and Vice-President of the Executive Council	August to December 1983
Hon. M. J. Young, Special Minister of State, later Minister for Immigration and Ethnic Affairs, later Minister for Immigration, Local Government and Ethnic Affairs, Vice-President of the Executive Council and Minister Assisting the Prime Minister for Multicultural Affairs	February 1984 to December 1987
Hon. K. C. Beazley, Vice-President of the Executive Council and Minister for Defence, later Minister for Transport and Communications, later Minister for Employment, Education and Training, later Minister for Finance	February 1988 to December 1995
Hon. P. K. Reith, Minister for Industrial Relations and Minister Assisting the Prime Minister for the Public Service, later Minister for Workplace Relations and Small Business, later Minister for Employment, Workplace Relations and Small Business, later Minister for Defence	April 1996 to September 2001
Hon. A. J. Abbott, Minister for Employment and Workplace Relations and Minister Assisting the Prime Minister for the Public Service, later Minister for Health and Ageing	February 2002 to September 2007

	Term of office *
Hon. A. N. Albanese, Minister for Infrastructure, Transport, Regional Development and Local Government, later Minister for Infrastructure and Transport and Minister for Regional Development and Local Government	February 2008 to June 2013
Hon. C. M. Pyne, Minister for Education, later Minister for Education and Training, later Minister for Industry Innovation and Science, later Ministry for Defence Industry	November 2013 –

* Terms of office have been shown to coincide with sitting periods of the House. Appointments may actually have been made outside sitting periods. Ministries listed are those held concurrently with the office of Leader of the House.

Appendix 9

NUMBER OF MINISTERS—STATUTORY VARIATIONS

Year	*Number* [1]	*Authority*
1901	7	Constitution, s. 65
1915	8	*Ministers of State Act 1915*
1917	9	*Ministers of State Act 1917*
1935	10	*Ministers of State Act 1935*
1938	11	*Ministers of State Act 1938*
1941	19	*Ministers of State Act 1941* [2]
1951	20	*Ministers of State Act 1951* [3]
1956	22	*Ministers of State Act 1956*
1964	25	*Ministers of State Act 1964*
1967	26	*Ministers of State Act 1967*
1971	27	*Ministers of State Act 1971*
1987	30	*Ministers of State Amendment Act (No. 2) 1987*
2000	42 [4]	*Ministers of State and Other Legislation Amendment Act 2000*

1 This figure refers to Ministers of State in terms of ss. 64–66 of the Constitution—that is, appointed to administer a department of State. In earlier years Executive Councillors were sometimes appointed as 'Ministers' who did not administer a department—e.g. 'Minister without Portfolio' or 'Minister in charge of' certain responsibilities. The Vice President of the Executive Council did not administer a department until the early 1930s.

2 The number of Ministers had been previously increased to 12 by a regulation under the National Security Act (H.R. Deb. (24.6.41) 322-3). The *Ministers of State Act 1941* increased the number of Ministers to 19 as a special provision during the war; this provision was repealed and the Act amended retaining the number at 19 by the *Ministers of State Act 1946*.

3 The consolidated *Ministers of State Act 1952* retained the number at 20.

4 Ministers designated as Parliamentary Secretaries not to exceed 12 and those not so designated not to exceed 30.

Appendix 10

PARTY AFFILIATIONS IN THE HOUSE OF REPRESENTATIVES

Year of election	*Labor*	*Free Trade*	*Protect-ionist*	*Anti-Socialist*	*Liberal* [i]	*Nation-alist*	*Country/ National* [ii]	*United Austra-lia*	*NSW Labor*	*Non-comm-unist Labour*	*Indep-endent*	*Total*
1901	14	28	31	—	—	—	—	—	—	—	2	75
1903	23	25	26	—	—	—	—	—	—	—	1 [iii]	75
1906	26	—	16	27	—	—	—	—	—	—	6 [iv]	75
1910	43	—	—	—	31 [v]	—	—	—	—	—	1	75
1913	37	—	—	—	38	—	—	—	—	—	—	75
1914	42	—	—	—	32	—	—	—	—	—	1	75
1917	22	—	—	—	—	53 [vi]	—	—	—	—	—	75
1919	26	—	—	—	—	37	11	—	—	—	1 [vii]	75
1922	30	—	—	—	5	26	14	—	—	—	1	76 [viii]
1925	24	—	—	—	—	37	14	—	—	—	1	76
1928	32	—	—	—	—	29	13	—	—	—	2 [ix]	76
1929	47	—	—	—	—	14	10	—	—	—	5 [x]	76
1931	15	—	—	—	—	—	16	40 [xi]	4	—	1	76
1934	18	—	—	—	—	—	14	33	9	—	1	75
1937	29	—	—	—	—	—	16	28	—	—	2 [xii]	75
1940	32	—	—	—	—	—	14	23	—	4	2	75
1943	49	—	—	—	—	—	12 [xiii]	12	—	—	2	75
1946	43	—	—	—	17	—	12 [xiii]	—	—	—	3	75

i Members of the Liberal and Country League (SA) are included from 1946.
ii The Country Party was formed after the 1919 election out of Members returned under the endorsement of primary producers' organisations. In 1975 name of party changed to National Country Party of Australia. In 1982 name of party changed to National Party of Australia, and in 2003 to the Nationals.
iii Identified by *Hughes & Graham* as Revenue Tariff Party.
iv Includes 4 Independent Protectionists and 2 Western Australia Party.
v Derived from elements of former Protectionists and Anti-Socialists. Also referred to during election as 'Fusion'.
vi Formed by elements of Labor Party and former Liberals.
vii Identified by *Hughes & Graham* as Independent Nationalist.
viii From 1922 total figure includes a Member for the Northern Territory who did not have full voting rights until 1968.
ix Includes one Country Progressive.
x Includes 3 Independent Nationalists and one Country Progressive.
xi Formed by elements of the Labor Party and former Nationalists.
xii Includes one Independent UAP.
xiii Includes one Liberal Country.

Year of election	*Labor*	*Liberal*	*Country Liberal*	*Country/ National*	*Independent*	*Total*
1949	48	55	—	19	1	123 [xiv]
1951	54	52	—	17	—	123
1954	59	47	—	17	—	123
1955	49	57	—	18	—	124
1958	47	58	—	19	—	124
1961	62 [xv]	45	—	17	—	124
1963	52	52	—	20	—	124
1966	41	61	—	21	1	124
1969	59	46	—	20	—	125
1972	67	38	—	20	—	125
1974	66	40	—	21	—	127
1975	36	68	—	23	—	127
1977	38	67	—	19	—	124
1980	51	54	—	20	—	125
1983	75	33	—	17	—	125
1984	82	45	—	21	—	148
1987	86	43	—	19	—	148
1990	78	55	—	14	1	148
1993	80	49	—	16	2	147
1996	49	75	1	18	5	148
1998	67 [xvi]	64	—	16	1	148
2001	65	68	1	13	3	150
2004	60	74	1	12	3	150
2007	83	55	—	10	2	150

Year of election	*Labor*	*Liberal* [xvii]	*Country Liberal*	*Nationals* [xvii]	*Nationals WA*	*Australian Greens*	*Katter's Australian Party*	*Palmer United Party*	*Nick Xeno-phon Team*	*Indep-endent*	*Total*
2010	72	60	1	11	1	1	—	—	—	4	150
2013	55	74	1	15	—	1	1	1	—	2	150
2016	69	60	—	16	—	1	1	—	1	2	150

xiv From 1949 figure includes a Member for the Australian Capital Territory who did not have full voting rights until 1966.

xv Although the Labor Party had the same number of seats as the coalition parties (62), two of its Members (Northern Territory and the ACT) did not have full voting rights.

xvi Includes one seat filled at a supplementary election held after the first meeting of the new House.

xvii In 2008 the Queensland branches of the Liberal Party and the Nationals merged to form the Liberal National Party of Queensland (LNP). However, LNP candidates elected to the Federal Parliament have continued to sit as Liberals or Nationals.

This table has been compiled using House records, C. A. Hughes & B. D. Graham, *A Handbook of Australian Government and Politics 1890–1964*, Australian National University Press, Canberra, 1968, pp. 285–422 and G. Sawer, *Australian Federal Politics and Law 1901–1929* and *Australian Federal Politics and Law 1929–1949*. Party affiliations of Members were not officially recorded by the Department of the House of Representatives until 1956. Prior to 1956 contemporary records and subsequent histories do not always agree on the party affiliations of Members.

Party strengths indicated are those after general elections and do not allow for by-elections, changes in affiliation between elections or changes as a result of elections declared void and recontested.

Appendix 11

ELECTORAL DIVISIONS—NUMBER AT GENERAL ELECTIONS

Election year	*NSW*	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*	*Total*	*Total with full voting rights* *
1901	26	23	9	7	5	5			75	75
1903	26	23	9	7	5	5			75	75
1906	27	22	9	7	5	5			75	75
1910	27	22	9	7	5	5			75	75
1913	27	21	10	7	5	5			75	75
1914	27	21	10	7	5	5			75	75
1917	27	21	10	7	5	5			75	75
1919	27	21	10	7	5	5			75	75
1922	28	20	10	7	5	5	1		76	75
1925	28	20	10	7	5	5	1		76	75
1928	28	20	10	7	5	5	1		76	75
1929	28	20	10	7	5	5	1		76	75
1931	28	20	10	7	5	5	1		76	75
1934	28	20	10	6	5	5	1		75	74
1937	28	20	10	6	5	5	1		75	74
1940	28	20	10	6	5	5	1		75	74
1943	28	20	10	6	5	5	1		75	74
1946	28	20	10	6	5	5	1		75	74
1949	47	33	18	10	8	5	1	1	123	121
1951	47	33	18	10	8	5	1	1	123	121
1954	47	33	18	10	8	5	1	1	123	121
1955	46	33	18	11	9	5	1	1	124	122
1958	46	33	18	11	9	5	1	1	124	122
1961	46	33	18	11	9	5	1	1	124	122
1963	46	33	18	11	9	5	1	1	124	122
1966	46	33	18	11	9	5	1	1	124	123
1969	45	34	18	12	9	5	1	1	125	125
1972	45	34	18	12	9	5	1	1	125	125
1974	45	34	18	12	10	5	1	2	127	127
1975	45	34	18	12	10	5	1	2	127	127
1977	43	33	19	11	10	5	1	2	124	124
1980	43	33	19	11	11	5	1	2	125	125
1983	43	33	19	11	11	5	1	2	125	125
1984	51	39	24	13	13	5	1	2	148	148
1987	51	39	24	13	13	5	1	2	148	148
1990	51	38	24	13	14	5	1	2	148	148
1993	50	38	25	12	14	5	1	2	147	147
1996	50	37	26	12	14	5	1	3	148	148
1998	50	37	27	12	14	5	1	2	148	148
2001	50	37	27	12	15	5	2	2	150	150
2004	50	37	28	11	15	5	2	2	150	150
2007	49	37	29	11	15	5	2	2	150	150
2010	48	37	30	11	15	5	2	2	150	150
2013	48	37	30	11	15	5	2	2	150	150
2016	47	37	30	11	16	5	2	2	150	150

* The member for the Northern Territory had limited voting rights between 1922 and 1968.
The member for the Australian Capital Territory had limited voting rights between 1949 and 1966.

Appendix 12

GENERAL ELECTIONS—SIGNIFICANT DATES FROM 19TH TO 45TH PARLIAMENTS

		Dates							Number of days between		
Parliament	*Election announced in House (outside House)*	*House rising date*	*Dissolution*	*Writs issued*	*Nominations closed*	*Date of poll*	*Date for return of writs (on or before)*	*Date of first sitting*	*House rising and polling day*	*polling day and first sitting*	*date for return of writs and first sitting*
19	26.10.49	27.10.49	31.10.49	31.10.49	14.11.49	10.12.49	25.1.50	22.2.50	44	74	28
20	(17.3.51) [i]	16.3.51	19.3.51	28.3.51	6.4.51	28.4.51	13.6.51	12.6.51	43	45	-1 [ii]
21	6.4.54 [iii]	14.4.54	21.4.54	23.4.54	6.5.54	29.5.54	7.7.54	4.8.54	45	67	28
22	26.10.55	28.10.55 [iv]	4.11.55	7.11.55	16.11.55	10.12.55	25.1.56	15.2.56	43	67	21
23	20.8.58 [v]	2.10.58 [iv]	14.10.58	22.10.58	31.10.58	22.11.58	20.1.59	17.2.59	51	87	28
24	12.9.61	27.10.61 [iv]	2.11.61	3.11.61	14.11.61	9.12.61	1.2.62	20.2.62	43	73	19
25	15.10.63	30.10.63	1.11.63	1.11.63	8.11.63	30.11.63	30.1.64	25.2.64	31	87	26
26	12.10.66	28.10.66	31.10.66	31.10.66	7.11.66	26.11.66	26.1.67	21.2.67	29	87	26
27	20.8.69	26.9.69	29.9.69	29.9.69	7.10.69	25.10.69	24.11.69	25.11.69	29	31	1
28	10.10.72	26.10.72	2.11.72	2.11.72	10.11.72	2.12.72	31.1.73	27.2.73	37	87	27
29	10.4.74	10.4.74	11.4.74	20.4.74	29.4.74	18.5.74	29.6.74	9.7.74	38	52	10
30	11.11.75	11.11.75	11.11.75	17&21.11.75 [vi]	28.11.75	13.12.75	22.1.76	17.2.76	32	66	26
31	27.10.77	8.11.77	10.11.77	10.11.77	18.11.77	10.12.77	8.2.78	21.2.78	32	73	13
32	11.9.80	18.9.80	19.9.80	19.9.80	27.9.80	18.10.80	17.12.80	25.11.80	30	38	-22 [ii]
33	(3.2.83)	15.12.82 [iv]	4.2.83	4.2.83	19.2.83	5.3.83	5.5.83	21.4.83	80	47	-14 [ii]
34	8.10.84	11.10.84	26.10.84	26.10.84	6.11.84	1.12.84	24.1.85	21.2.85	51	82	28
35	27.5.87	4.6.87	5.6.87	5.6.87	18.6.87	11.7.87	3.9.87	14.9.87	37	65	11
36	(16.2.90)	22.12.89	19.2.90	19.2.90	2.3.90	24.3.90	30.5.90	8.5.90	92	45	-22 [ii]
37	(7.2.93)	18.12.92 [iv]	8.2.93	8.2.93	19.2.93	13.3.93	19.5.93	4.5.93	85	52	-15 [ii]
38	(27.1.96)	1.12.95 [iv]	29.1.96	29.1.96	9.2.96	2.3.96	8.5.96	30.4.96	92	59	-8 [ii]
39	(30.8.98)	15.7.98	31.8.98	31.8.98	10.9.98	3.10.98	9.12.98	10.11.98	80	38	-29 [ii]
40	(5.10.01)	27.9.01	8.10.01	8.10.01	18.10.01	10.11.01	16.1.02	12.2.02	44	94	27
41	(29.8.04)	13.8.04 [iv]	31.8.04	31.8.04	16.9.04	9.10.04	8.12.04	16.11.04	57	38	-22 [ii]
42	(14.10.07)	20.9.07	17.10.07	17.10.07	1.11.07	24.11.07	25.1.08	12.2.08	65	80	18
43	(17.7.10)	24.6.10	19.7.10	19.7.10	29.7.10	21.8.10	27.10.10	28.9.10	58	38	-29 [ii]
44	(4.8.13)	27.6.13	5.8. 13	5.8.13	15.8.13	7.9.13	13.11.13	12.11.13	72	66	-1 [ii]
45	(8.5.16)	5.5.16	9.5.16	16.5.16	9.6.16	2.7.16	8.8.16	30.8.16	58	59	22

i On 16 March 1951 the Prime Minister indicated he had tendered advice to the Governor-General but was not in a position to inform the House of the reply.
ii The first sitting day preceded the date fixed for the return of writs.
iii Dates for closing of nominations and issue of writs announced in answer to question without notice.
iv Continuation of previous day's sitting.
v Announced in answer to question without notice.
vi Writs issued for Northern Territory, ACT and all States except South Australia and Western Australia on 17 November 1975; writs issued for South Australia and Western Australia on 21 November 1975.

Appendix 13

ELECTION PETITIONS—HOUSE OF REPRESENTATIVES

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
7 May 1901	W E Adcock for review of polling in Fremantle, WA (Member returned was E Solomon). VP 1901–02/59 (13.6.1901) *and see below*	Alleged bribery, use of undue influence and improperly conducted election. Petitioner sought review of poll and legality of election and steps to ensure purity of elections and prevention of corruption.	Petition referred to Committee of Elections and Qualifications which recommended petition be not entertained as petitioner had not complied with the law of WA relating to Parliamentary elections. Report adopted by House, petition dismissed. VP 1901–02/59 (13.6.1901), 61 (14.6.1901)
8 May 1901	W E Adcock in similar terms to above but referring to certain action taken in Perth by petitioner's solicitor in connection with law of WA. VP 1901–02/83 (5.7.1901)	Same in substance as above.	Petition referred to Committee of Elections and Qualifications which recommended petition be not entertained as it was the same in substance as the above petition, which had been heard and determined. Report adopted by House, petition dismissed. VP 1901–02/83 (5.7.1901), 87 (10.7.1901)
Undated, presented to House 22 April 1902	J C Whitelaw against election of W Hartnoll as a Member for Tasmania. VP 1901–02/419 (22.4.1902)	Alleged irregularity in nomination of W Hartnoll.	Petition referred to Committee of Elections and Qualifications which reported that, though there had been an informality in the nomination, it was not sufficient reason for disturbing the election. Report adopted by House. VP 1901–02/419 (22.4.1902), 441 (29.5.1902), 445 (3.6.1902)
29 Jan. 1904	J M Chanter against election of R O Blackwood as Member for Riverina, NSW. VP 1904/8 (2.3.1904)	Alleged irregularities in printing of ballot papers, and the subsequent voting and count and in conduct during polling.	Court of Disputed Returns declared R O Blackwood not duly elected and further declared the election absolutely void. New election held. VP 1904/43–4 (19.4.1904)
4 Feb. 1904	W Maloney against election of Sir Malcolm D McEacharn as Member for Melbourne, Vic. VP 1904/8 (2.3.1904)	Alleged irregularities in postal votes and other aspects of conduct of election and that successful candidate allegedly ineligible in terms of s. 44 of Constitution (it was alleged he, as honorary Consul for Japan, was under an acknowledgment of allegiance, obedience or adherence to a foreign power).	Court of Disputed Returns declared Sir Malcolm McEachern not duly elected and further declared election absolutely void. New election held. VP 1904/25–6 (15.3.1904)
6 Feb. 1904	M Hirsch against election of P Phillips as Member for Wimmera, Vic. VP 1904/8 (2.3.1904)	Alleged irregularities on conduct of election.	Court of Disputed Returns dismissed petition. VP 1904/32 (18.3.1904)

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
25 Jan. 1904	D N Cameron against election of Sir Phillip O Fysh as Member for Denison, Tas. VP 1904/44 (19.4.1904)	Alleged breaches of provisions of Act concerning electoral expenditure, alleged bribery and undue influence by successful candidate and irregularities in conduct of election.	Court of Disputed Returns dismissed petition. VP 1904/49 (27.4.1904)
24 Jan. 1907	T Kennedy against election of A C Palmer as Member for Echuca, Vic. VP 1907/26 (20.2.1907)	Alleged improper practices in conduct of election.	Court of Disputed Returns declared the respondent not duly elected and further declared the election absolutely void. New election held. VP 1907–08/3–4 (3.7.1907)
30 May 1910	R A Crouch against election of A T Ozanne as Member for Corio, Vic. VP 1910/9 (1.7.1910)	Alleged improper practices in conduct of election.	Court of Disputed Returns dismissed petition. VP 1910/133 (22.9.1910)
22 July 1913	W N Hedges against election of R J Burchell as Member for Fremantle, WA. VP 1913/14 (12.8.1913)	Alleged improper practices in conduct of election.	Outcome not recorded in Votes and Proceedings, petition apparently not upheld. R J Burchell remained as Member of House.
11 Feb. 1920	J Kean against election of E T J Kerby as Member for Ballaarat, Vic. VP 1920–21/7 (26.2.1920)	Alleged improper practices in conduct of election.	Court of Disputed Returns declared E T J Kerby not duly elected and the election absolutely void. New election held. (*Note* House resolved that in its opinion D C McGrath, elected at second election, should be compensated as he had to contest 2 elections because of official errors). VP 1920–21/189–90 (1.7.1920), 468 (25.11.1920)
Undated, filed (by telegram) on 3 May 1923	J A Porter against election of H G Nelson as Member for Northern Territory. VP 1923–24/2 (13.6.1923)	Alleged improper practices in conduct of election.	Application for an order extending the time for the service of the petition dismissed by Full Court of the High Court (petition had been lodged in telegram form). VP 1923–24/2–3 (13.6.1923)
16 Dec.1929	J A Perkins against election of J J Cusack as Member for Eden–Monaro, NSW. VP 1929–31/91 (12.3.1930)	Alleged improper activities in conduct of election.	Court of Disputed Returns dismissed petition. VP 1929–31/91–2 (12.3.1930)
12 Nov. 1946	R G Sarina against election of W P O'Connor as Member for West Sydney, NSW. VP 1946–48/29 (20.11.1946)	Successful candidate allegedly under acknowledgment of allegiance, obedience and adherence to a foreign power within the meaning of s. 44 of the Constitution (as Roman Catholic).	Petition withdrawn by leave of High Court. VP 1946–48/80 (21.2.1947)

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
27 Jan. 1950	H W Crittenden against election of G Anderson as Member for Kingsford-Smith, NSW. VP 1950–51/10 (22.2.1950)	Successful candidate allegedly under acknowledgment of allegiance, obedience and adherence to a foreign power within the meaning of s. 44 of the Constitution (as Roman Catholic) and alleged breaches of Act concerning electoral expenditure and other matters.	Court of Disputed Returns ordered that proceedings on petition be forever stayed. Order not presented to House.
31 March 1965	R G Sarina against election of 5 Senators for NSW (J P Ormonde, J A Mulvihill, Sir A M McMullin, K M Anderson and T L Bull) and C W Bridges-Maxwell as Member for Robertson, NSW. VP 1964–66/341 (17.8.1965)	Alleged breaches of Act concerning electoral expenditure and other matters.	Court of Disputed Returns dismissed petition. VP 1964–66/341 (17.8.1965)
23 Jan. 1978	H T Berrill against election of Member for Boothby, SA (Member returned was J E McLeay). VP 1978–80/18 (22.2.1978)	Alleged breaches of provisions of Act.	Court of Disputed Returns dismissed petition. Order not presented to House.
2 Dec. 1980	R L Muscio against election of Sir William McMahon as Member for Lowe, NSW. VP 1980–83/65 (4.12.1980)	Certain material published during the election campaign constituted illegal practices contrary to section 161 of the Commonwealth Electoral Act and was likely to effect the result of the election.	Petition not upheld by Court of Disputed Returns (consent order, 18 March 1981).
5 Dec. 1980	E A Symonds against election of R J Birney as Member for Phillip, NSW. VP 1980–83/81 (24.2.1981)	Similar to above.	No further action.
5 Dec. 1980	S Cummings against election of J M Bradfield as Member for Barton, NSW. VP 1980–83/81 (24.2.1981)	Similar to above.	No further action.
5 Dec. 1980	R T Gun against election of G Chapman as Member for Kingston, SA. VP 1980–83/81 (24.2.1981)	Similar to above.	Petition not upheld by Court of Disputed Returns (consent order, 18 March 1981).

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
5 Dec. 1980	A J Guy against election of N J Hicks as Member for Riverina, NSW. VP 1980–83/82 (24.2.1981)	Similar to above.	No further action.
8 Dec. 1980	E T Page against election of R J Birney as Member for Phillip, NSW. VP 1980–83/81 (24.2.1981)	Similar to above.	No further action.
8 Dec. 1980	L J Keogh against election of D F Jull as Member for Bowman, Qld. VP 1980–83/81 (24.2.1981)	Similar to above.	Dismissed by Consent.
Undated, petition was filed with court on 8 Dec. 1980	E J Lindsay against election of A G Dean as Member for Herbert, Qld. VP 1980–83/82 (24.2.1981)	Similar to above.	Dismissed by Consent.
18 Dec. 1980	R Cullen against election of R M McLean as Member for Perth, WA. VP 1980–83/82 (24.2.1981)	Similar to above. It was further claimed that the result of the election was affected by the fact that one candidate held an office of profit under the Crown at the time of the election.	No further action.
19 Dec. 1980	D H Patch against election of R J Birney as Member of Phillip, NSW. VP 1980–83/82 (24.2.1981)	Certain material published during the election campaign constituted illegal practices and was likely to affect the result of the election.	Dismissed by Consent.
23 Dec. 1980	B D Simon against election of B T Cunningham as Member for McMillan, Vic. VP 1980–83/82 (24.2.1981)	Similar to above.	Dismissed by Consent.
23 Dec.1980	Y M R McComb against election of E E Darling as Member for Lilley, Qld. VP 1980–83/82 (24.2.1981)	Similar to above.	Dismissed by Consent.
24 Dec. 1980	J F Cotter against election of G Campbell as Member for Kalgoorlie, WA. VP 1980–83/82 (24.2.1981)	Similar to above.	No further action.
11 Feb. 1985	H G Linacre against election of D J H Watson as Member for Forde, Qld. VP 1985–87/26 (22.2.1985)	Alleged breaches of provisions of Act concerning re-count and other matters.	No further action.

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
27 Sept. 1987	C G Smith against election of M H Lavarch as Member for Fisher, Qld. VP 1987–90/98 (6.10.1987)	Alleged improper practices concerning bribery, printing and publishing of electoral advertisements and other matters.	No further action.
8 May 1990	A G Skyring against election of J C Moore as Member for Ryan, Qld. VP 1990–93/116 (31.5.1990)	Alleged that successful candidate's deposit was not legal tender, not being gold coin.	No further action.
28 May 1992	I Sykes against election of P Cleary as Member for Wills, Vic. VP 1990–93/1537 (1.6.1992)	Alleged breach of s. 44 of the Constitution (office of profit under the crown).	Court of Disputed Returns declared respondent not duly elected and further declared election absolutely void. New election held. VP 1990–93/1907 (25.11.1992)
7 May 1993	I Sykes against election of each Member elected on 13 March and 17 April 1993 and each Senator elected on 13 March 1993. VP 1993–96/45 (10.5.1993)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1993–96/177 (19.8.1993)
12 May 1993	I Pavlekovich-Smith on the matter of the election 13 March 1993. VP 1993–96/63 (12.5.1993)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1993–96/177 (19.8.1993)
25 May 1993	R J N Hudson Jnr in the matter of the election 13 March 1993. VP 1993–96/106 (26.5.1993)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1993–96/176–7 (19.8.1993)
Undated, filed with court 7 June 1993	P K Muldowney against each Member elected on 13 March and 17 April 1993. VP 1993–96/147 (17.8.1993)	Alleged breaches of Commonwealth Electoral Act, Constitution, Bill of Rights 1689, First Statute of Westminster 1275.	Court of Disputed Returns dismissed petition. VP 1993–96/176 (19.8.1993)
7 June 1993	A P Webster against election of M Deahm as Member for Macquarie, NSW and each Member and Senator elected on 13 March and 17 April 1993. VP 1993–96/147 (17.8.1993)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1993–96/1106 (27.6.1994)
Undated, filed with court 7 June 1993	J W Robertson against each Member and Senator elected on 13 March and 17 April 1993. VP 1993–96/147 (17.8.1993)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1993–96/1106 (27.6.1994)

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
7 May 1996	R V Free against election of J Kelly as Member for Lindsay, NSW. VP 1996–98/72 (8.5.1996)	Alleged breach of s. 44 of the Constitution (office of profit under the crown).	Court of Disputed Returns declared respondent not duly elected and further declared election absolutely void. New election held. VP 1996–98/428–30 (11.9.1996)
8 May 1996	W Snowdon against election of N Dondas as Member for Northern Territory. VP 1996–98/109 (20.5.1996)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1996–98/948 (3.12.1996)
13 May 1996	P A K Stevenage against election of P Filing as Member for Moore, WA. VP 1996–98/109 20.5.1996)	Alleged breach of Commonwealth Electoral Act.	No further action.
7 Dec. 1998	D K Ditchburn against Divisional Returning Officer and election of P J Lindsay as Member for Herbert, Qld. VP 1998–2001/205 (9.12.1998)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 1998–2001/717 (9.8.1999)
12 Dec. 2001	R S Gunter against the election of each Member and Senator elected for the State of Queensland on 10 November 2001. VP 2002–04/17 (13.2.2002)	Alleged breach of s. 32 of the Constitution—that the Governor-General and State Governor did not have the legal power to issue the election writs; and alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. Order not presented to House.
11 Jan. 2002	D K Ditchburn against the election of P J Lindsay as Member for Herbert, Qld. VP 2002–04/17 (13.2.2002)	Alleged breach of s. 24 of the Constitution—that provisions of the Commonwealth Electoral Act did not allow Members to be 'directly chosen' by the electors.	Court of Disputed Returns dismissed petition. VP 2002–04/328 (19.8.2002)
2 Dec. 2004	A J Hudson against the election of W Entsch as Member for Leichhardt, Qld. VP 2004–07/130 (9.12.2004)	Alleged improper activities in conduct of election.	Court of Disputed Returns dismissed petition. VP 2004–07/487 (9.8.2005)
16 Dec. 2004	D Wheeley against the election of G Hardgrave as Member for Moreton, Qld. VP 2004–07/143 (8.2.2005)	Alleged uncertainty of election results due to electoral procedures not complying with Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 2004–07/487 (9.8.2005)

Date of petition	*Petitioner*	*Claims of petitioner*	*Action taken*
25 Jan. 2008	R Mitchell against the election of F Bailey as Member of McEwen, Vic. VP 2008–10/39 (12.2.2008)	Alleged breaches of the Commonwealth Electoral Act in that certain ballot papers had been wrongly rejected from, or wrongly admitted to, the count.	Court of Disputed Returns dismissed petition. (While the court found errors in the count, their correction increased the elected Member's majority). VP 2008–10/452 (26.8.2008)
3 Nov. 2008	S G Scott-Irving against the Australian Broadcasting Corporation and election of R Oakeshott as Member for Lyne, NSW. VP 2008–10/687 (10.11.2008)	Alleged breach of Commonwealth Electoral Act.	Court of Disputed Returns dismissed petition. VP 2008–10/1077 (1.6.2009)
27 Oct. 2010	G Freemantle against the election of D O'Neill as Member for Robertson, NSW. VP 2010–13/174–5 (12.11.2010)	Alleged breach of Commonwealth Electoral Act relating to postal votes.	Court of Disputed Returns dismissed petition. Order not presented to House.
27 Oct. 2010	A Green against the election of D Bradbury as Member for Lindsay, NSW. VP 2010–13/174–5 (12.11.2010)	Alleged breach of Commonwealth Electoral Act relating to postal votes.	Court of Disputed Returns dismissed petition. Order not presented to House.
27 Oct. 2010	G Briscoe-Hough against the election of D Melham as Member for Banks, NSW. VP 2010–13/174–5 (12.11.2010)	Alleged breach of Commonwealth Electoral Act relating to postal votes.	Petition withdrawn by leave of High Court. VP 2010–13/290 (9.2.2011)

Appendix 14

REFERENDUMS TO ALTER THE CONSTITUTION

Subject (***bold type*** *indicates referendum carried)*	*Date of referendum*	*States in which majority of electors voted in favour*	*Percentage of formal votes in favour*
Senate Elections	12.12.06	All	82.65
Finance	13.4.10	Qld, WA, Tas.	49.04
State Debts	13.4.10	All except NSW	54.95
Legislative Powers	26.4.11	WA	39.42
Monopolies	26.4.11	WA	39.89
Trade and Commerce	31.5.13	Qld, SA, WA	49.38
Corporations	31.5.13	Qld, SA, WA	49.33
Industrial Matters	31.5.13	Qld, SA, WA	49.33
Railway Disputes	31.5.13	Qld, SA, WA	49.13
Trusts	31.5.13	Qld, SA, WA	49.78
Nationalization of Monopolies	31.5.13	Qld, SA, WA	49.33
Legislative Powers	13.12.19	Vic., Qld, WA	49.65
Nationalization of Monopolies	13.12.19	Vic., Qld, WA	48.64
Industry and Commerce	4.9.26	NSW, Qld	43.50
Essential Services	4.9.26	NSW, Qld	42.80
State Debts	17.11.28	All	74.30
Aviation	6.3.37	Vic., Qld	53.56
Marketing	6.3.37	None	36.26
Post-war Reconstruction and Democratic Rights	19.8.44	SA, WA	45.99
Social Services	28.9.46	All	54.39
Organized Marketing of Primary Products	28.9.46	NSW, Vic., WA	50.57
Industrial Employment	28.9.46	NSW, Vic., WA	50.30
Rents and Prices	29.5.48	None	40.66
Powers to Deal with Communists and Communism	22.9.51	Qld, WA, Tas.	49.44
Parliament	27.5.67	NSW	40.25
Aboriginals	27.5.67	All	90.77
Prices	8.12.73	None	43.81
Incomes	8.12.73	None	34.42
Simultaneous Elections	18.5.74	NSW	48.30
Mode of Altering the Constitution	18.5.74	NSW	47.99
Democratic Elections	18.5.74	NSW	47.20
Local Government Bodies	18.5.74	NSW	46.85
Simultaneous Elections	21.5.77	NSW, Vic., SA	62.22
Senate Casual Vacancies	21.5.77	All	73.32
Referendums	21.5.77	All	77.72
Retirement of Judges	21.5.77	All	80.10
Terms of Senators	1.12.84	NSW, Vic.	50.64
Interchange of Powers	1.12.84	None	47.06
Fair Elections	3.9.88	ACT	37.60
Local Government	3.9.88	None	33.62
Parliamentary Terms	3.9.88	None	32.92
Rights and Freedoms	3.9.88	None	30.79
Republic	6.11.99	ACT	45.13
Preamble to Constitution	6.11.99	None	39.34

Appendix 15

CHRONOLOGY OF PARLIAMENTS

Parliament	*General elections*	*Opening*	*House's last sitting day*	*Prorogation (further prorogation)*	*Dissolution*
First Parliament	29 & 30.3.1901				
First Session		9.5.1901	10.10.1902	10.10.1902 (14.11.1902) (15.12.1902) (21.1.1903) (20.2.1903) (31.3.1903)	
Second Session		26.5.1903	22.10.1903	22.10.1903 (11.11.1903)	23.11.1903
Second Parliament	16.12.1903				
First Session		2.3.1904	15.12.1904	15.12.1904 (20.1.1905) (3.2.1905) (29.3.1905) (28.4.1905) (22.5.1905)	
Second Session		28.6.1905	21.12.1905	21.12.1905) (31.1.1906) (29.3.1906) (4.5.1906)	
Third Session		7.6.1906	12.10.1906	12.10.1906 (26.10.1906)	5.11.1906
Third Parliament	12.12.1906				
First Session		20.2.1907	21.2.1907	22.2.1907 (5.4.1907) (18.5.1907)	
Second Session		3.7.1907	5.6.1908	11.6.1908 (14.7.1908) (13.8.1908)	
Third Session		16.9.1908	11.12.1908	15.12.1908 (19.1.1909) (5.3.1909) (7.4.1909)	
Fourth Session		26.5.1909	8.12.1909	13.12.1909 (18.1.1910)	19.2.1910 (expired)

Parliament	*General elections*	*Opening*	*House's last sitting day*	*Prorogation (further prorogation)*	*Dissolution*
Fourth Parliament	13.4.1910				
First Session		1.7.1910	25.11.1910	29.11.1910 (2.2.1911) (17.3.1911) (2.5.1911) (9.6.1911) (24.7.1911) (1.8.1911)	
Second Session		5.9.1911	19–21.12.1911	22.12.1911 (1.2.1912) (13.3.1912) (19.4.1912) (22.5.1912)	
Third Session		19.6.1912	20–21.12.1912	8.1.1913 (21.2.1913) (4.4.1913)	23.4.1913
Fifth Parliament	31.5.1913				
First Session		9.7.1913	18–19.12.1913	19.12.1913 (29.1.1914) (11.3.1914)	
Second Session		15.4.1914	26.6.1914	27.6.1914	30.7.1914
Sixth Parliament	5.9.1914				
First Session		8.10.1914	16–17.3.1917	20.3.1917	26.3.1917
Seventh Parliament	5.5.1917				
First Session		14.6.1917	14.6.1917	16.6.1917	
Second Session		11.7.1917	24.10.1919	28.10.1919	3.11.1919
Eighth Parliament	13.12.1919				
First Session		26.2.1920	9–10.12.1921	5.1.1922 (10.3.1922) (11.5.1922)	
Second Session		28.6.1922	12–14.10.1922	18.10.1922	6.11.1922
Ninth Parliament	16.12.1922				
First Session		28.2.1923	9.3.1923	21.3.1923 (16.5.1923)	
Second Session		13.6.1923	9–10.10.1924	30.4.1925	
Third Session		10.6.1925	23–25.9.1925	28.9.1925	3.10.1925
Tenth Parliament	14.11.1925				
First Session		13.1.1926	21–22.9.1928		9.10.1928

Parliament	*General elections*	*Opening*	*House's last sitting day*	*Prorogation (further prorogation)*	*Dissolution*
Eleventh Parliament	17.11.1928				
First Session		6.2.1929	12.9.1929		16.9.1929
Twelfth Parliament	12.10.1929				
First Session		20.11.1929	26.11.1931		27.11.1931
Thirteenth Parliament	19.12.1931				
First Session		17.2.1932	1–2.8.1934		7.8.1934
Fourteenth Parliament	15.9.1934				
First Session		23.10.1934	11.12.1936	27.5.1937	
Second Session		17.6.1937	15.9.1937		21.9.1937
Fifteenth Parliament	23.10.1937				
First Session		30.11.1937	7–8.12.1939	14.3.1940	
Second Session		17.4.1940	21–22.8.1940		27.8.1940
Sixteenth Parliament	21.9.1940				
First Session		20.11.1940	1.7.1943		7.7.1943
Seventeenth Parliament	21.8.1943				
First Session		23.9.1943	30–31.3.1944	5.7.1944	
Second Session		17.7.1944	1.12.1944	8.2.1945	
Third Session		21.2.1945	9.8.1946		16.8.1946
Eighteenth Parliament	28.9.1946				
First Session		6.11.1946	17–18.6.1948	4.8.1948	
Second Session		1.9.1948	27.10.1949		31.10.1949
Nineteenth Parliament	10.12.1949				
First Session		22.2.1950	16.3.1951		19.3.1951
Twentieth Parliament	28.4.1951				
First Session		12.6.1951	22.10.1953	30.10.1953	
Second Session		10.11.1953	2–3.12.1953	4.2.1954	
Third Session		15.2.1954	14.4.1954		21.4.1954
Twenty-first Parliament	29.5.1954				
First Session		4.8.1954	27–28.10.1955		4.11.1955

Parliament	*General elections*	*Opening*	*House's last sitting day*	*Prorogation (further prorogation)*	*Dissolution*
Twenty-second Parliament	10.12.1955				
First Session		15.2.1956	8.11.1956	7.3.1957	
Second Session		19.3.1957	5.12.1957	11.2.1958	
Third Session		25.2.1958	1–2.10.1958		14.10.1958
Twenty-third Parliament	22.11.1958				
First Session		17.2.1959	3.12.1959	10.2.1960	
Second Session		8.3.1960	8–9.12.1960	20.2.1961	
Third Session		7.3.1961	26–27.10.1961		2.11.1961
Twenty-fourth Parliament	9.12.1961				
First Session		20.2.1962	30.10.1963		1.11.1963
Twenty-fifth Parliament	30.11.1963				
First Session		25.2.1964	28.10.1966		31.10.1966
Twenty-sixth Parliament	26.11.1966				
First Session		21.2.1967	8–9.11.1967	9.2.1968	
Second Session		12.3.1968	26.9.1969		29.9.1969
Twenty-seventh Parliament	25.10.1969				
First Session		25.11.1969	25–26.11.1969	23.2.1970	
Second Session		3.3.1970	26.10.1972		2.11.1972
Twenty-eighth Parliament	2.12.1972				
First Session		27.2.1973	13.12.1973	14.2.1974	
Second Session		28.2.1974	10.4.1974		11.4.1974
Twenty-ninth Parliament	18.5.1974				
First Session		9.7.1974	11.11.1975		11.11.1975
Thirtieth Parliament	13.12.1975				
First Session		17.2.1976	24.2.1977	28.2.1977	
Second Session		8.3.1977	8.11.1977		10.11.1977
Thirty-first Parliament	10.12.1977				
First Session		21.2.1978	18.9.1980		19.9.1980

Parliament	*General elections*	*Opening*	*House's last sitting day*	*Prorogation (further prorogation)*	*Dissolution*
Thirty-second Parliament	18.10.1980				
First Session		25.11.1980	14–15.12.1982		4.2.1983
Thirty-third Parliament	5.3.1983				
First Session		21.4.1983	11.10.1984		26.10.1984
Thirty-fourth Parliament	1.12.1984				
First Session		21.2.1985	4.6.1987		5.6.1987
Thirty-fifth Parliament	11.7.1987				
First Session		14.9.1987	22.12.1989		19.2.1990
Thirty-sixth Parliament	24.3.1990				
First Session		8.5.1990	17–18.12.1992	8.2.1993	8.2.1993
Thirty-seventh Parliament	13.3.1993				
First Session		4.5.1993	30.11–1.12.1995	29.1.1996	29.1.1996
Thirty-eighth Parliament	2.3.1996				
First Session		30.4.1996	15.7.1998	31.8.1998	31.8.1998
Thirty-ninth Parliament	3.10.1998				
First Session		10.11.1998	27.9.2001	8.10.2001	8.10.2001
Fortieth Parliament	10.11.2001				
First Session		12.2.2002	12–13.8.2004	31.8.2004	31.8.2004
Forty-first Parliament	9.10.2004				
First Session		16.11.2004	20.9.2007	15.10.2007	17.10.2007
Forty-second Parliament	24.11.2007				
First Session		12.2.2008	24.6.2010	19.7.2010	19.7.2010
Forty-third Parliament	21.8.2010				
First session		28.9.2010	27.6.2013	5.8.2013	5.8.2013
Forty-fourth Parliament	7.9.2013				
First session		12.11.2013	17–18.3.2016	15.4.2016	
Second Session		18.4.2016	5.5.2016		9.5.2016
Forty-fifth Parliament	2.7.2016				
First session		30.8.2016			

Appendix 16

SITTINGS OF THE HOUSE

Year	*Number of sitting weeks*	*Number of sittings•*	*Total hours of sitting**	*Average length of sitting** *h min*	*Number of sittings after midnight*
1901†	31	113	866	7 40	7
1902	31	107	796	7 26	3
1903†	22	78	577	7 24	3
1904	36	122	902	7 23	3
1905	24	90	831	9 14	12
1906†	19	70	590	8 25	6
1907	25	97	808	8 20	16
1908	26	91	680	7 29	9
1909	26	98	793	8 05	7
1910†	22	83	748	9 01	6
1911	16	61	559	9 09	5
1912	27	105	966	9 12	8
1913†	20	74	562	7 36	7
1914†	21	61	504	8 15	3
1915	25	72	531	7 23	7
1916	12	32	260	8 07	1
1917†	19	52	460	8 51	7
1918	28	86	872	10 08	9
1919†	17	51	358	7 01	2
1920	35	114	842	7 23	6
1921	27	93	720	7 44	7
1922†	16	53	432	8 09	3
1923	13	52	479	9 12	8
1924	25	83	632	7 37	6
1925†	13	36	389	10 49	4
1926	24	84	646	7 41	5
1927	17	59	523	8 51	4
1928†	18	62	500	8 04	5
1929†	16	54	474	8 47	8
1930	28	98	781	7 58	11
1931†	29	94	744	7 55	10
1932	23	73	652	8 56	14
1933	20	67	630	9 24	16
1934†	12	35	297	8 29	9
1935	16	55	460	8 21	12
1936	22	71	539	7 35	15
1937†	9	29	257	8 52	5
1938	22	66	602	9 07	13
1939	15	51	446	8 45	11
1940†	15	43	402	9 21	5
1941	20	50	396	7 55	11

Year	*Number of sitting weeks*	*Number of sittings•*	*Total hours of sitting**	*Average length of sitting** *h*	*min*	*Number of sittings after midnight*
1942	17	45	404	8	59	11
1943†	16	48	414	8	37	14
1944	17	57	517	9	04	9
1945	26	90	749	8	19	8
1946†	19	65	566	8	42	15
1947	26	92	795	8	39	8
1948	27	90	684	7	36	9
1949†	22	80	627	7	50	5
1950	28	83	803	9	40	12
1951†	17	56	511	9	08	11
1952	23	74	667	9	01	16
1953	17	61	533	8	45	5
1954†	17	48	460	9	36	3
1955†	18	52	511	9	50	4
1956	27	79	771	9	46	8
1957	21	63	644	10	13	12
1958†	17	48	491	10	14	9
1959	24	71	711	10	01	18
1960	25	74	770	10	24	22
1961†	19	55	575	10	27	21
1962	22	66	688	10	25	16
1963†	18	53	530	9	59	10
1964	22	65	656	10	06	10
1965	23	76	765	10	04	11
1966†	17	55	531	9	39	9
1967	21	62	646	10	25	20
1968	23	67	703	10	29	20
1969†	17	51	532	10	26	18
1970	20	73	736	10	05	23
1971	22	74	742	10	02	29
1972†	21	60	680	11	20	16
1973	25	81	913	11	16	—
1974†	21	62	678	10	56	1
1975†	23	69	743	10	46	—
1976	25	79	781	9	53	—
1977†	22	68	676	9	57	6
1978	22	75	747	9	58	3
1979	22	68	671	9	52	3
1980†	17	51	525	10	18	9

Year	*Number of sitting weeks*	*Number of sittings•*	*Total hours of sitting**	*Average length of sitting** h min	*Number of sittings after midnight*	*Sittings of Federation Chamber (hours)‡*
1981	21	62	627	10 07	6	
1982	19	53	554	10 28	8	
1983†	17	49	533	10 52	3	
1984†	13	52	551	10 35	10	
1985	18	66	681	10 20	13	
1986	20	79	781	10 22	1	
1987†	19	74	746	10 05	1	
1988	21	65	701	10 47	10	
1989	18	59	658	11 09	12	
1990†	12	38	433	11 23	5	
1991	21	67	774	11 33	10	
1992	19	60	689	11 29	12	
1993†	14	46	524	11 24	8	
1994	18	68	632	9 18	1	61
1995	18	70	637	9 06	—	108
1996†	16	61	647	10 37	3	90
1997	20	76	800	10 31	2	171
1998†	15	54	560	10 22	—	97
1999	19	73	710	9 43	—	137
2000	19	73	714	9 47	2	128
2001†	15	56	526	9 23	1	110
2002	18	69	667	9 39	2	183
2003	20	74	682	9 13	1	191
2004†	16	59	594	10 04	—	152
2005	18	67	615	9 10	1	179
2006	18	68	630	9 15	—	229
2007†	14	50	452	9 02	—	148
2008	18	69	657	9 31	2	291
2009	18	68	819	12 02	1	268
2010†	15	55	609	11 04	—	255
2011	18	64	740	11 34	2	378
2012	17	63	661	10 29	1	358
2013†	13	48	481	10 01	—	257
2014	21[1]	76	759	9 59	—	274
2015	19	75	746	9 56	—	263
2016†	14	51	507	9 57	—	199
2017	18	64	615	9 36	2	358

• A sitting on occasion may extend over more than one day, or even several days, during which period there may be lengthy suspensions.

* Does not include sittings in the Federation Chamber. Includes time expended in meal breaks and other suspensions.

† Years in which elections for the House of Representatives were held.

‡ First sitting of Main Committee 8 June 1994. Main Committee renamed Federation Chamber February 2012. Includes time expended in suspensions.

[1] The sittings on Friday 14 November, Monday 17 November and Tuesday 18 November 2014 counted as one sitting week.

Appendix 17

CONSIDERATION OF LEGISLATION BY THE HOUSE

Year	*Total bills introduced* [1]	*Introduced from Senate*	*Considered in detail* [2]	*Referred to committee*	*Guillotined* [3]	*Acts for year* [4]
1901†	28	6	20		—	17
1902	23	2	24	1 [5]	—	21
1903†	27	5	25		—	21
1904	22	5	20		—	15
1905	33	4	31		—	26
1906†	42	5	34		—	23
1907	29	7	15		—	12
1908	29	—	26		—	27
1909	38	9	34		—	29
1910†	50	9	43		—	41
1911	30	6	30		—	29
1912	52	8	51		—	43
1913†	37	6	28		—	24
1914†	54	8	46		—	36
1915	62	6	61		—	53
1916	45	12	48		—	41
1917†	40	3	41		—	40
1918	50	11	47		2	47
1919†	37	4	37		3	32
1920	66	15	59		2	56
1921	49	6	44		—	43
1922†	47	10	43		—	42
1923	52	6	39		4	36
1924	63	9	64		2	61
1925†	35	8	33		3	32
1926	56	7	54		—	52
1927	50	6	40		—	38
1928†	47	11	46		—	48
1929†	43	3	37		4	35
1930	89	5	85		—	78
1931†	73	2	71		—	56
1932	80	17	76		3	76
1933	77	7	73		1	74
1934†	72	5	70		4	67
1935	76	12	72		8	73
1936	99	8	98		1	94
1937†	54	7	47		2	47
1938	91	10	79		2	78
1939	91	9	89		3	87
1940†	101	6	99		1	99

Year	*Total bills introduced* [1]	*Introduced from Senate*	*Considered in detail* [2]	*Referred to committee*	*Guillotined* [3]	*Acts for year* [4]
1941	73	2	69		—	70
1942	61	4	60		—	58
1943†	59	2	57		—	58
1944	48	6	48		—	46
1945	60	3	59		3	59
1946†	84	2	83		2	81
1947	94	13	93		3	93
1948	96	13	91		3	93
1949†	88	14	88		5	87
1950	87	8	52		4	80
1951†	85	5	65		2	82
1952	111	5	72		5	109
1953	99	18	72		3	96
1954†	85	11	64		2	83
1955†	71	10	64		1	71
1956	114	14	88		3	113
1957	119	17	73		3	103
1958†	101	20	68		14	83
1959	105	7	81		1	104
1960	115	10	104		1	111
1961†	99	6	82		4	98
1962	112	4	80		—	108
1963†	103	10	53		—	103
1964	135	7	54		—	130
1965	158	11	33		—	156
1966†	94	4	20		1	93
1967	133	6	33		—	124
1968	169	14	26		—	157
1969†	101	—	30		2	102
1970	154	6	30		8	127
1971	148	4	34		17	138
1972†	146	6	27		—	139
1973	253	19	61		19	221
1974†	226	15	60		21	166
1975†	215	7	63		19	121
1976	230	13	56		—	208
1977†	164	10	28		2	161
1978	224	14	53	7 [6]	5	211
1979	196	22	32	3 [7]	7	191
1980†	205	13	37	5 [8]	2	177
1981	202	13	47		—	182
1982	196	10	43		1	158
1983†	170	19	37		1	147

Year	*Total bills introduced* [1]	*Introduced from Senate*	*Considered in detail* [2]	*Referred to committee*	*Guillotined* [3]	*Acts for year* [4]
1984†	192	20	51		1	175
1985	234	17	64		26	202
1986	189	11	54	1 [9]	40	168
1987†	211	21	69		1	184
1988	210	12	52		102	155
1989	194	14	60		59	183
1990†	185	13	43		78	144
1991	205	19	68		101	204
1992	282	42	39		132	264
1993†	184	34	30		111	121
1994	197	53	56	9 [10]	14	184
1995	176	32	68	5 [11]	1	176
1996†	173	17	41	5 [11]	6	84
1997	235	15	72	4 [12]	12	222 [13]
1998†	218	13	44	1 [14]	16	135
1999	224	19	71	4 [15]	—	201
2000	192	11	59	6 [16]	—	174
2001†	182	22	62	6 [17]	—	170
2002	254	9	42	2 [18]	2	148
2003	174	8	39	1 [14]	1	150
2004†	223	16	33	—	2	158
2005	182	24	39	1 [14]	10	164
2006	188	32	41	—	19	172
2007†	168	14	40	1 [19]	2	184
2008	203	12	26	5 [20]	—	159
2009	226	9	30	—	6	136
2010†	221	10	29	7 [21]	—	150
2011	238	15	69	93 [22]	19	190
2012	210	6	78	89 [23]	0	206
2013†	203	6	49	35 [24]	13	148
2014	222	4	58	4 [25]	35	135
2015	208	12	27	2 [26]	2	177
2016†	186	4	17	6 [27]	6	102
2017	218	15	33	6	—	133

1 Includes the bills introduced from the Senate. These totals do not reflect all bills before the House during the year, as bills introduced in one year may be considered the following year.
2 Prior to 1994 consideration in detail took place in committee of the whole and was known as the committee stage. Procedures allowing the committee (detail) stage to be bypassed became operative from 13.8.63.
3 From 2005 includes bills with no declaration of urgency, but time limited by suspension of standing orders. There were 3 bills subject to a declaration of urgency in 2005, and 1 bill in 2006; there have been none since.
4 Does not include Constitutional Alteration Bills passed by both Houses, but not approved at Referendum.
5 Referred to a select committee.
6 Referred to legislation committees (for committee stage).
7 Appropriation Bill (No.1) considered by estimates committees (committee stage); 2 bills referred to legislation committees.
8 Appropriation Bill (No.1) considered by estimates committees (committee stage); 4 bills referred to legislation committees.
9 Referred to a joint select committee.
10 3 bills referred to joint committees; 6 referred to standing committees.
11 4 bills referred to joint committees; 1 referred to a standing committee.
12 Referred to joint committees (1 by Senate).
13 Not including Act 223 of 1997 which was 'taken to be' passed in 1997 pursuant to the *Aged Care (Living Longer Living Better) Act 2013* (Schedule 5).
14 Referred to a joint committee.
15 2 bills referred to joint committees; 2 referred to joint select committees (by Senate).

16 4 bills referred to joint committees (3 by Senate); 2 referred to standing committees.
17 3 bills referred to joint committees (2 by Senate); 3 referred to joint select committee.
18 2 bills referred to joint committees.
19 3 bills referred to a joint committee.
20 3 bills referred to joint committees (by Senate); 2 referred to standing committees.
21 3 bills referred to joint committees (by Senate); 4 referred to standing committees.
22 7 bills referred to joint committees; 20 referred to joint select committees; 66 referred to standing committees.
23 21 bills referred to joint committees (1 by Senate); 6 referred to joint select committees (1 by Senate); 62 referred to standing committees.
24 8 bills referred to joint committees (1 by Senate); 3 referred to joint select committees (2 by Senate); 24 referred to standing committees.
25 4 bills referred to a joint committee.
26 2 bills referred to a joint committee.
27 5 bills referred to joint committees; 1 referred to a joint select committee.

† General election years.

Appendix 18

SENATE REQUESTS FOR AMENDMENTS TO BILLS

This list records Senate requests which are in some way noteworthy, including requested amendments which the House either did not initially make or made with significant comment. It also includes bills returned by the Senate with amendments which the House treated as requests or questioned as to whether they should have been requests, and 'pressed' requests. For discussion of the principles involved *see* Chapter on 'Senate amendments and requests'.

Where the year of the bill was not shown in its title in the Votes and Proceedings, the year it was introduced is shown in square brackets.

Year	*Title of bill and action by Senate*	*Response of House*
1901	**Consolidated Revenue Bill (No. 1) [1901]**	
	Returned by the Senate with a 'respectful request' that the House amend the bill to show the items of expenditure comprised in the sums it purported to grant His Majesty. VP 1901–02/61 (14.6.1901)	The Prime Minister admitted the items should have been shown (he had assumed they were attached as a schedule), the bill was laid aside and the Consolidated Revenue Bill (No. 2) introduced. The second bill included the schedule but left out the 'free gift' preamble of the first bill. Members being concerned that there should appear on the face of the bill some express recognition of the originating and granting power of the House, the preamble was amended accordingly and the bill was passed and sent to the Senate. VP 1901–02/61–2 (14.6.1901); H.R. Deb. (14.6.1901) 1174–91
	Consolidated Revenue Bill (No. 2) [1901]	
	Returned by the Senate with 'suggestions' for alterations to the title, the preamble and clause 1. VP 1901–02/67 (21.6.1901)	The Senate's main object was to alter the portion of the preamble which stated the grant was 'made by the House of Representatives'. S. Deb. (20.6.1901) 1340 The House met the Senate's claim by substituting the words 'originated in the House of Representatives'. H.R. Deb. (21.6.1901) 1473 The other two amendments suggested by the Senate were made by the House. VP 1901–02/67 (21.6.1901)
	The Senate agreed to the modification made by the House and requested the House to make the amendments agreed upon. VP 1901–02/69 (25.6.1901)	The House formally made the amendments to the bill. VP 1901–02/69 (25.6.1901)
	The bill was agreed to by the Senate as amended by the House. VP 1901–02/70 (25.6.1901)	
	[Before considering Consolidated Revenue Bill (No. 2) the Senate, on a separate motion of privilege, debated at some length whether the item for the military and naval demonstration at the opening of Parliament was for 'ordinary annual services', or whether it should have been in a separate bill which the Senate could amend. The motion was eventually withdrawn. J 1901–02/41 (20.6.1901); S. Deb. (20.6.1901) 1310–37	[It is also of interest that strong objection was taken in the House to the fact that the Senate returned the bill '. . . with . . . suggestions . . . in which . . . the Senate requests the concurrence of the House of Representatives', it being argued that this form obliterated all distinction between 'suggestion' and 'amendment' (*see* comments by Sir John Quick and others, H.R. Deb. (21.6.1901) 1476

Year	*Title of bill and action by Senate*	*Response of House*
1902	**Customs Tariff Bill [1902]**	
	Returned by the Senate with 93 requested amendments. VP 1901–02/472–81 (24.6.1902)	The House made 33 of the requested amendments, made one in part, made 10 with modifications and did not make 49. VP 1901–02/503–4 (14.8.1902)
	The Senate agreed to the House's modifications on eight requested amendments, did not request the House to make 24 amendments originally requested, modified two of its requested amendments and pressed 26 others. VP 1901–02/521–2 (3.9.1902)	Having been asked to give his ruling as to whether the Senate message was in order and could be received, the Speaker saw it as necessary that the two Houses should jointly make rules or orders laying down the practice to be followed. He ruled that, as the House had not exercised the power given by the Constitution to make rules or orders in respect of the order and conduct of its business and proceedings in relation to money bills under discussion between the two Houses, the question of the receipt and consideration of the message was one to be determined by the vote of the House. He further ruled that the order to take the message into consideration would give all the necessary power to consider the message and to determine all the issues raised in it as a majority may desire. The House then resolved 'That having regard to the fact that the public welfare demands the early enactment of a Federal Tariff, and pending the adoption of Joint Standing Orders, the House refrains from the determination of its constitutional rights or obligations in respect to this Message, and resolves to receive and consider it forthwith'. The House later ordered that the resolution be incorporated in the message returning the bill to the Senate. VP 1901–02/524–5 (3.9.1902) The House then amended its modification to one request, made one amendment as requested, agreed to 11 requests with modifications, insisted on its modification to one request, and did not make 14 requests pressed by the Senate. VP 1901–02/527 (4.9.1902)
	The Senate agreed to consider the message and resolved '. . . that the action of the House of Representatives in receiving and dealing with the reiterated requests of the Senate is in compliance with the undoubted constitutional position and rights of the Senate'. The Senate then agreed to the House's further amendment in regard to one requested amendment, the House's modifications to 11 requested amendments and the modification to one requested amendment the House had insisted on, did not further press the requested amendments to which the House had not acceded and agreed to the bill as amended by the House at the request of the Senate. J 1901–02/551–2 (9.9.1902); VP 1901–02/530–1 (10.9.1902)	

Year	*Title of bill and action by Senate*	*Response of House*
1903	**Sugar Bounty Bill 1903**	
	(originally Sugar Bonus Bill 1903)	
	Returned by the Senate with 10 amendments. VP 1903/55 (9.7.1903) The Senate's committee of the whole originally reported the bill with requested amendments but the bill was recommitted, the resolution of request rescinded and the bill reported with amendments and with the title amended. J 1903/48–9 (1.7.1903), 55 (2.7.1903), 60–1 (8.7.1903)	The Speaker pointed out that one of the amendments would, if passed, increase 'a proposed charge or burden on the people' and was a direct contravention of subsection 3 of section 53 of the Constitution and the alteration, if sought, should have been by request and not by amendment. VP 1903/55 (9.7.1903)
		The House agreed to all the Senate amendments except one because 'the Bill is a proposed law appropriating revenue or moneys, and Amendment No. 3 is an infraction of the provisions of section 53 of the Constitution . . .'. VP 1903/57–8 (14.7.1903)
	The Senate returned the bill with a message that it did not insist upon the amendment, but requested the House to make the amendment. VP 1903/68 (23.7.1903)	The House made the requested amendment with a modification. VP 1903/70 (24.7.1903)
	The Senate agreed to the modification made by the House to the requested amendment. VP 1903/72 (28.7.1903)	
	Appropriation Bill 1903–4	
	Returned by the Senate with five requested amendments. (In considering the estimates the House's committee of supply had struck out salary increases to certain officers of the Senate (H.R. Deb. (15.9.1903) 5050–2). The Senate requested the House to provide these increases and also to reduce the number of, and amount provided for, Superintendents of Works). VP 1903/167, 172 (14.10.1903)	The House made the requested amendment regarding the Superintendents of Works but refused the other requests. VP 1903/172 (14.10.1903)
	The Senate pressed its requested amendments. VP 1903/179 (20.10.1903)	The order of the day for consideration of the Senate's message was discharged and the bill laid aside. VP 1903/181 (21.10.1903)
		A new appropriation bill incorporating the Senate requested amendments was introduced and passed both Houses without amendment or request. VP 1903/182 (21.10.1903); J 1903/237 (21.10.1903)
1906	**Excise Tariff (Spirits) Bill [1906]**	
	Returned by the Senate with nine requested amendments. VP 1906/145 (25.9.1906), 158 (3.10.1906)	The House made five of the requested amendments, made one with a modification and did not make three. VP 1906/158 (30.10.1906)
	The Senate agreed to the modifications of its requested amendment, did not press one requested amendment and pressed two requested amendments the House did not make. VP 1906/169 (10.10.1906)	The House made the requested amendments with modifications. VP 1906/169 (10.10.1906)
	The Senate further pressed its two requested amendments. VP 1906/172 (10.10.1906)	The House made the two requested amendments as originally requested (VP 1906/173 (10.10.1906)), as a consequence of amendments made to the Spirits Bill 1906. H.R. Deb. (10.10.1906) 6408

Year	*Title of bill and action by Senate*	*Response of House*
	Customs Tariff (British Preference) Bill [1906]	
	Returned by the Senate with three requested amendments. VP 1906/171–2 (10.10.1906)	The House made two requested amendments and did not make one, amending the schedule in its place. VP 1906/172 (10.10.1906)
	The Senate pressed its requested amendment and considered that the amendments made were not a modification of the request. VP 1906/173 (10.10.1906); *and see* S. Deb. (10.10.1906) 6372–9	The House made the amendment requested, resolving that it '. . . thought fit at the present stage of this Bill to make the requested amendment instead of the amendment made and transmitted to the Senate, and desires to inform the Senate that in its opinion the amendment previously made was clearly a modification of the amendment requested'. VP 1906/173–4 (10.10.1906)
	The Senate agreed to the bill as amended by the House at the request of the Senate. VP 1906/175 (10.10.1906)	The Governor-General returned the bill to the House with recommended amendments (identical to those modifications made by the House in consequence of the Senate's first request for amendments).
		The House agreed to the amendments recommended by the Governor-General. VP 1906/175 (10.10.1906)
	The Senate disagreed to the amendments recommended by the Governor-General. VP 1906/175 (10.10.1906)	The House resolved not to insist upon the amendments recommended by the Governor-General, made by the House, and disagreed to by the Senate. VP 1906/175 (10.10.1906)
		The Governor-General reserved the bill for the King's assent. Assent was not given. VP 1906/177 (12.10.1906)
1908	**Customs Tariff Bill (1907)**	
	Returned by the Senate with 238 requested amendments. VP 1907–08/303–69 (2.4.1908)	At the commencement of the House's consideration of the Senate message a point of order was raised that the Senate, in making requests for increases in duty, had exceeded its powers under the Constitution. The Speaker ruled inter alia that the message was one which it was within the power of the Senate to send and which, following precedents laid down, the House may well consider and deal with on its merits. VP 1907–08/384–5 (22.4.1908)
		As at 5 May 1908 the House had considered 113 of the requested amendments, making 65 of them, making 12 in part, making 11 with modifications, postponing one and not making 24. A message was sent to the Senate informing it of the manner in which the House had dealt with the foregoing requests and stating that when the remainder had been dealt with the result would be communicated to it. VP 1907–08/399–416 (5.5.1908)
		At 19 May 1908 the House completed consideration of the Senate's remaining requested amendments, making 84 of them, making eight in part, making 10 with modifications, making consequential amendments and not making 24. VP 1907–08/431–52 (19.5.1908)

Year	*Title of bill and action by Senate*	*Response of House*
	The Senate did not press 32 of its requested amendments, agreed to the House's modifications to 21 requested amendments and to consequential amendments, pressed 14 requested amendments and requested that the House reconsider the 27 amendments which were not made, were made in part, or were modified by the House, and which the Senate modified, pressed or pressed in part. VP 1907–08/458–78 (21.5.1908)	A point of order was raised that the Senate had not the power to return any proposed law a second time with requests for amendments. The Speaker was not prepared to give a ruling on the question, informed the House of the precedents on the matter and stated it was up to the House either to proceed with consideration of the message, or to deal with it as it may think fit, or to refuse to consider it. VP 1907–08/479 (21.5.1908)
		The House resolved 'That, having regard to the fact that the public welfare demands the early enactment of the Tariff, and pending the adoption of the Joint Standing Orders, this House refrains from the determination of its constitutional rights or obligations in respect to the Message No. 28 received from the Senate in reference to the Customs Tariff Bill (1907), and resolves to consider it forthwith'. The House also ordered that the resolution be incorporated in the message returning the bill to the Senate. VP 1907–08/485 (26.5.1908)
		The House made certain of the requested amendments pressed by the Senate, made others as modified by the Senate, made others with modifications, in part or with amendments, and did not make the remainder. VP 1907–08/487–501 (27.5.1908)
	The Senate agreed to consider the message and resolved '. . . that the action of the House of Representatives in receiving and dealing with the reiterated Requests of the Senate is in compliance with the undoubted constitutional position and rights of the Senate'. J 1907–08/611 (28.5.1908)	
	The Senate did not further press the requested amendments with which the House had not complied, agreed to the House's modifications to its other requested amendments and agreed to the bill as amended by the House at the request of the Senate. VP 1907–08/506 (29.5.1908)	
	Manufacturers Encouragement Bill [1907]	
	Returned by the Senate with eight amendments. VP 1908/95 (3.12.1908)	The Speaker called attention to two amendments proposed by the Senate (Nos. 7 and 8), noting that under an earlier ruling of the President (S. Deb. (3.10.1907) 4165–7) they were beyond the authority of the Senate.
		The House resolved 'That, whilst of opinion that Amendments Nos. 7 and 8 made by the Senate strictly are in excess of the powers of the Senate (as declared by the President of the Senate on the 3rd October, 1907), yet, in view of the insignificant nature of the excess, the House agree to those Amendments on condition that the matter is not to be drawn into a precedent'. VP 1908/105 (10.12.1908)

Year	*Title of bill and action by Senate*	*Response of House*
	Appropriation Bill 1908–9	
	Returned by the Senate with requested amendments (one primary amendment and consequential amendments to totals in schedule). VP 1908/107 (11.12.1908)	The House did not make the requested amendments. VP 1908/107 (11.12.1908)
	The Senate did not press its requested amendments and agreed to the bill. VP 1908/108 (11.12.1908)	
1910	**Appropriation (Works and Buildings) Bill (1910–11)**	
	Returned by the Senate with an amendment. VP 1910/125 (16.9.1910), 130 (21.9.1910)	The Speaker stated that in his opinion the amendment was out of order as it altered the destination of a vote and enabled the money to be expended at a place not recommended by the estimates forwarded with the Governor-General's message. The House disagreed to the amendment 'Because it alters the destination of the vote'. VP 1910/130 (21.9.1910)
	The Senate insisted on its amendment disagreed to by the House. VP 1910/131 (21.9.1910)	The House insisted on disagreeing to the amendment but as a consequential amendment omitted the whole item and made the necessary alterations in the totals in the bill. VP 1910/134 (22.9.1910) Both the Government and the Opposition in the House supported the Speaker's opinion that the Senate amendment was out of order. (*see* H.R. Deb. (22.9.1910) 3617–8)
	The Senate no longer insisted on its amendment and agreed to the consequential amendment made by the House. VP 1910/138 (23.9.1910)	
1911	**Customs Tariff Bill (1911)**	
	Returned by the Senate with 31 requested amendments. VP 1911/196 (19.12.1911)	The House made one requested amendment with a modification, did not make another and made the remaining 29. VP 1911/202–3 (19.12.1911)
	The Senate did not press the requested amendment which the House did not comply with, agreed to the modification and agreed to the bill as amended. VP 1911/205 (19.12.1911)	
1916	**Supply Bill (No. 3) 1916–17**	
	Returned by the Senate with two requested amendments. VP 1914–17/537 (15.12.1916)	The House did not make the requested amendments. VP 1914–17/537–8 (15.12.1916)
	The Senate pressed its requested amendments. VP 1914–17/539 (15.12.1916)	The House laid the bill aside. VP 1914–17/539 (15.12.1916)

Year	*Title of bill and action by Senate*	*Response of House*
		A new bill, Supply Bill (No. 3) 1916–17 (No. 2), was introduced which gave effect to the Senate's requests. This bill was agreed to by the Senate without requests. VP 1914–17/540, 541 (15.12.1916) In speaking to the question on the third reading the Prime Minister said, in part, 'The Government had to choose between making provision for the payment of the salaries, or, . . . engaging in a political or constitutional struggle over the power of the two Houses. The Government have taken, I think, the wiser way . . .'. (H.R. Deb. (15.12.1916) 10015)
1921	**Customs Tariff Bill (1921)**	
	Returned by the Senate with 92 requested amendments. VP 1920–21/700 (29.9.1921), 713–32 (13.10.1921)	The House made 48 amendments requested by the Senate, made 22 with modifications and did not make 22 others. J 1920–21/449 (16.11.1921)
	The Senate returned the bill and did not press 14 requested amendments, agreed to the House's modifications to 18, pressed 9, agreed to two modifications with further modifications and did not press one requested amendment but made a modification to it. VP 1920–21/789 (24.11.1921), 809–20 (5.12.1921)	The Speaker declined to put the formal question setting a future day for consideration of the question until a motion was moved from the floor as he was of the opinion that the Senate, in pressing certain requests for amendments in the customs tariff, had exceeded the rights conferred on it by section 53 of the Constitution. He added that the right of the Senate to press requests in connection with the tariff had never been admitted by the House. VP 1920–21/789 (24.11.1921)
		The House resolved 'That, having regard to the fact that the public welfare demands the early enactment of the Tariff, and pending the adoption of Joint Standing Orders, this House refrains from the determination of its constitutional rights or obligations in respect of Message No. 97 received from the Senate in reference to the Customs Tariff Bill (1921), and resolves to consider it forthwith'. VP 1920–21/809 (5.12.1921)
		The House made one amendment as originally requested, made three requested amendments as modified by the Senate, made two with modifications, insisted on its modifications to two and insisted on not making four requested amendments. VP 1920–21/809–20 (5.12.1921)
	On receipt of the House's message the President made a statement regarding its 'unusual terms' and the Senate agreed to consider the message and resolved '. . . that the action of the House of Representatives in receiving and dealing with the reiterated Requests of the Senate is in compliance with the undoubted constitutional position and rights of the Senate'. J 1920–21/503 (7.12.1921)	

Year	*Title of bill and action by Senate*	*Response of House*
	During debate on consideration of the message Senator Millen (Minister for Repatriation) said in part 'The other House recognizes fully and frankly the need for an early finalization of the Tariff, and the Senate . . . should adopt the same attitude'. S. Deb. (7.12.1921) 13898	
	The Senate agreed to the modifications made by the House to two requested amendments, did not press two amendments as originally requested and agreed to the modifications made by the House therein, did not further press the other four requested amendments and agreed to the bill as amended by the House at the request of the Senate. VP 1920–21/839 (8.12.1921)	
	Appropriation Bill 1921–22	
	Returned by the Senate with two requested amendments (an increase in a salary vote for a Senate officer and a decrease in the salary vote for the Clerk of the House). VP 1920–21/845 (8.12.1921), 855 (9.12.1921)	The House did not make the requested amendments. VP 1920–21/855 (9.12.1921) In moving the motion that the requested amendments be not made, the Prime Minister indicated that the request seeking a salary increase for the Senate officer would be met by a supplementary appropriation, but 'The Senate must not be permitted to interfere with the control by this House of its own officers'. H.R. Deb. (9.12.1921) 14219
		The Supplementary Appropriation Bill 1921–22 (appropriating the sum of £25 for an increase in salary for the Special Messenger in charge of stores and stamping correspondence in the Senate) was introduced and passed both Houses. VP 1920–21/860 (9.12.1921)
	The Senate pressed the requested amendment relating to the salary of the Clerk of the House. VP 1920–21/863 (9.12.1921)	The House insisted on not making the requested amendment. VP 1920–21/863 (9.12.1921)
		An informal committee of both Houses considered the matter and concluded that 'it is advisable that there should be uniformity in the salaries of the chief officers in the Senate and in the House of Representatives. That in the future preparation of the estimates this uniformity should be observed'.
		The House endorsed the recommendations and gave the necessary authority to the Speaker to carry them into effect. VP 1920–21/863 (9.12.1921)
	In view of the recommendation of the informal committee the Senate did not further press the requested amendment and agreed to the bill. VP 1920–21/864 (9.12.1921)	
1926	**Customs Tariff Bill (1926)**	
	Returned by the Senate with 19 requested amendments. VP 1926–28/175 (11.6.1926), 199–201 (25.6.1926)	The House made 16 requested amendments, made two with modifications and did not make another. VP 1926–28/199–201 (25.6.1926), 204, 204–5 (29.6.1926)

Year	*Title of bill and action by Senate*	*Response of House*
	The Senate agreed to the two modifications, did not press its requested amendment which had not been made and agreed to the bill as amended by the House at the request of the Senate. VP 1926–28/210 (1.7.1926)	
1928	**Customs Tariff Bill (1927)**	
	Returned by the Senate with nine requested amendments. VP 1926–28/518 (22.3.1928), 520–1 (23.3.1928)	The House made seven requested amendments and made two with consequential modifications. VP 1926–28/520–1 (23.3.1928), 523 (27.3.1928), 526 (28.3.1928)
	The Senate agreed to the two consequential modifications made by the House and agreed to the bill as amended by the House at the request of the Senate. VP 1926–28/534 (29.3.1928)	
1930	**Appropriation Bill 1930–31**	
	Returned by the Senate with a requested amendment (that the appropriation be reduced by £1). VP 1929–31/383, 386 (8.8.1930)	The House did not make the amendment requested. VP 1929–31/386 (8.8.1930)
	The Senate did not press its requested amendment and agreed to the bill. VP 1929–31/393 (8.8.1930)	
1932	**Financial Emergency Bill (1932)**	
	Returned by the Senate with an amendment. VP 1932–34/350 (30.9.1932)	The Speaker drew the attention of the House to the fact that the message covered an amendment which may be in conflict with section 53 of the Constitution. The House disagreed to the amendment as it '. . . increases a proposed charge or burden on the people and accordingly is an infringement of section fifty-three of the Constitution'. VP 1932–34/350 (30.9.1932)
	The Senate acquainted the House '. . . that whilst in the opinion of the Senate it is not clear the Amendment would have the effect of increasing the charge or burden upon the people, the Senate refrains at this stage from any determination of its rights under the Constitution, and does not insist upon its Amendment disagreed to by the House of Representatives'. VP 1932–34/352 (30.9.1932)	
1933	**Customs Tariff Bill (1933)**	
	Returned by the Senate with 47 requested amendments. VP 1932–34/686 (4.10.1933), 740–52 (25.10.1933)	The House made 33 requested amendments, made seven with modifications and did not make the remaining seven amendments. J 1932–34/342 (9.11.1933)
	The Senate did not press four of its requested amendments, agreed to the House's modifications to seven of its requested amendments and pressed three of its requested amendments. VP 1932–34/794 (16.11.1933)	Following the announcement of receipt of the Senate message the Speaker reviewed the precedents on the matter and stated that the right of the Senate to press a request for amendment in connection with the tariff had never been admitted by the House, nor had the House determined its constitutional rights and obligations. VP 1932–34/795 (16.11.1933)

Year	*Title of bill and action by Senate*	*Response of House*
		Prior to consideration of the Senate's message the House resolved 'That, having regard to the fact that the public interest demands the early enactment of the Tariff, and pending the adoption of the Joint Standing Orders, this House refrains from the determination of its constitutional rights or obligations in respect of Message No. 103 received from the Senate in reference to the Customs Tariff Bill (1933), and resolves to consider it forthwith'. VP 1932–34/826 (30.11.1933)
		The House agreed to the three amendments originally requested, with modifications. VP 1932–33/828–30 (30.11.1933)
	On receipt of the House's message the President made a statement on the matter and the Senate agreed to consider the message and resolved '... that the action of the House of Representatives in receiving and dealing with the reiterated Requests of the Senate is in compliance with the undoubted constitutional position and rights of the Senate'. J 1932–34/381 (1.12.1933)	
	The Senate agreed to the modifications made by the House to the three requested amendments and agreed to the bill as amended. VP 1932–34/844 (1.12.1933)	
	Excise Tariff Bill (1933)	
	Returned by the Senate with two requested amendments. VP 1932–34/687 (4.10.1933), 770 (2.11.1933)	The House made the requested amendments with modifications. VP 1932–34/770–1 (2.11.1933), 773–4 (3.11.1933)
1936	**Customs Tariff Bill (1936)**	
	Returned by the Senate with nine requested amendments. VP 1934–37/609 (20.5.1936), 612–4 (21.5.1936)	The House made five requested amendments, made one with a modification and did not make the remaining three. VP 1934–37/612–6 (21.5.1936)
	The Senate did not press two requested amendments, agreed to the House's modification to one of its requested amendments, and pressed the remaining requested amendment. VP 1934–37/630 (22.5.1936)	The Speaker made a statement to the House concerning the right of the Senate to press requests in connection with the tariff and suggested the House act as it had done in the past. The House resolved 'That, having regard to the fact that the public interest demands the early enactment of the Tariff, and pending the adoption of the Joint Standing Orders, this House refrains from the determination of its constitutional rights or obligations in respect of Message No. 123, received from the Senate in reference to the Customs Tariff Bill (1936), and resolves to consider it forthwith'. VP 1934–37/630 (22.5.1936)
		The House did not make the requested amendment. VP 1934–37/630–1 (22.5.1936)

Year	*Title of bill and action by Senate*	*Response of House*
	On receipt of the House's message the Deputy President made a statement and the Senate agreed to consider the message and resolved '. . . that the action of the House of Representatives in receiving and dealing with the reiterated Requests of the Senate is in compliance with the undoubted constitutional position and rights of the Senate'. J 1934–37/229 (22.5.1936)	
	The Senate did not further press the requested amendment and agreed to the bill as amended. VP 1934–37/632 (22.5.1936)	
1943	**Income Tax Bill 1943**	
	Returned by the Senate with three requested amendments. VP 1940–43/508–9 (11.3.1943)	The House made two of the amendments requested and did not make the other. VP 1940–43/509 (11.3.1943)
	The Senate pressed its requested amendment. VP 1940–43/513 (16.3.1943)	The Speaker stated that the right of the Senate to press a request for an amendment had never been admitted by the House though the House on previous occasions, having regard to the fact that public welfare demanded the passing of certain legislation, had refrained from a determination of its constitutional rights and obligations. VP 1940–43/513 (16.3.1943)
		The House resolved 'That this House takes note of the statement of Mr Speaker in relation to the constitutional questions raised by Message No. 171, received from the Senate in reference to the Income Tax Bill 1943, but refrains from the determination of its constitutional rights in respect of such Message and resolves to consider it forthwith'.
		The House then made the requested amendment. VP 1940–43/514 (16.3.1943)
1964	**Television Stations Licence Fees Bill 1964**	
	Returned by the Senate with a requested amendment. VP 1964–66/229 (12.11.1964), 235 (17.11.1964)	The House did not make the requested amendment. VP 1964–66/235–6 (17.11.1964)
	The Senate did not press its requested amendment and agreed to the bill. VP 1964–66/238 (17.11.1964)	
1966	**Customs Tariff Bill (No. 2) 1966**	
	Returned by the Senate with three requested amendments. VP 1964–66/599 (11.5.1966), 601 (12.5.1966)	The House did not make the requested amendments. VP 1964–66/601–2 (12.5.1966)
	The Senate did not press its requested amendments and agreed to the bill. VP 1964–66/604 (12.5.1966)	
1967	**Homes Savings Grant Bill 1967**	
	Returned by the Senate with two requested amendments. VP 1967–68/116 (16.5.1967), 139–40 (19.5.1967)	The House did not make the requested amendments. VP 1967–68/139–41 (19.5.1967)

Year	*Title of bill and action by Senate*	*Response of House*
	The Senate did not press its requested amendments and agreed to the bill. VP 1967–68/147 (15.8.1967)	
1968	**Parliamentary Allowances Bill 1968**	
	Returned by the Senate with two requested amendments (to provide for an allowance to the leader of the second non-government party in the Senate and to increase the electorate allowances of Senators by $150). VP 1968–69/316 (21.11.1968)	The House agreed to the first requested amendment but did not make the second. VP 1968–69/316 (21.11.1968)
	The Senate did not press its requested amendment and agreed to the bill. VP 1968–69/318 (21.11.1968)	
1970	**National Health Bill 1970**	
	Returned by the Senate with seven requested amendments, one consequential requested amendment and the message also informed the House that the Senate had made 12 amendments in the bill. VP 1970–72/183 (4.6.1970), 200–1 (10.6.1970)	The House made one requested amendment and did not make the remaining six nor the consequential amendment. VP 1970–72/201–2 (10.6.1970)
	The Senate did not press its requested amendments not made by the House, but made two further requested amendments. VP 1970–72/209–10 (11.6.1970)	The House made the further requested amendments. VP 1970–72/210–1 (11.6.1970)
	The Senate agreed to the bill as amended by the House at its request and requested the concurrence of the House in the 12 amendments made by the Senate. VP 1970–72/212–4 (11.6.1970)	The House agreed to seven amendments, disagreed to two and disagreed to a further three but made amendments in place thereof. VP 1970–72/214–7 (11.6.1970)
	The Senate did not insist upon the amendments disagreed to by the House and agreed to the amendments made by the House in place of three of its amendments. VP 1970–72/225 (12.6.1970)	
1973	**Meat Export Charge Bill 1973**	
	Returned by the Senate with a requested amendment. VP 1973–74/423 (11.10.1973), 490 (6.11.1973)	The House did not make the requested amendment. VP 1973–74/490 (6.11.1973)
	The Senate did not press its requested amendment and agreed to the bill. VP 1973–74/502 (8.11.1973)	
	States Grants (Schools) Bill 1973	
	Returned by the Senate with a requested amendment. VP 1973–74/621 (6.12.1973), 642–3 (12.12.1973)	The House made the requested amendment with modifications and made a consequential amendment. VP 1973–74/642– 5 (12.12.1973)
	The Senate agreed to the modifications made by the House to its request, agreed to the consequential amendment and agreed to the bill. VP 1973–74/654 (13.12.1973)	

Year	*Title of bill and action by Senate*	*Response of House*
1975	**Stevedoring Industry Charge Bill 1975**	
	Returned by the Senate with a requested amendment. VP 1974–75/828 (19.8.1975), 910 (10.9.1975)	The House made the requested amendment with modifications and also made three further amendments (standing orders having been suspended). The House ordered that, in the message returning the bill, the Senate be requested to reconsider the bill in respect of the amendments made by the House. VP 1974–75/910 (10.9.1975)
	The Senate agreed to the House's modifications to its request, agreed to the other amendments made by the House (standing orders having been suspended) and agreed to the bill. VP 1974–75/914 (11.9.1975)	
1981	**Sales Tax Amendment Bills (Nos. 1A to 9A) 1981**	
	Returned by the Senate with seven requested amendments for each bill. VP 1980–83/542 (24.9.1981), 589–92 (14.10.1981)	The House did not make the requested amendments. VP 1980–83/589–93 (14.10.1981)
	The Senate pressed its requested amendments. VP 1980–83/613 (21.10.1981)	The Speaker made a statement concerning the power of the House in respect of money bills and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests. The House resolved: (1) That this House endorses the statement of Mr Speaker in relation to the constitutional questions raised by Message No. 185 transmitted from the Senate in relation to the Sales Tax Amendment Bills (Nos. 1A to 9A) 1981; (2) That this House declines to consider Message No. 185 insofar as it purports to press the requests that were contained in Message No. 160 from the Senate; and (3) That the consideration of further action in relation to the Sales Tax Amendment Bills (Nos. 1A to 9A) 1981 be made an order of the day for the next sitting. VP 1980–83/613–5 (21.10.1981) The order of the day for the consideration of further action in relation to the bills was discharged. VP 1980–83/945 (6.5.1982)
	States Grants (Tertiary Education Assistance) Bill 1981	
	Returned by the Senate with 30 amendments. VP 1980–83/667 (17.11.1981)	The Speaker drew the attention of the House to the fact that the message covered amendments which may have been in conflict with section 53 of the Constitution. The House resolved: (1) That this House considers that the effect of the purported amendments of the Senate would be to increase the burden on the people in contravention of section 53 of the Constitution and therefore declines to take the purported amendments into consideration; and

Year	*Title of bill and action by Senate*	*Response of House*
		(2) That the bill be laid aside. VP 1980–83/668 (17.11.1981)
1985	**Dairy Industry Stabilisation Levy Amendment Bill 1985**	
	Returned by the Senate with a requested amendment. VP 1985–87/327 (23.5.1985)	The House did not make the requested amendment. VP 1985–87/327–8 (23.5.1985)
	The Senate pressed its requested amendment. VP 1985–87/357 (20.8.1985)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the request. The House resolved: That— (1) this House endorses the statement of Mr Speaker in relation to the constitutional questions raised by Message No. 108 transmitted from the Senate in relation to the Dairy Industry Stabilization Levy Amendment Bill 1985; (2) this House declines to consider Message No. 108 insofar as it purports to press the request that was contained in Message No. 69 from the Senate; and (3) consideration of further action in relation to the Dairy Industry Stabilization Levy Amendment Bill 1985 be made an order of the day for the next sitting. VP 1985–87/357–8 (20.8.1985) The order of the day for the consideration of further action in relation to the bill was discharged. VP 1985–87/1046 (5.6.1986)
	Veterans' Entitlements Bill 1985	
	Returned by the Senate with six requested amendments. VP 1985–87/645 (28.11.1985)	The House did not make the requested amendments. VP 1985–87/645–6 (28.11.1985)
	The Senate pressed its requested amendments. VP 1985–87/663 (29.11.1985)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests. The House resolved: That this House— (1) endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 175 transmitted from the Senate in relation to the Veteran's Entitlements Bill 1985; (2) refrains from the determination of its constitutional rights in respect of such message; and (3) resolves to consider the message in committee of the whole House forthwith. VP 1985–87/820–1 (11.4.1986) The House informed the Senate that its requests would be acceptable in the form indicated in a schedule if proposed in conjunction with certain suggested amendments also indicated in the schedule. VP 1985–87/831–8 (14.4.1986)

Year	*Title of bill and action by Senate*	*Response of House*
	Consequent upon consideration of the message from the House, the Senate made 17 requested amendments. VP 1985–87/856–8 (16.4.1986)	The House made the requested amendments. VP 1985–87/856–8 (16.4.1986)
	The Senate agreed to the bill as amended by the House at its request and requested concurrence of the House to 43 amendments. VP 1985–87/871–5 (17.4.1986)	The House agreed to the amendments. VP 1985–87/871–5 (17.4.1986)
1988	**States Grants (Schools Assistance) Bill 1988**	
	Returned by the Senate with two requested amendments and the message also informed the House that the Senate had made five amendments in the bill. VP 1987–90/991 (21.12.1988)	The House did not make the requested amendments. VP 1987–90/991–3 (21.12.1988)
	The Senate pressed its requested amendments and reiterated that it had made five amendments in the bill. VP 1987–90/1012 (21.12.1988)	The Deputy Speaker made a statement concerning the power of the House in respect of money bills and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests. The House resolved: That— (1) this House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 295 transmitted from the Senate in relation to the States Grants (Schools Assistance) Bill 1988; (2) this House, having regard to the fact that the public interest demands the early passage of the legislation, refrains from the determination of its constitutional rights in respect of such message; (3) this House resolves to consider the message in committee of the whole House forthwith; and (4) part (2) of this resolution be incorporated in the message when the Bill is returned to the Senate. The House then made the requested amendments. VP 1987–90/1012–4 (21.12.1988)
	The Senate agreed to the bill as amended by the House at its request and requested the concurrence of the House in the five amendments made by the Senate. VP 1987–90/1016–7 (21.12.1988)	The House agreed to three amendments, two were disagreed to but a new clause was inserted in place of one of them. VP 1987–90/1016–9 (21.12.1988)
	The Senate did not insist on the amendments disagreed to by the House and agreed to the amendment made by the House in place of one of the amendments. VP 1987–90/1026 (28.2.1989)	

Year	*Title of bill and action by Senate*	*Response of House*
	States Grants (Technical and Further Education Assistance) Bill 1988	
	Returned by the Senate with four amendments. VP 1987–90/994 (21.12.1988)	The Deputy Speaker drew the attention of the House to the fact that the message covered an amendment which may have been in conflict with section 53 of the Constitution. The House disagreed to the amendments but made an amendment in place of one of them and informed the Senate in the reasons that one of the amendments increased the proposed charge or burden on the people. VP 1987–90/995–7 (21.12.1988)
	The Senate did not insist on two of its amendments, insisted on the other two, including the one which the House considered was in conflict with section 53 of the Constitution, and agreed to the amendment made by the House in place of one of its amendments. VP 1987–90/1014 (21.12.1988)	The House insisted on disagreeing to the amendments insisted on by the Senate. VP 1987–90/1014–5 (21.12.1988)
	The Senate did not insist on the amendments to which the House insisted upon disagreeing. VP 1987–90/1055 (7.3.1989)	
1990	**Sales Tax (Nos. 1 to 9) Amendment Bills 1990**	
	Returned by the Senate with a requested amendment for each bill. VP 1990–93/119–20 (31.5.1990)	The House did not make the requested amendments but made amendments in their place. VP 1990–93/119–20 (31.5.1990)
	The Senate did not press its requested amendments and agreed to the amendments made in their place. VP 1990–93/129 (1.6.1990)	
1991	**Superannuation Supervisory Levy Bill 1991**	
	Returned by the Senate with a requested amendment. VP 1990–93/642 (16.4.1991)	The House did not make the requested amendment but made an amendment in its place. VP 1990–93/700–1 (18.4.1991)
	The Senate did not press its requested amendment and agreed to the amendment made in its place. VP 1990–93/719 (9.5.1991)	
	Wool Tax (Nos. 1 to 5) Amendment Bills 1991	
	Returned by the Senate with a requested amendment for each bill. VP 1990–93/907–10 (20.6.1991)	The House did not make the requested amendments. VP 1990–93/907–10 (20.6.1991)
	The Senate pressed requested amendments. VP 1990–93/920–1 (21.6.1991)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House as to whether it would consider the Senate message insofar as it purported to press the requests. The House resolved: That— (1) This House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 257 transmitted from the Senate in relation to the Wool Tax (Nos. 1 to 5) Amendment Bills 1991;

Year	*Title of bill and action by Senate*	*Response of House*
		(2) this House having regard to the fact that the public interest demands the early consideration of the legislation, refrains from the determination of its constitutional rights in respect of such message; (3) this House resolves to consider the message in committee of the whole House forthwith; and (4) part (2) of this resolution be incorporated in the message when the Bill is returned to the Senate. The House did not make the requested amendments but made amendments in their place. VP 1990–93/921–3 (21.6.1991)
	The Senate did not further press its requested amendments and agreed to the amendments made in their place. VP 1990–93/927 (21.6.1991)	
	Social Security Legislation Amendment Bill (No. 4) 1991	
	Returned by the Senate with 12 amendments. VP 1990–93/1236 (28.11.1991)	The Deputy Speaker made a statement concerning the amendments and querying whether they should have been pursued as requests. [Proposed private Member's amendment to the Senate Amendment No. 8 ruled out of order as its effect would be to increase the size of benefits payable under the legislation.] The House agreed to the amendments. VP 1990–93/1236–44 (28.11.1991) Later, the Speaker made a detailed statement to the effect that one of the Senate's amendments would indeed increase the charge or burden on the people. He noted that the First Parliamentary Counsel (FPC) had agreed with the House's conclusion on the matter but that the Clerk of the Senate had contested the FPC's arguments. Speaker stated the Clerk would ensure that messages from the Senate returning bills would be examined to protect the interests of the House. Motion endorsing Speaker's statement carried. VP 1990–93/1298 (19.12.1991)
1992	**Local Government (Financial Assistance) Amendment Bill 1992**	
	Returned by the Senate with two amendments. VP 1990–93/1598 (24.6.1992)	The House agreed to Amendment No. 1. With respect to Amendment No. 2, the Speaker made a statement concerning the power of the House in respect of money bills and nature of the Senate amendment and querying whether it should have been pursued as a request for an amendment. The House adopted report of committee of the whole that it: (1) considers that the effect of Amendment No. 2 of the Senate would be to increase the burden on the people in contravention of section 53 of the Constitution and declines to consider the amendment; and

Year	*Title of bill and action by Senate*	*Response of House*
		(2) recommends that the Senate be informed that if Amendment No. 2 contained in Message No. 489 is forwarded to the House as a request for an amendment, the request would be considered by the House. VP 1990–93/1598–9 (24.6.1992)
	The Senate returned the purported amendment as a requested amendment (while not conceding that it should have been a request). VP 1990–93/1628 (25.6.1992)	The House made the requested amendment. VP 1990–93/1628 (25.6.1992)
1993	**Social Security Amendment Bill 1993**	
	Returned by the Senate with an amendment. VP 1993–96/99 (26.5.1993)	The Speaker drew the attention of the House to the effect of the amendment. He stated that from the viewpoint of section 53 the matter was unclear, that it was difficult to be confident about the eventual impact and that it was for the House to decide whether it wished to take any action on this matter. The Parliamentary Secretary responsible for the bill acknowledged the Speaker's statement and stated that the Government would not object to the Senate's message on the grounds that the amendment should have been made as a request. The House disagreed to the amendment. VP 1993–96/99–105 (26.5.1993)
	The Senate did not insist upon its amendment disagreed to by the House. VP 1993–96/149 (17.8.1993)	
	Veterans' Affairs Legislation Amendment Bill 1993	
	Returned by the Senate with an amendment. VP 1993–96/105 (26.5.1993)	The Speaker's statement in respect of the Social Security Amendment Bill was also relevant to this bill. VP 1993–96/99–100 (26.5.1993) The House disagreed to the amendment. VP 1993–96/105–6, 112–6 (26.5.1993)
	The Senate did not insist upon its amendment disagreed to by the House. VP 1993–96/149 (17.8.1993)	
	Taxation Laws Amendment Bill (No. 2) 1993	
	Returned by the Senate with two amendments. VP 1993–96/140 (27.5.1993)	The Speaker made a statement concerning the constitutional significance of the Senate amendment No. 2, and concluded that it was for the House to consider what action it may wish to take. The House resolved: That— (1) the House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 35 transmitted by the Senate in relation to the Taxation Laws Amendment Bill (No. 2) 1993; (2) the House, having regard to the fact that the public interest demands the early enactment of the legislation, refrains from the determination of its constitutional rights in respect of Senate Message No. 35;

Year	*Title of bill and action by Senate*	*Response of House*
		(3) should the House concur in the amendments transmitted in Senate Message No. 35, the Speaker's statement and parts (1) and (2) of this resolution be incorporated in the message returning the Bill to the Senate; and (4) the amendments be taken into consideration, in committee of the whole House, forthwith. The House agreed to the amendments. VP 1993–96/140–3 (27.5.1993)
	Sales Tax (Customs) (Deficit Reduction) Bill 1993	
	Returned by the Senate with five requested amendments. VP 1993–96/358 (18.10.1993)	The House did not make three of the requested amendments, but made the other two requested amendments. VP 1993–96/364–5 (18.10.1993)
	The Senate did not press its requested amendments not made by the House and agreed to the bill. VP 1993–96/403 (21.10.1993)	
	Sales Tax (Excise) (Deficit Reduction) Bill 1993	
	Returned by the Senate with five requested amendments. VP 1993–96/358 (18.10.1993)	The House did not make three of the requested amendments, but made the other two requested amendments. VP 1993–96/365–6 (18.10.1993)
	The Senate did not press its requested amendments not made by the House and agreed to the bill. VP 1993–96/403 (21.10.1993).	
	Sales Tax (General) (Deficit Reduction) Bill 1993	
	Returned by the Senate with five requested amendments. VP 1993–96/359 (18.10.1993)	The House did not make three of the requested amendments, but made the other two requested amendments. VP 1993–96/366 (18.10.1993)
	The Senate did not press its requested amendments not made by the House and agreed to the bill. VP 1993–96/403 (21.10.1993)	
	Excise Tariff (Deficit Reduction) Bill 1993	
	Returned by the Senate with six requested amendments. VP 1993–96/404 (21.10.1993)	The House made one requested amendment, but did not make the other five requested amendments. VP 1993–96/404–7 (21.10.1993)
	The Senate did not press its requested amendment not made by the House and agreed to the bill. VP 1993–96/416–7 (26.10.1993)	
	Customs Tariff (Deficit Reduction) Bill 1993	
	Returned by the Senate with four requested amendments. VP 1993–96/407 (21.10.1993)	The House did not make the requested amendments. VP 1993–96/407–9 (21.10.1993)
	The Senate did not press its requested amendments and agreed to the bill. VP 1993–96/416–7 (26.10.1993)	

Year	*Title of bill and action by Senate*	*Response of House*
1994	**Social Security (Home Child Care and Partner Allowances) Legislation Amendment Bill 1994**	
	Returned by the Senate with two requested amendments. VP 1993–96/825 (1.3.1994)	The House did not make the requested amendments. VP 1993–96/835–6 (2.3.1994)
	The Senate did not press its requests and agreed to the bill. Message returning bill to House included terms of Senate resolution relating to the requested amendments. VP 1993–96/905–7 (24.3.1994)	
	Taxation Laws Amendment Bill (No. 4) 1993	
	Returned by the Senate with four requested amendments and a message informing the House that the Senate had made 14 amendments in the bill. The message stated that the Senate's agreement to make requests did not indicate that the Senate considered requests were appropriate or that the Senate had formed a conclusive view on application of sections 53 or 55 of the Constitution to the bill. The message also stated that the matter of the application and interpretation of the third paragraph of section 53 in relation to bills dealing with taxation had been referred to a Senate committee for consideration. VP 1993–96/884 (24.3.1994)	The Speaker made a statement concerning the proper interpretation of the third paragraph of section 53 of the Constitution. The House resolved: That— (1) the question of the interpretation and application of the provisions of the third paragraph of section 53 of the Constitution be referred to the Standing Committee on Legal and Constitutional Affairs; and (2) a message be sent to the Senate acquainting it of this resolution and asking that the Senate: (a) consider broadening the terms of the reference to its Standing Committee on Legal and Constitutional Affairs to allow its committee to consider the interpretation and application of the third paragraph of section 53 generally; and (b) agree to an order to permit its committee to confer with the House of Representatives Standing Committee on Legal and Constitutional Affairs on this matter with a view to reports being presented to both Houses. The House made the requested amendments. VP 1993–96/884–900 (24.3.1994)
	The Senate agreed to the bill as amended by the House at the request of the Senate, and requested the concurrence of the House in the 14 amendments made by the Senate. VP 1993–96/903–4 (24.3.1994)	The House agreed to the amendments. VP 1993–96/903–5 (24.3.1994)
	Student Assistance Amendment Bill 1994	
	Returned by the Senate with two requested amendments and the message also informed the House that the Senate had made amendments in the bill. VP 1993–96/1035 (30.5.1994)	The House did not make the requested amendments. VP 1993–96/1035–6 (30.5.1994)
	The Senate pressed its requested amendments. VP 1993–96/1108 (27.6.1994)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests.

Year	*Title of bill and action by Senate*	*Response of House*
		The House resolved: That— (1) the House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 289 transmitted by the Senate in relation to the Student Assistance Amendment Bill 1994; (2) the House refrains from the determination of its constitutional rights in respect of Senate Message No. 289; and (3) the message be considered forthwith. The House did not make requested amendments. Bill laid aside. VP 1993–96/1108–10 (27.6.1994)
	Taxation Laws Amendment Bill (No. 3) 1994	
	Returned by the Senate with 34 amendments. VP 1993–96/1406–7 (19.10.1994)	The Deputy Speaker made a statement to the House concerning uncertainty about the effect of Amendment No. 4 in terms of a possible charge or burden on the people, and whether the matter should have been dealt with as a request. The Deputy Speaker suggested that, to ensure the legislation was not unduly delayed, it might suit the convenience of the House to consider the amendments forthwith. The House agreed to 30 amendments, did not agree to three, and made an amendment in place of Senate Amendment No. 4. VP 1993–96/1407–16 (19.10.1994)
	The Senate did not insist upon the amendments disagreed to by the House, agreed to the amendment in place of Amendment No. 4 with a further amendment and made seven further amendments to the bill. VP 1993–96/1603–4 (17.11.1994)	The Speaker made a statement concerning the power of the Senate in terms of section 53 of the Constitution. The House resolved: That— (1) the House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 355 transmitted by the Senate in relation to the Taxation Laws Amendment Bill (No. 3) 1994; (2) the House, having regard to the fact that the public interest demands the early enactment of the legislation, refrains from the determination of its constitutional rights in respect of Senate Message No. 355; (3) should the House concur in the amendments transmitted in Senate Message No. 355, the Speaker's statement and parts (1) and (2) of this resolution be incorporated in the message returning the bill to the Senate; and (4) the amendments be considered forthwith. The House agreed to the amendment made by the Senate to the amendment made by the House in place of Senate Amendment No. 4 and the seven further amendments. VP 1993–96/1604–8 (17.11.1994)

Year	*Title of bill and action by Senate*	*Response of House*
	ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994	
	Returned by the Senate with a requested amendment and the message also informed the House that the Senate had made 67 amendments in the bill. VP 1993–96/1600–1 (17.11.1994)	The House did not make the requested amendment. VP 1993–96/1601 (17.11.1994)
	The Senate did not press its request for an amendment, which the House did not make, but in its place made three amendments and requested the concurrence of the House in the 67 amendments made by the Senate. VP 1993–96/1869–70 (2.3.1995)	The Speaker stated that the right of the Senate to press a request for an amendment had never been accepted by the House, though the House would proceed to consider the message. The House disagreed to the three amendments made in the place of the requested amendment the House did not originally make, disagreed to 38 of the amendments made by the Senate and agreed to 29 further amendments. Bill laid aside. VP 1993–96/1870–88 (2.3.1995)
	Taxation Laws Amendment Bill (No. 4) 1994	
	Returned by the Senate with three amendments. VP 1993–96/1703 (8.12.1994)	The Speaker made a statement concerning the power of the Senate with regard to section 53 of the Constitution and concluded that even if the House dealt with the proposals as amendments, Members would not have wanted this action to be taken as an acceptance by the House that they should have been proposed in this way. The House agreed to the amendments. VP 1993–96/1703–4 (8.12.1994)
	Student Assistance (Youth Training Allowance) Amendment Bill 1994	
	Returned by the Senate with 23 requested amendments and the message also informed the House that the Senate had made 152 amendments in the bill. VP 1993–96/1705 (8.12.1994)	The House made 22 requested amendments and did not make one amendment, making another amendment in its place. VP 1993–96/1705–9 (8.12.1994)
	The Senate did not press its requested amendment not made by the House, agreed to the amendment made in its place and requested the concurrence of the House in the 152 amendments made by the Senate. VP 1993–96/1724 (8.12.1994)	The House agreed to the amendments. VP 1993–96/1724–46 (8.12.1994)
	Student Assistance (Youth Training Allowance —Transitional Provisions and Consequential Amendments) Bill 1994	
	Returned by the Senate with 22 requested amendments and the message also informed the House that the Senate had made 36 amendments in the bill. VP 1993–96/1710 (8.12.1994)	The House made 21 requested amendments and did not make one amendment, making another amendment in its place. VP 1993–96/1710–3 (8.12.1994)
	The Senate did not press its requested amendment not made by the House, agreed to the amendment made in its place and requested the concurrence of the House in the 36 amendments made by the Senate. VP 1993–96/1747 (8.12.1994)	The House agreed to the amendments. VP 1993–96/1747–54 (8.12.1994)

Year	*Title of bill and action by Senate*	*Response of House*
1995	**Student and Youth Assistance Amendment (Youth Training Allowance) Bill 1995**	
	Returned by the Senate with a requested amendment. VP 1993–96/2429 (27.9.1995)	The House did not make the requested amendment. VP 1993–96/2429 (27.9.1995)
	Not returned by the Senate before dissolution of the House on 29 January 1996.	
1996	**Housing Assistance Bill 1996**	
	Returned by the Senate with a requested amendment and the message also informed the House that the Senate had made six amendments in the bill. VP 1996–98/266 (19.6.1996)	The House did not make the requested amendment. VP 1996–98/266–7 (19.6.1996)
	The Senate did not press its requested amendment not made by the House and requested the concurrence of the House in the six amendments made by the Senate. VP 1996–98/278 (20.6.1996)	The House agreed to the amendments. VP 1996–98/278 (20.6.1996)
	Income Tax Rates Amendment (Family Tax Initiative) Bill 1996	
	Returned by the Senate with four amendments. VP 1996–98/916 (21.11.1996)	The Deputy Speaker made a statement to the effect that Senate amendments Nos. 1 and 2 may have been amendments which could increase a proposed charge or burden on the people and, as such, should have been put in the form of requests to the House to amend the bill. The Deputy Speaker also stated that he understood the amendments had originally been drafted as requests; and that he would ask all Senate Ministers, when advised that the appropriate course to follow was by way of request for amendment, to satisfy themselves as to the adherence to constitutional principles before deviating from that course. The House resolved: That— (1) the House endorses the statement of the Deputy Speaker in relation to the constitutional questions raised by Message No. 93 transmitted by the Senate in relation to the Income Tax Rates Amendment (Family Tax Initiative) Bill 1996; (2) the House, having regard to the fact that the public interest demands the early enactment of the legislation, refrains from the determination of its constitutional rights in respect of Senate Message No. 93; and (3) the amendments be considered forthwith. The House agreed to the amendments. VP 1996–98/916–20 (21.11.1996)

Year	*Title of bill and action by Senate*	*Response of House*
	Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996	
	Returned by the Senate with a requested amendment and the message also informed the House that the Senate had made 36 amendments to the bill. VP 1996–98/936–7 (2.12.1996)	Before the House dealt with the Senate's requested amendment the Speaker informed the House that the question had been raised as to whether some of the amendments that the Senate had made to the bill should in fact have been made as requests. The Speaker said that he understood the amendments in question affected eligibility for certain benefits and that expenditure under a standing appropriation would be greater than it would be if the amendments were not made. Nevertheless it appeared that the expenditure would not be any greater than it would have been under the existing law. The burden on the people would not be any greater than under the status quo, but the 'savings' originally proposed in the bill would be reduced. The Speaker further stated that he thought it reasonable for the House to take the view that the Senate alterations could indeed be made as amendments and did not need to take the form of requests; this view was consistent with the view taken by the Standing Committee on Legal and Constitutional Affairs report on these provisions. The Speaker also stated that the point might be relevant to Senate amendments to other bills including the Shipping Grants Legislation Bill listed as the next item of business; unless other factors were involved he did not propose to comment on each such instance. The House made the requested amendment. VP 1996–98/937–8 (2.12.1996)
1997	**Private Health Insurance Incentives Bill 1997**	
	Returned by the Senate with three requested amendments. VP 1996–98/1252–3 (5.3.1997)	The House did not make the requested amendments. VP 1996–98/1252–4 (5.3.1997)
	The Senate did not press its requested amendments not made by the House and agreed to the bill. VP 1996–98/1446–7 (26.3.1997)	
	Medicare Levy Amendment Bill (No. 2) 1996	
	Returned by the Senate with 13 requested amendments. VP 1996–98/1255 (5.3.1997)	The House did not make the requested amendments. VP 1996–98/1255–7 (5.3.1997)
	The Senate did not press its requested amendments not made by the House and made nine further requested amendments. VP 1996–98/1447 (26.3.1997)	The House made the requested amendments. VP 1996–98/1447–8 (26.3.1997)

Year	*Title of bill and action by Senate*	*Response of House*
	Telecommunications Bill 1996	
	Returned by the Senate with 280 amendments. VP 1996–98/1357 (26.3.1997)	The Second Deputy Speaker made a statement concerning three of the amendments. He said, in part, as he understood the amendments that it was possible they could result in additional payments being made from the proposed universal service reserve. He went on to say that the House might take the view that the connection between the amendments and expenditure from the consolidated revenue fund was somewhat uncertain and, in the circumstances, it might not object to the alterations having been made as amendments rather than as requests. The House agreed to the amendments. VP 1996–98/1357–1402 (26.3.1997)
	Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures Bill) 1997	
	Returned by the Senate with 12 amendments. VP 1996–98/2179 (23.11.1997)	The Speaker made the following statement: It appears that proposed changes … [in 8 of the amendments] will, if enacted, have the effect of increasing the expenditure under the standing appropriation in the principal Act. … The change proposed by the Senate … [in 2 amendments] would create a discretionary power to increase expenditure under a standing appropriation. The increase would be a legally possible, probable and expected increase in expenditure. There is significant doubt that the Senate may proceed in such circumstances by way of amendment, because of the requirements of section 53 of the Constitution. A more appropriate way to proceed would be by way of request for amendment However, the purported amendments raise an additional important point of constitutional principle. Section 56 of the Constitution provides that a vote, resolution or proposed law for the appropriation of revenue shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated. House standing orders 297 and 298 are complementary to section 56, and provide for messages from the Governor-General recommending an appropriation for the purposes of or in relation to amendments or requests to be announced before the amendment is moved or considered. It is my belief that certain of the purported amendments would increase expenditure under the appropriation, as I noted earlier. My belief is supported by legal opinion. … No message has been reported in respect of the purported Senate amendments. In fact, a message could not be reported relating to a Senate amendment—only for Senate requests for amendment.

Year	*Title of bill and action by Senate*	*Response of House*
		In the light of this, the matter for consideration becomes not so much the privileges and rights as between the two Houses, but observance of the requirements of the Constitution concerning the appropriation of revenue. Where there is a possibility of certain sections of the Constitution being considered to be matters on which the Courts might not make a pronouncement, there is an obligation on all involved in the parliamentary process to ensure that Constitutional propriety is observed. The House resolved— That the House endorses the statement of the Speaker in relation to the constitutional questions raised by message No. 341 transmitted by the Senate in relation to the Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997. The House disagreed to the 10 purported amendments. A message from the Governor-General was announced recommending appropriation for the purposes of the proposed amendments The House agreed to 10 amendments to the bill in place of (and in the same terms as) the purported amendments disagreed to, and agreed to the two remaining Senate amendments. VP 1996–98/2549–52 (1.12.1997)
	The Senate agreed to the amendments made by the House in place of its amendments. VP 1996–98/2620 (3.12.1997)	
1998	**Taxation Laws Amendment (Trust Loss and Other Deductions Bill) 1997**	
	Returned by the Senate with 24 amendments. VP 1996–98/2864 (26.3.1998)	The Deputy Speaker made the following statement: My attention has been drawn to the alterations proposed by Senate amendments (10) and (11). I understand that the alteration in amendment (10) will extend the scope of a definition in the Bill. One result would apparently be that some taxpayers will have tax deductions and other benefits disallowed, so that they would be liable to pay more tax. Amendment (11) is consequential. It appears that both of these alterations were prepared and circulated in the Senate as requests rather than amendments. This reflected advice received by the Government in terms of compliance with the 3rd paragraph of section 53 of the Constitution. Following a statement by the Chairman of Committees in the Senate these alterations were however treated as amendments. On their face the alterations fail the test proposed by our Legal and Constitutional Affairs Committee as to the type of amendments open to the Senate. The committee referred, inter alia, to a request being required where an alteration moved in the Senate will make an increase in the total tax payable legally possible.

Year	*Title of bill and action by Senate*	*Response of House*
		I note however, that the supplementary explanatory memorandum presented stated 'the amendments to the Bill will not affect the financial impact outlined in paragraph 1.45 of the explanatory memorandum to the Bill'. Matters such as these often raise difficult questions of interpretation. Having drawn attention to this matter, I acknowledge the House may choose not to take any objection and proceed to consider the Senate amendments. On this occasion the House may wish to follow that course. The House considered and agreed to the amendments. VP 1996–98/2864–5 (26.3.1998)
	Ballast Waters Research and Development Funding Levy Collection Bill 1997	
	Returned by the Senate with three amendments. VP 1996–98/2900 (1.4.1998)	The Deputy Speaker made a statement on the amendments [which, in effect replaced outmoded appropriation provisions with new appropriating provisions]: … The Senate may seek by way of amendment the removal from a bill of appropriating provisions. However, having done that, the Senate should not then insert provisions which appropriate moneys. The appropriate way to proceed in these circumstances is by way of request … This is supported by legal opinion. The matter for consideration is not so much one of the privileges and rights between the two Houses, but observance of the requirements of the Constitution concerning the appropriation of revenue. … As the Senate's purported amendments have an appropriating effect, there is significant doubt as to the constitutionality of proceeding in the absence of a Governor-General's message recommending appropriation. … The House endorsed the statement of the Deputy Speaker in relation to the constitutional questions raised. The House disagreed to the Senate's purported amendments. Message from the Governor-General was announced recommending appropriation for the purposes of the proposed amendments to the bill. The House agreed to three amendments to the bill in place of (and in the same terms as) the amendments disagreed to. VP 1996–98/2957–9 (8.4.1998)
	The Senate agreed to the amendments made by the House in place of its amendments. VP 1996–98/3070 (1.6.1998)	

Year	*Title of bill and action by Senate*	*Response of House*
	Child Support Legislation Amendment Bill 1998	
	Returned by the Senate with nine amendments. VP 1998–2001/109 (1.12.1998)	The Deputy Speaker made statement drawing the attention of the House to one of the Senate amendments which had inserted provisions in the Child Support (Assessment) Act which could increase the amount of child support collected under the Child Support (Registration and Collection) Act. Under that Act amounts equal to those collected are paid out of the Consolidated Revenue Fund. Because of the provisions of section 56 of the Constitution it would seem that such alterations should be accompanied by a message from the Governor-General recommending the appropriation. The Deputy Speaker indicated that if the House wished to entertain the proposals reflected in the amendment, it could choose to proceed by alternative means. The House endorsed the statement of the Deputy Speaker in relation to the constitutional questions raised. The House agreed to eight amendments and disagreed to the remaining amendment. A message from the Governor-General was announced recommending appropriation for the purposes of the proposed amendment. The House agreed to an amendment to the bill in place of (and in the same terms as) the amendment disagreed to. VP 1998–2001/175–6 (3.12.1998)
	The Senate agreed to the amendment made by the House in place of its amendment. VP 1998–2001/197 (8.12.1998)	
1999	**Health Legislation Amendment Bill (No. 2) 1999**	
	Returned by the Senate with a requested amendment and the message also informed the House that the Senate had made 12 amendments to the bill. VP 1998–2001/444 (25.3.1999)	The House did not make the requested amendment. VP 1998–2001/455–6 (29.3.1999)
	Returned to the House with 12 amendments. VP 1998–2001/468 (30.3.1999)	The House agreed to the requested amendments. VP 1998–2001/468 (30.3.1999)

Year	*Title of bill and action by Senate*	*Response of House*
	Telecommunications (Consumer Protection and Service Standards) Bill 1998 **Telecommunications (Universal Service Levy) Amendment Bill 1998**	
	The Senate returned the bills with 42 amendments. VP 1998–2001/629, 630 (22.6.1999)	Prior to the House considering the amendments (together with amendments to two other related bills), the Deputy Speaker made the following statement: Amendments to the Telecommunications (Consumer Protection and Service Standards) Bill and the Telecommunications (Universal Service Levy) Amendment Bill have given rise to questions about the provisions of section 53 of the Constitution. The second paragraph of section 53 provides that the Senate may not amend a proposed law imposing taxation. The third paragraph provides that the Senate may not amend any proposed law so as to increase any proposed charge or burden on the people. It is possible that objection could be taken to Senate amendment 34 to the Telecommunications (Consumer Protection and Service Standards) Bill on the ground that it would cause an increase in expenditure. I understand however that in essence it is not clear that there will be what might be regarded as a genuine increase in the expenditure of public money. It is also possible to regard the Levy Amendment Bill as a bill imposing taxation, and so incapable of being amended by the Senate. This is however a highly technical argument. On balance, and while noting the issue, the House may consider that it would be appropriate not to take any objection on constitutional grounds to the Senate amendments in question. The House endorsed the statement by the Deputy Speaker, and considered and agreed to the amendments. VP 1998–2001/658–61 (24.6.1999)
2000	**Youth Allowance Consolidation Bill 1999**	
	Returned by the Senate with two requested amendments. VP 1998–2001/1356 (4.4.2000)	The House did not make one of the requested amendments and made an amendment in its place. VP 1998–2001/1383 (6.4.2000) The House did not make the other requested amendment. VP 1998–2001/1432 (10.5.2000)
	The Senate did not press its requested amendments not made by the House, agreed to the amendment made by the House in place of one requested amendment and requested the House to make four further amendments. VP 1998–2001/1565–6 (22.6.2000)	The House agreed to the further requested amendments. VP 1998–2001/1579 (26.6.2000)
	The Senate returned the bill with two amendments. VP 1998–2001/1592 (28.6.2000)	The House agreed to the amendments. VP 1998–2001/1592 (28.6.2000)

Year	*Title of bill and action by Senate*	*Response of House*
	New Business Tax System (Miscellaneous) Bill 1999	
	Returned by the Senate with seven amendments. VP 1998–2001/1503 (6.6.2000)	Prior to the House considering the Senate amendments, the Deputy Speaker made a statement concerning their constitutional significance (specifically to s.53). The effect of the amendments would be to increase the class eligible to receive payments from public funds as a result of the credit franking process. The House endorsed the statement by the Deputy Speaker. The amendments were disagreed to. A message was announced recommending an appropriation for the purposes of amendments, and the House made amendments in place of (and in the same terms as) the Senate amendments disagreed to. VP 1998–2001/1513 (7.6.2000)
	The Senate agreed to the amendments made by the House in place of its amendments. VP 1998–2001/1584 (27.6.2000)	
	Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000	
	Returned by the Senate with a requested amendment and the message also informed the House that the Senate had made 14 amendments to the bill. VP 1998–2001/1561 (22.6.2000)	The House did not make the requested amendment. VP 1998–2001/1561 (22.6.2000)
	The Senate did not press its requested amendment which the House had not made and further requested the House to make an amendment to the bill. VP 1998–2001/1592 (28.6.2000)	The House did not make the further requested amendment. VP 1998–2001/1592 (28.6.2000)
	The Senate did not press its further requested amendment which the House had not made and agreed to the bill with 14 amendments. VP 1998–2001/1608 (29.6.2000)	The House did not agree to the amendments. VP 1998–2001/1608–10 (29.6.2000)
	The Senate did not insist on its amendments disagreed to by the House. VP 1998–2001/1617 (29.6.2000)	
	New Business Tax System (Alienation of Personal Services Income) Bill 2000	
	Returned by the Senate with 13 requested amendments for amendments. VP 1998–2001/1619 (29.6.2000)	The House made 10 requested amendments, did not make two requested amendments and made two amendments in place of another requested amendment. VP 1998–2001/1619 (29.6.2000)
	The Senate did not press its requested amendments not made by the House, agreed to the amendments made by the House in place of two requested amendments, and agreed to the bill as amended by the House at the request of the Senate. VP 1998–2001/1629 (14.8.2000)	

Year	*Title of bill and action by Senate*	*Response of House*
	States Grants (Primary and Secondary Education Assistance) Bill 2000	
	Returned by the Senate with two requests and the message also informed the House that the Senate had made 23 amendments to the bill. VP 1998–2001/1898 (27.11.2000)	The House did not make the requested amendments. VP 1998–2001/1898–1901 (27.11.2000)
	The Senate pressed its requested amendments. VP 1998–2001/1909 (28.11.2000)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests. The House resolved that: (1) the House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 496 transmitted by the Senate in relation to the States Grants (Primary and Secondary Education Assistance) Bill 2000; (2) the House refrains from the determination of its constitutional rights in respect of Senate message No. 496; and (3) the message be considered forthwith. The House did not make the requested amendments purportedly pressed by the Senate. VP 1998–2001/1909–12 (28.11.2000)
	The Senate further pressed its requests for amendments. VP 1998–2001/1960 (5.12.2000)	The Speaker stated that the House had never accepted that the Senate had a right to repeat its requests for an amendment to a bill when the House had rejected the request, however there had been occasions in the past when the House had refrained from determining its constitutional rights. The Speaker concluded that it rested with the House as to whether it would consider the Senate message containing requested amendments which the Senate had purported to press further. The House resolved that: (1) the House: (a) endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 504 transmitted by the Senate in relation to the States Grants (Primary and Secondary Education Assistance) Bill 2000; (b) refrains from any determination of its constitutional rights in respect of Senate message No. 504; (c) declines to consider further the requested amendments which the Senate has purported to press further; (d) calls on the Senate to agree to the Bill as transmitted to it by the House of Representatives without requests, amendments or further delay; and (2) the message returning the Bill to the Senate convey the terms of this resolution. VP 1998–2001/1960–3 (5.12.2000)

Year	*Title of bill and action by Senate*	*Response of House*
	Returned by the Senate with 23 amendments. VP 1998–2001/2004 (7.12.2000)	The House did not agree to the amendments. VP 1998–2001/2004–17 (7.12.2000)
	The Senate did not insist on its amendments disagreed to by the House. VP 1998–2001/2025–6 (7.12.2000)	
	Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000	
	Returned by the Senate with a requested amendment. VP 1998–2001/1898 (27.11.2000)	The House did not make the requested amendment. VP 1998–2001/1918–9 (29.11.2000)
	The Senate pressed its requested amendment. VP 1998–2001/1963 (5.12.2000)	The Speaker made a statement concerning the power of the House in respect of money bills, and concluded that it rested with the House whether it would consider the Senate's message insofar as it purported to press the requests. The House resolved: That— the House endorses the statement of the Speaker in relation to the constitutional questions raised by Message No. 507 transmitted by the Senate in relation to the Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2000; the House refrains from the determination of its constitutional rights in respect of Senate message No. 507; and the message be considered forthwith. The House did not make the requested amendment which the Senate had purported to press. VP 1998–2001/1963–4 (5.12.2000)
	The Senate did not further press its requested amendment which the House had not made. VP 1998–2001/1998 (7.12.2000)	
2001	**Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001**	
	Returned by the Senate with a requested amendment. VP 1998–2001/2413 (27.6.2001)	The House did not make the requested amendment and made nine amendments in place thereof. VP 1998–2001/2413–4 (27.6.2001)
	The Senate did not press its requested amendment and agreed to the amendments made by the House. VP 1998–2001/2445 (28.6.2001)	
	States Grants (Primary and Secondary Education Assistance) Amendment Bill (No.2) 2001	
	Returned by the Senate with a requested amendment. VP 1998–2001/2673 (27.9.2001)	The House did not make the requested amendment. VP 1998–2001/2673–5 (27.9.2001)
	The Senate pressed its requested amendment. VP 1998–2001/2691–2 (27.9.2001)	The House was dissolved before the Senate message was considered by the House, and the bill lapsed.

Year	*Title of bill and action by Senate*	*Response of House*
	New Business Tax System (Thin Capitalisation) Bill 2001	
	Returned by the Senate with 70 amendments. VP 1998–2001/2686 (27.9.2001)	The Speaker made a statement noting that the Office of Parliamentary Counsel had provided a statement of reasons as to why some of the Senate's amendments should be moved as requests. The effect of the amendments would reduce the availability of deductions to certain taxpayers, and therefore increase the burden of taxation on those taxpayers, contrary to the third paragraph of section 53. The House resolved that: the House endorses the statement of the Speaker in relation to the constitutional questions raised by the Senate message in respect of this bill; the House, having regard to the public interest in the early enactment of the bill, refrains from the determination of its constitutional rights in respect of the matter; and the amendments be considered forthwith. The House agreed to the amendments. VP 1998–2001/2686–7 (27.9.2001)
2002	**Members of Parliament (Life Gold Pass) Bill 2002**	
	Returned by the Senate with a requested amendment. VP 2002–04/490 (16.10.2002)	The House did not make the requested amendment. VP 2002–04/492–3 (16.10.2002)
	The Senate pressed its requested amendment. VP 2002–04/517 (22.10.2002)	The Deputy Speaker made a statement noting that the House had never accepted that the Senate had a right to repeat and thereby press or insist on a requested amendment in a bill which the Senate was not able to amend itself. The House resolved that: (1) the House endorses the statement of the Speaker in relation to the constitutional questions raised . . . and (2) the House refrains from the determination of its constitutional rights in respect of Senate message No. 131. The House did not make the requested amendment. VP 2002–04/580–3 (14.11.2002)
	The Senate did not further press its requested amendment. VP 2002–04/591–2 (2.12.2002)	
	Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002	
	Having divided the bill into two bills, the Senate returned one of proposed bills, incorporating 24 amendments. VP 2002–04/599–600 (3.12.2002)	The Deputy Speaker made a statement, noting that on two occasions since 1995 the Senate had requested that the House consider a proposal to divide a House bill and in both cases the House did not consider the message seeking the concurrence of the House in the Senate action.

Year	*Title of bill and action by Senate*	*Response of House*
		The House resolved that: the House— (1) endorses the statement of the Deputy Speaker . . . (2) declines to consider Senate message No. 159; and (3) requests the Senate to reconsider the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 as originally transmitted to the Senate . . . VP 2002–04/599–601 (3.12.2002)
	The Senate did not insist on its division of the bill and returned the bill with 94 amendments. The message also reported a Senate resolution reasserting the principle that the division of any bill by the Senate was a form of amendment of a bill, not different in principle from any other form of amendment, and should be considered as such. VP 2002–04/678 (12.12.2002)	The Speaker stated that a number of the amendments contained in the Senate schedule should have been addressed to the House in the form of requests for amendments. He indicated that the message also included the text of a resolution agreed to by the Senate relating to the bill but said that this inclusion of other matters in the formal legislative process on a bill was not necessary for the enactment of the measure. The House agreed to five Senate amendments and disagreed to 41 Senate amendments. A message from the Governor-General was announced recommending an appropriation for the purposes of amendments. The House then disagreed to 48 Senate amendments and made amendments (in the same terms) in their place. VP 2002–04/678–9 (12.12.2002)
	The Senate agreed to the amendments made by the House in place of its amendments. VP 2002–04/684 (12.12.2002)	
	[Bill later agreed to following action in relation to the other 41 amendments]	
2003	**Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003**	
	Returned by the Senate with eight requested amendments. VP 2002–04/1284 (3.11.2003)	The House did not make the requested amendments. VP 2002–04/1284-5 (3.11.2003)
	The Senate pressed its requested amendments. VP 2002–04/1335 (27.11.2003)	Before considering the Senate message, the Deputy Speaker made a statement reminding the House that it had never accepted that the Senate had a right to repeat and thereby press or insist on requests for amendments to bills which the Senate was not able to amend itself. The House resolved that: (1) the House: (a) endorses the statement of the Speaker in relation to the constitutional questions raised . . .; (b) notes that, in the past, the purported pressing of requests was accepted as a failure to pass proposed legislation in the terms of section 57 of the Constitution;

Year	*Title of bill and action by Senate*	*Response of House*
		(c) asserts that, in considering this constitutionally unsound practice of the Senate in purporting to press its requests, the House refrains from any determination of its constitutional rights in respect of Senate message No. 361; (d) declines to consider further the requested amendments which the Senate has purported to press; and (2) the message returning the Bill to the Senate convey the terms of this resolution. VP 2002–04/1545–6 (29.3.2004)
	The Senate did not further press its requested amendments and agreed to the bill with seven amendments. VP 2002–04/1574–5 (1.4.2004)	The House disagreed to the Senate amendments. VP 2002–04/1574–5 (1.4.2004)
	The Senate did not insist on its amendments disagreed to by the House. VP 2002–04/1582 (1.4.2004)	
	Military Rehabilitation and Compensation Bill 2003	
	Returned by the Senate with eight requested amendments. VP 2002–04/1554 (30.3.2004)	The House made seven of the requested amendments and did not make the other. VP 2002–04/1558 (31.3.2004)
	The Senate did not press its requested amendment and agreed to the bill with 43 amendments. VP 2002–04/1572 (1.4.2004)	The House agreed to the amendments. VP 2002–04/1572 (1.4.2004)
2005	**Higher Education Legislation Amendment (2005 Budget Measures) Bill 2005**	
	Returned by the Senate with three amendments. VP 2004–07/758 (9.11.2005)	The Deputy Speaker made a statement concerning Senate amendments (1) and (2) and the matters of constitutional principle they raised: I understand that proposed Senate amendments (1) and (2) will, if enacted, have the effect of moving expenditure between financial years. The view has been taken that legally this would amount to a change in the destination of the appropriation. There is doubt that the Senate may proceed in these circumstances by way of amendment because of section 53 of the Constitution. Among other things, this section prohibits the Senate from amending a bill so as to increase 'any proposed charge or burden on the people'. I am advised that the view has been taken that, where expenditure is to be transferred in such circumstances, section 56 of the Constitution requires that the proposed appropriation must be recommended by a message from the Governor-General. I understand that such a message has been obtained in this case.

Year	*Title of bill and action by Senate*	*Response of House*
		The House will need to consider the way in which it should proceed to deal with the matters raised in Senate amendments (1) and (2). If it wishes to entertain the proposals reflected in the amendments, it may choose to proceed by alternative means. The matter for consideration is not so much one of the privileges and rights between the two Houses as one observance of the requirements of the Constitution concerning the appropriation of revenue. The House endorsed the statement of the Deputy Speaker in relation to the constitutional questions raised. The House disagreed to Senate amendments (1) and (2), and agreed to amendment (3). Message from the Governor-General was announced recommending an appropriation for the purposes of amendments to the bill. The House then agreed to two amendments in place of the amendments disagreed to and agreed to a further amendment. VP 2004–07/841 (5.12.2005)
	The Senate did not insist on its amendments, agreed to the House amendments made in place of its amendments, and agreed to the further amendment. VP 2004–07/901 (7.2.2006) While the House amendments were being considered the Chairman read a statement, explaining 'The amendments were moved by the government in the Senate as amendments on the basis of the well-established principle that amendments in the Senate may re-allocate appropriations without increasing the amount of expenditure'. S. Deb. (9.12.2005) 45	
2009	**Health Insurance Amendment (Compliance) Bill 2009**	
	Returned by the Senate with 10 amendments. VP 2008–10/1496 (24.11.2009)	The Deputy Speaker made a statement concerning the Senate amendments and the matters of constitutional principle they raised: As I understand it, advice has been provided that the amendments, if enacted, would have the effect of increasing amounts that would be payable under a standing appropriation in the *Health Insurance Act 1973*, and would be construed as appropriating money.

Year	*Title of bill and action by Senate*	*Response of House*
		There is doubt that the Senate may proceed in these circumstances by way of amendment because of section 53 of the Constitution. Among other things, this section prohibits the Senate from amending any bill so as to increase 'any proposed charge or burden on the people'. The view has been taken that where revenue or moneys are to be appropriated in these circumstances, section 56 of the Constitution requires that the proposed appropriation must be recommended by a message from the Governor-General. The House will need to consider the way in which it should proceed to deal with the matters raised in the Senate amendments. If the House wishes to entertain the proposal reflected in the amendments, it may choose to proceed by alternative means. The House disagreed to two amendments, and agreed to eight amendments. VP 2008–10/1496–7 (24.11.2009)
	The Senate insisted on its amendments disagreed to by the House. VP 2008–10/1538 (26.11.2009)	The House insisted on disagreeing to the amendments disagreed to by the House and, following suspension of standing orders, made an unrelated amendment to the bill. VP 2008–10/1651–2 (24.2.2010) The House was dissolved before the House message was considered by the Senate, and the bill lapsed.
2015	**Medical Research Future Fund Bill 2015**	
	Returned by the Senate with 20 amendments. VP 2013–16/1498 (12.8.2015)	The Speaker made a statement concerning Senate amendment (1) and the matter of constitutional principle it raised: Amendment (1) proposes to amend the definition of medical innovation to expand the purposes for which amounts may be paid, from the Medical Research Future Fund Special Account. This account is established by clause 14 of the bill, with payments being made out of the Consolidated Revenue Fund (under a standing appropriation, in section 80 of the *Public Governance, Performance and Accountability Act 2013*).

Year	*Title of bill and action by Senate*	*Response of House*
		There is doubt that the Senate may proceed in such circumstances by way of amendment, because of the requirements of sections 53 and 56 of the Constitution. The matter for consideration is not so much one of the privileges and rights between the two Houses, but observance of the requirements of the Constitution concerning the appropriation of revenue. I am advised that the view has been taken, where there is an expansion of the purposes for which money may be drawn from a standing appropriation, section 56 of the Constitution requires that the proposed appropriation be recommended by a message from the Governor-General. I understand that such a message has been obtained in this case. If the House wishes to entertain the proposal reflected in the Senate's proposed amendment, the House may choose to proceed by alternative means. The House endorsed the statement of the Speaker in relation to the constitutional questions raised. The House disagreed to Senate amendment (1). Message from the Administrator was announced recommending an appropriation for the purpose of an amendment to the bill. The House then agreed to an amendment in place of the amendment disagreed to and agreed to Senate amendments (2) to (20). VP 2013–16/1504 (13.8.2015)
	The Senate agreed to the amendment made by the House in place of its amendment. VP 2013–16/1508 (13.8.2015)	
2016	**Northern Australia Infrastructure Facility Bill 2016**	
	Returned by the Senate with three amendments. VP 2013–16/65 (3.9.2016)	The Speaker made a statement concerning the Senate amendments and the matters of constitutional principle they raised: The amendments propose to amend the definition of 'Northern Australia' in the bill. Such change in the definition would change the destination of the appropriation in clause 41 of the bill. There is doubt that the Senate may proceed in such circumstances by way of amendment, because of the requirements of section 53 of the Constitution. Among other things, this section prohibits the Senate from amending a bill so as to increase 'any proposed charge or burden on the people'.

Year	*Title of bill and action by Senate*	*Response of House*
		The matter for consideration is not so much one of the privileges and rights between the two Houses, but observance of the requirements of the Constitution concerning the appropriation of revenue. I am advised that the view has been taken, where expenditure is appropriated in these circumstances, section 56 of the Constitution requires that the proposed appropriation be recommended by a message from the Governor-General. I understand that such a message has been obtained in this case. If the House wishes to entertain the proposal reflected in the Senate's proposed amendments, the House may choose to proceed by alternative means. The House endorsed the statement of the Speaker in relation to the constitutional questions raised. Message from the Administrator was announced recommending an appropriation for the purposes of amendments to the bill. The House then disagreed to the Senate amendments and made three amendments in their place. VP 2013–16/65–6 (3.5.2016)
	The Senate agreed to the amendments made by the House in place of its amendments. VP 2013–16/73 (4.5.2016)	

Appendix 19

BILLS RESERVED FOR THE SOVEREIGN'S ASSENT AND BILLS RETURNED BY THE GOVERNOR-GENERAL WITH RECOMMENDED AMENDMENTS

Reserved for Sovereign's Assent:
Customs Tariff (British Preference) Bill 1906 (*failed to receive Royal Assent*)
Navigation Bill 1912 (Act No. 4 of 1913)
Navigation Bill 1919 (Act No. 32 of 1919)
Navigation Bill 1920 (Act No. 1 of 1921)
Navigation Bill 1925 (Act No. 8 of 1925)
Navigation Bill 1926 (Act No. 8 of 1926)
Navigation (Maritime Conventions) Bill 1934 (Act No. 49 of 1934)
Navigation Bill 1935 (Act No. 30 of 1935)
Judiciary Bill 1939 (Act No. 43 of 1939)
Navigation Bill 1942 (Act No. 1 of 1943)
Royal Style and Titles Bill 1953 (Act No. 32 of 1953)
Flags Bill 1953 (Act No. 1 of 1954)
Privy Council (Limitation of Appeals) Bill 1968 (Act No. 36 of 1968)
Royal Style and Titles Bill 1973 (Act No. 114 of 1973)
Privy Council (Appeals from the High Court) Bill 1975 (Act No. 33 of 1975)

Bills returned by Governor-General with recommended amendments:
Commonwealth Electoral Bill 1902
High Court Procedure Bill 1903
Life Assurance Companies Bill 1905
Customs Tariff (British Preference) Bill 1906
Seamen's Compensation Bill 1911
Navigation Bill 1912
Customs Tariff Bill 1921
Customs Tariff Bill 1926
Excise Tariff Bill 1927
Income Tax Bill 1931
United Kingdom Grant Bill 1947
Privy Council (Appeals from the High Court) Bill 1975
Taxation Administration Amendment Bill 1983
Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Bill 1985

Appendix 20

STATISTICS ON SELECTED HOUSE PROCEEDINGS

Year	*Matters of public importance*	*Adjournment debates*	*Number of petitions*	*Number of divisions*	*Closures of question agreed to*	*Closures of Member agreed to*
1901*	5	56	224	113	—	—
1902	11	59	96	257	—	—
1903*	4	40	178	50	—	—
1904	10	48	17	57	—	—
1905	5	42	152	88	—	—
1906*	1	38	5	85	—	—
1907	7	53	88	243	—	—
1908	3	38	18	119	—	—
1909	8	56	7	131	18	1
1910*	1	44	33	72	—	—
1911	—	29	7	52	—	—
1912	5	41	7	56	—	—
1913*	3	47	—	93	33	—
1914*	8	35	6	48	5	—
1915	14	37	5	51	6	—
1916	4	18	9	11	—	—
1917*	9	38	3	54	5	—
1918	13	53	9	100	6	—
1919*	8	31	2	76	1	—
1920	25	56	1	227	18	1
1921	14	48	2	146	3	1
1922*	5	26	1	102	10	—
1923	8	31	—	169	36	—
1924	17	48	4	144	18	—
1925*	4	20	3	58	5	—
1926	3	36	2	52	2	—
1927	6	25	1	48	3	—
1928*	6	30	3	59	4	—
1929*	4	26	—	46	6	1
1930	10	53	3	84	19	—
1931*	15	67	1	216	35	—
1932	13	44	3	205	25	1
1933	21	41	16	157	15	—
1934*	9	21	—	78	12	1
1935	11	32	—	311	101	1
1936	10	40	1	78	12	—
1937*	2	22	—	32	1	—
1938	10	40	2	99	6	—
1939	7	34	—	85	5	—
1940*	5	30	3	33	1	—
1941	4	39	3	16	—	—
1942	9	35	2	25	1	—
1943*	7	30	1	22	—	—
1944	14	31	—	40	5	—
1945	7	58	—	101	10	—
1946*	9	37	2	75	12	—
1947	21	37	93	135	24	1

Year	*Matters of public importance*	*Adjournment debates*	*Number of petitions*	*Number of divisions*	*Closures of question agreed to*	*Closures of Member agreed to*
1948	14	26	3	113	22	—
1949*	13	29	3	96	22	—
1950	9	62	2	123	36	2
1951*	11	41	9	178	85	—
1952	12	45	9	153	54	—
1953	4	38	21	125	69	1
1954*	3	22	14	89	45	—
1955*	29	25	8	133	49	—
1956	7	35	7	243	86	4
1957	17	39	50	163	61	—
1958*	8	25	37	65	24	—
1959	8	39	43	132	45	—
1960	10	41	29	151	68	1
1961*	5	30	30	125	51	—
1962	13	37	22	128	68	—
1963*	8	22	140	82	38	2
1964	11	34	58	91	41	—
1965	6	31	41	124	39	—
1966*	5	30	104	65	26	—
1967	12	28	70	78	23	—
1968	10	32	139	106	48	—
1969*	28	29	90	83	26	1
1970	22	34	494	161	56	—
1971	23	41	723	216	92	—
1972*	21	36	1130	142	66	3
1973	18	75	1677	264	103	—
1974*	32	52	883	184	113	1
1975*	26	51	2043	359	158	29
1976	47	68	1987	124	53	21
1977*	48	50	1420	174	100	23
1978	56	55	1340	188	67	32
1979	52	49	2366	207	67	24
1980*	33	39	1923	150	52	19
1981	51	46	2900	165	59	32
1982	46	44	2094	119	41	23
1983*	42	38	1885	93	29	1
1984*	41	27	2315	142	44	14
1985	57	43	2955	128	34	—
1986	71	60	5528	143	37	4
1987*	65	61	3622	110	38	2
1988	47	44	1289	154	31	14
1989	44	38	1690	152	31	26
1990*	31	28	564	61	8	6
1991	46	49	824	165	33	28
1992	45	42	843	118	31	19
1993*	17	37	547	105	28	—
1994	47	57	540	86	13	6
1995	40	62	431	110	27	16
1996*	37	48	430	221	31	35
1997	52	70	633	183	11	40
1998*	30	47	336	157	27	15

Year	*Matters of public importance*	*Adjournment debates*	*Number of petitions*	*Number of divisions*	*Closures of question agreed to*	*Closures of Member agreed to*
1999	45	68	232	164	34	31
2000	50	67	289	141	33	28
2001*	35	50	250	110	16	33
2002	43	60	319	160	22	26
2003	45	65	368	176	12	39
2004*	46	54	471	81	5	10
2005	51	62	235	209	18	59
2006	50	65	276	165	17	36
2007*	39	48	250	75	5	12
2008	44	57	109	153	18	23
2009	45	53	150	129	10	20
2010*	40	48	136	101	4	14
2011	49	49	195	198	—	—
2012	49	50	120	186	7	—
2013*	33	39	104	140	17	9
2014	54	65	104	178	42	22
2015	57	69	104	119	22	29
2016*	38	42	101	211	49	48
2017	49	58	329	197	31	29

Excludes Federation Chamber proceedings.

* Years in which elections for the House of Representatives were held.

Appendix 21

QUESTIONS

(since 1963)

Year	*Questions in writing (on notice)*	*Questions without notice*	*Year*	*Questions in writing (on notice)*	*Questions without notice*
1963	776	968	1991	753	861
1964	814	1557	1992	927	616
1965	714	1796	1993	826	429
1966	654	1056	1994	1044	890
1967	752	1164	1995	961	863
1968	1072	1298	1996	1159	1127
1969	901	905	1997	1446	1482
1970	2269	1187	1998	861	998
1971	2682	1218	1999	787	1370
1972	1626	1024	2000	1132	1353
1973	1683	1219	2001	713	927
1974	2875	782	2002	1281	1220
1975	1534	956	2003	1604	1194
1976	1870	1447	2004	1287	1008
1977	2221	1021	2005	2522	1274
1978	3126	1098	2006	2358	1293
1979	2139	1033	2007	1046	904
1980	1694	762	2008	554	1290
1981	3347	943	2009	616	1187
1982	2214	709	2010	421	948
1983	1002	597	2011	621	882
1984	910	591	2012	540	899
1985	3115	734	2013	239	817
1986	1876	934	2014	644	1433
1987	1180	900	2015	1445	1371
1988	876	715	2016	711	945
1989	778	665	2017	255	1155
1990	507	453			

Appendix 22

PROPORTION OF HOUSE TIME BY CATEGORY OF BUSINESS—RECENT PARLIAMENTS

	40th Parliament		*41st Parliament*			*42nd Parliament*			*43rd Parliament*			*44th Parliament*			*45th Parliament*	
	2002	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*	*2014*	*2015*	*2016*	*2017*
Legislation																
Government sponsored	51.5	50.7	56.8	58.0	50.4	58.6	53.9	61.3	48.8	50.5	50.7	48.0	56.3	52.2	48.2	51.1
Sponsored by Private Members	0.2	0.3	0.1	1.3	7.1	0.2	0.1	0.1	1.3	2.6	2.2	1.9	0.3	0.4	1.1	6.3
Total	51.7	51.0	56.9	59.3	57.5	58.8	53.9	61.4	50.1	53.0	52.9	49.8	56.6	52.6	49.3	57.4
Motions																
Government initiated	4.4	7.9	2.0	1.2	1.5	0.8	2.4	0.7	3.3	0.7	1.6	0.7	0.5	4.2	1.4	0.8
Initiated by Private Members	4.7	5.1	3.0	4.2	5.6	3.7	2.1	1.1	3.4	3.5	6.0	4.6	3.6	3.6	2.7	2.4
Total	9.1	13.0	4.9	5.3	7.1	4.5	4.5	1.9	6.6	4.2	7.6	5.3	4.1	7.8	4.1	3.2
Statements																
Ministerial statements	0.5	0.7	0.2	0.2	0.3	0.1	3.6	2.9	2.9	2.3	1.7	1.3	1.1	1.3	1.4	0.8
Statements by Private Members	0.5	0.7	0.5	1.0	0.6	0.5	—	0.1	0.7	1.9	1.9	1.8	4.8	4.9	5.0	5.7
Total	1.0	1.4	0.7	1.2	0.8	0.6	3.7	2.9	3.6	4.1	3.5	3.1	5.8	6.2	6.4	6.6
Matters of public importance	6.1	5.7	7.6	7.6	7.5	8.8	6.6	6.3	7.8	8.8	9.3	8.3	7.6	8.0	8.1	8.6
Adjournment debates	4.9	4.8	4.8	5.0	5.0	5.2	4.3	4.0	5.8	6.7	6.7	6.2	4.4	4.7	4.3	4.9
Grievance debates*	2.8	3.0	2.6	2.8	2.8	2.4	—	—	—	—	—	—	—	—	—	—
Address in reply**	2.5	—	3.1	—	—	—	3.7	—	4.0	—	—	4.1	3.1	—	6.1	—
Motions to suspend standing orders																
Government initiated	0.4	0.3	0.2	0.3	0.3	0.5	0.5	0.3	0.4	1.1	0.3	0.7	1.0	0.2	1.0	0.4
Initiated by Private Members	1.5	1.8	0.7	2.2	1.8	0.6	2.0	1.4	1.3	3.1	3.2	2.5	1.3	1.6	2.7	2.0
Total	1.9	2.1	0.9	2.4	2.2	1.1	2.5	1.7	1.7	4.2	3.5	3.2	2.2	1.8	3.7	2.5
Business of the House ***	20.0	18.9	18.5	16.2	17.1	18.6	20.8	21.9	20.3	19.0	16.5	20.0	16.1	19.0	18.0	16.9

* Since 2008 grievance debates have taken place in the Federation Chamber.
** The Address in Reply takes place at the start of each Parliament.
*** For items included in the category 'Business of the House' *see* Appendix 23.

Figures are percentages of House time and do not include proceedings in the Federation Chamber. Discrepancies in totals are due to rounding.

Appendix 23

PERCENTAGE OF HOUSE TIME SPENT ON GOVERNMENT AND PRIVATE MEMBERS' BUSINESS—RECENT YEARS

Year	*Government Business*	*Private Members' Business*	*Other opportunities for Private Members*	*Business of the House*
1990	52	6	18	23
1991	57	12	13	18
1992	58	12	14	17
1993	62	8	15	15
1994	62	8	14	16
1995	59	9	13	18
1996	54	8	16	21
1997	58	8	15	19
1998	53	8	18	22
1999	59	8	14	18
2000	57	7	15	21
2001	57	6	15	22
2002	57	7	16	20
2003	60	8	14	19
2004	59	4	18	19
2005	60	9	15	16
2006	53	15	15	17
2007	60	5	16	19
2008	60	4	15	21
2009	65	3	10	22
2010	55	7	18	20
2011	55	11	15	19
2012	54	13	16	16
2013	51	11	19	20
2014	59	10	15	16
2015	58	11	13	19
2016	52	12	19	18
2017	53	16	13	17

Government business includes government sponsored legislation and motions (including motions to suspend standing orders) and ministerial statements.

Private Members' business includes legislation and motions (including motions to suspend standing orders) sponsored by private Members and statements by Members.

Other opportunities for private Members includes adjournment and grievance debates, discussion of matters of public importance and debates on the Address in Reply.

Business of the House includes time spent on petitions, giving notices, question time, presentation of papers (excluding motions to take note), privilege matters, personal explanations, dissent motions, announcements of ministerial arrangements, motions to appoint committees (unless moved by private Members), statements and debate on committee reports, motions for addresses, votes of condolence, leave of absence and special adjournment.

Note: Figures have been rounded. Does not include time spent in the Federation Chamber

Appendix 24

COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND JOINT COMMITTEES

Year	*Committee*
1901–1902	Decimal System of Coinage (House Select)
1901–1903	Elections and Qualifications (Standing)
1902–1902	Bonuses for Manufactures Bill (House Select)
1904–1904	Electoral Act Administration (House Select)
1904–1904	Old-age Pensions (House Select)
1905–1905	Shipping Service between the Commonwealth and the United Kingdom (House Select)
1908–1908	Procedure in Cases of Privilege (Joint Select)
1908–1908	Stripper Harvesters and Drills (House Select)
1910–1911	Tasmanian Customs 'Leakage' (House Select)
1913–1913	Powellised and other Timber for the Port Augusta to Kalgoorlie Railway (House Select)
1913–1931	Public Accounts (Joint Statutory)
1913–1931	Public Works (Joint Statutory)
1914–1914	Irregular Conduct and Interference (House Select)
1920–1920	Sea Carriage (House Select)
1921–1921	Wireless Communication (Joint Select)
1923–1923	Compensation for Ex-Gunner Yates (House Select)
1923–1924	Navigation Act—Effect on Trade (House Select)
1926–1927	Electoral Act (Joint Select)
1927–1928	The Moving Picture Industry in Australia (Joint Select)
1929–1930	Tobacco-growing Industry in Australia (House Select)
1932–1932	Public Accounts (Joint Select)
1937–	***Public Works (Joint Statutory)***
1941–1942	Broadcasting (Joint Select)
1941–1942	Profits (Joint Standing)
1941–1942	Rural Industries (Joint Standing)
1941–1946	War Expenditure (Joint Standing)
1941–1946	Social Security (Joint Standing)
1942–1949	Broadcasting (Joint Statutory)
1944–1944	Income Tax on Current Income (Joint Standing)
1946–	***Broadcasting of Parliamentary Proceedings (Joint Statutory)***
1952–1972	Foreign Affairs (Joint Standing)
1952–1997	Public Accounts (Joint Statutory)
1954–1954	Hansard (House Select)
1956–1959	Constitutional Review (Joint Standing)
1957–1987	Australian Capital Territory (Joint Standing)
1961–1961	Voting Rights of Aborigines (House Select)
1962–1966	Parliamentary and Government Publications (Joint Standing)
1963–1963	Grievances of Yirrkala Aborigines, Arnhem Land Reserve (House Select)
1963–1963	House of Representatives Accommodation (House Select)
1965–1972	New and Permanent Parliament House (Joint Standing)
1968–1969	Naming of Electoral Divisions (House Select)
1968–1972	Aircraft Noise (House Select)
1970–1970	New and Permanent Parliament House (Joint Select)

Year	*Committee*
1970–1970	Wildlife Conservation (House Select)
1970–1972	Defence Forces Retirement Benefits Legislation (Joint Select)
1970–1972	Pharmaceutical Benefits (House Select)
1972–1973	Road Safety (House Select)
1973–1975	Northern Territory (Joint Select)
1973–1975	Prices (Joint Standing)
1973–1976	Parliamentary Committee System (Joint Select)
1973–1987	Environment and Conservation (Standing)
1973–1987	Foreign Affairs and Defence (Joint Standing)
1973–1992	Aboriginal Affairs (Standing)
1974–1975	Pecuniary Interests of Members of Parliament (Joint Select)
1974–1976	Specific Learning Difficulties (House Select)
1974–1984	Road Safety (Standing)
1976–1977	Aboriginal Lands Rights in the Northern Territory (Joint Select)
1976–1978	Tourism (House Select)
1976–1987	Expenditure (Standing)
1978–1980	Family Law Act (Joint Select)
1977–1980	New and Permanent Parliament House (Joint Standing)
1981–1989	New Parliament House (Joint Standing)
1982–1984	Parliamentary Privilege (Joint Select)
1983–1987	Electoral Reform (Joint Select)
1984–2002	National Crime Authority (Joint Statutory)
1985–1985	Aboriginal Education (House Select)
1985–1985	Aircraft Noise (House Select)
1985–1986	Australia Card (Joint Select)
1985–1987	Transport Safety (Standing)
1985–1988	Video Material (Joint Select)
1985–1993	Migration Regulations (Joint Standing)
1986–1986	Telecommunications Interception (Joint Select)
1987–1992	Finance and Public Administration (Standing)
1987–1996	Community Affairs (Standing)
1987–1996	Transport, Communications and Infrastructure (Standing)
1987–1998	Employment, Education and Training (Standing)
1987–1998	Environment, Recreation and the Arts (Standing)
1987–1998	Industry, Science and Technology (Standing)
1987–2010	Legal and Constitutional Affairs (Standing)
1987–	***Foreign Affairs, Defence and Trade (Joint Standing)***
1987–	***Electoral Matters (Joint Standing)***
1988–1989	Corporations Legislation (Joint Select)
1988–2001	Australian Security Intelligence Organisation (Joint Statutory)
1989–1989	Tenure of Appointees to Commonwealth Tribunals (Joint Select)
1989–1992	Australian Capital Territory (Joint Standing)
1990–1993	Parliamentary Zone (Joint Standing)
1990–1996	Long Term Strategies (Standing)
1991–1991	Televising of the House of Representatives (House Select)
1991–1996	Televising of the House of Representatives (Standing)
1991–1992	Print Media (House Select)
1991–1993	Certain Aspects of the Operation and Interpretation of the Family Law Act (Joint Select)
1991–2001	Corporations and Securities (Joint Statutory)

Year	*Committee*
1992–1993	National Capital (Joint Standing)
1992–1996	Banking, Finance and Public Administration (Standing)
1992–2013	Aboriginal and Torres Strait Islander Affairs (Standing)
1993–1995	Certain Family Law Issues (Joint Select)
1993–	***Migration (Joint Standing)***
1993–	***National Capital and External Territories (Joint Standing)***
1994–2005	Native Title and the Aboriginal and Torres Strait Islander Land Fund (Joint Statutory)
1996–1998	Communications, Transport and Microeconomic Reform (Standing)
1996–1998	Financial Institutions and Public Administration (Standing)
1996–1998	Primary Industries, Resources and Rural and Regional Affairs (Standing)
1996–2004	Family and Community Affairs (Standing)
1996–	***Treaties (Joint Standing)***
1998–1999	Retailing Sector (Joint Select)
1998–2001	Communications, Transport and the Arts (Standing)
1998–2001	Employment, Education and Workplace Relations (Standing)
1998–2001	Industry, Science and Resources (Standing)
1998–2001	Primary Industries and Regional Services (Standing)
1998–2007	Economics, Finance and Public Administration (Standing)
1998–2007	Environment and Heritage (Standing)
1998–	***Public Accounts and Audit (Joint Statutory)***
1999–1999	Republic Referendum (Joint Select)
2001–2001	Intelligence Services (Joint Select)
2002–2004	Ageing (Standing)
2002–2004	Education and Training (Standing)
2002–2004	Employment and Workplace Relations (Standing)
2002–2005	ASIO, ASIS and DSD (Joint Statutory)
2002–2007	Agriculture, Fisheries and Forestry (Standing)
2002–2007	Communications, Information Technology and the Arts (Standing)
2002–2007	Industry and Resources (Standing)
2002–2007	Science and Innovation (Standing)
2002–2007	Transport and Regional Services (Standing)
2002–	***Corporations and Financial Services (Joint Statutory)***
2003–2003	Recent Australian Bushfires (House Select)
2003–2010	Australian Crime Commission (Joint Statutory)
2004–2007	Education and Vocational Training (Standing)
2004–2007	Employment, Workplace Relations and Workforce Participation (Standing)
2004–2007	Family and Human Services (Standing)
2004–2013	Health and Ageing (Standing)
2005–2006	Native Title and the Aboriginal and Torres Strait Islander Land Account (Joint Statutory)
2005–	***Intelligence and Security (Joint Statutory)***
2005–	***Parliamentary Library (Joint Standing)***
2007–	***Australian Commission for Law Enforcement Integrity (Joint Statutory)***
2008–2010	Climate Change, Water, Environment and the Arts (Standing)
2008–2010	Communications (Standing)
2008–2010	Education and Training (Standing)
2008–2010	Employment and Workplace Relations (Standing)
2008–2010	Family, Community, Housing and Youth (Standing)
2008–2010	Industry, Science and Innovation (Standing)

Year	*Committee*
2008–2010	Infrastructure, Transport, Regional Development and Local Government (Standing)
2008–2010	Primary Industries and Resources (Standing)
2008–2013	Cyber-Safety (Joint Select)
2008–	***Economics (Standing)***
2010–2011	Parliamentary Budget Office (Joint Select)
2010–2013	Agriculture, Resources, Fisheries and Forestry (Standing)
2010–2013	Climate Change, Environment and the Arts (Standing)
2010–2013	Gambling Reform (Joint Select)
2010–2013	Regional Australia (Standing)
2010–2016	Education and Employment (Standing)
2010–2015	Infrastructure and Communications (Standing)
2010–	***Law Enforcement (Joint Statutory)***
2010–	***Social Policy and Legal Affairs (Standing)***
2011–2011	Australia's Clean Energy Future Legislation (Joint Select)
2011–2011	Christmas Island Tragedy (Joint Select)
2011–2012	Australia's Immigration Detention Network (Joint Select)
2011–2013	National Broadband Network (Joint Standing)
2012–2013	Constitutional Recognition of Local Government (Joint Select)
2012–2015	Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples (Joint Select)
2012–	***Human Rights (Joint Statutory)***
2013–2013	Broadcasting Legislation (Joint Select)
2013–2013	DisabilityCare Australia (Joint Select)
2013–2016	Agriculture and Industry (Standing)
2013–2016	Environment (Standing)
2013–2016	Health (Standing)
2013–	***Indigenous Affairs (Standing)***
2013–	***National Disability Insurance Scheme (Joint Standing)***
2013–2016	Northern Australia (Joint Select)
2013–	***Tax and Revenue (Standing)***
2014–2015	Australia Fund Establishment (Joint Select)
2014–2016	Trade and Investment Growth (Joint Select)
2015–	***Communications and the Arts (Standing)***
2015–	***Infrastructure, Transport and Cities (Standing)***
2016–	***Agriculture and Water Resources (Standing)***
2016–	***Employment, Education and Training (Standing)***
2016–	***Environment and Energy (Standing)***
2016–	***Health, Aged Care and Sport (Standing)***
2016–	***Industry, Innovation, Science and Resources (Standing)***
2016–	***National Broadband Network (Joint Standing)***
2016–	***Northern Australia (Joint Standing)***
2016–	***Trade and Investment Growth (Joint Standing)***
2016–	***Government Procurement (Joint Select)***
2017–	***Regional Development and Decentralisation (Select)***
2017–	***Oversight of the Implementation of Redress Related Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Joint Select)***
2018–	***Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (Joint Select)***

The list does not include domestic committees appointed pursuant to standing or sessional orders.

The year of commencement is the year the committee was appointed or, in the case of committees with the same name appointed in successive Parliaments, first appointed. For the purposes of this listing a name change is treated as a separate committee.

Committees shown in italics and bold are committees of the 45th Parliament.

Appendix 25

MATTERS RAISED AS MATTERS OF PRIVILEGE IN THE HOUSE

A number of matters which have arisen in the House and which relate to the general subject of privilege are excluded from this appendix as they were not specifically raised as matters of privilege or were not pursued by the House or Speaker as such. Reference as appropriate has been made to some of these matters in the Chapter on 'Parliamentary privilege'.

	Matter	*Action by Speaker, House and Privileges Committee*
1	**4 August 1905**	
	Article in the *Age* concerning statements of manoeuvring etc. in regard to election of Chairman of Committees. VP 1905/31 (4.8.1905)	Matter debated; no further action.
2	**18 September 1907**	
	Signatures on petition—alleged forgery etc. VP 1907–08/92 (18.9.1907)	Referred to Printing Committee. Committee recommended that Crown law authorities be requested to take action with the view to criminal prosecution; report adopted. VP 1907–08/165 (15.11.1907) Crown Solicitor advised that prosecution for forgery would be unsuccessful. VP 1907–08/267(13.12.1907)
3	**13 August 1912**	
	Statement concerning Member (Mr Riley) in the *Age*. VP 1912/91 (13.8.1912)	Notice of motion proposing the exclusion of representatives of the *Age* from the press gallery withdrawn following apology from newspaper's representatives.
4	**28 October 1913**	
	Comments in the *Argus* concerning progress of business of Parliament (Electoral Bill). VP 1913/115 (28.10.1913)	Motion, that the editor and the printer and publisher are guilty of contempt etc., negatived.
5	**11 November 1913**	
	Statement reported to have been made by Member (Mr McGrath) outside the House allegedly to the effect that the Speaker had lost the confidence and respect of (part of) the House. VP 1913/151–3 (11.11.1913)	Motion suspending Member for remainder of session (unless he sooner unreservedly retracted words) agreed to. (Member remained under suspension for the remainder of the session.) House ordered that the resolution of 11 November 1913 be expunged from the journals of the House as being subversive of the right of a Member to address his constituents freely. VP 1914–17/181 (29.4.1915)
6	**13 November 1913**	
	Article in the *Age* stating that Members were able to alter Hansard proofs in any manner that pleased them. VP 1913/157 (13.11.1913)	Motion, that the writer of the article was guilty of contempt etc., negatived.
7	**2 March 1917**	
	Statements made in Senate relating to attempted bribery and corruption etc. VP 1914–17/575 (2.3.1917)	Motion, that matter be referred to a royal commission, debated and negatived.

	Matter	*Action by Speaker, House and Privileges Committee*
8	**5 April 1918**	
	Speaker raised matter of seizure at Parliament House of a Member's parcels said to have contained reprints of Member's speech in the House. (Seizure requested initially on ground of use of Commonwealth coat of arms, later on ground of military necessity involving safety of Commonwealth.) VP 1917–19/177–8 (5.4.1918)	Motion, that intrusion into and invasion of Parliament House by a military force without the Speaker's consent constituted a breach of privilege of the House, debated and negatived.
9	**29 May 1918**	
	Military censorship of Members' correspondence. VP 1917–19/242 (29.5.1918)	Motion, that the House was of the opinion that the privileges of Members were being interfered with and proposing to appoint a committee to inquire into the matter, debated and negatived.
10	**24 October 1919**	
	Speaker brought to attention of the House that in the report of the Economies Royal Commission, matters listed for investigation included various parliamentary services. Parliament had not so authorised the tribunal to investigate such matters and Parliament alone could appoint a tribunal in the sphere of parliamentary jurisdiction. VP 1917–19/587 (24.10.1919)	Minister stated that he would see that law officers took immediate notice of Speaker's remarks to insure that no privileges which Parliament enjoyed were in any way infringed by operation of the Commission.
11	**9 November 1920**	
	Portion of speech alleged to have been made by Member (Mr Mahon) outside the House concerning events in Ireland. VP 1920–21/423 (9.11.1920)	Statements made by Members regarding proposed motion of privilege which was delayed owing to Member's absence. VP 1920–21/425 (10.11.1920) Motion, that Member be expelled for allegedly seditious and disloyal utterances (making him) unfit to remain Member etc., debated and agreed to (amendment having been negatived); seat declared vacant; Member unsuccessful at by-election. VP 1920–21/431–3 (11.11.1920)
12	**22 September 1922**	
	Portion of speech alleged to have been made by Member (Mr Page) outside the House about operation of the House. VP 1922/145 (22.9.1922)	Mr Page stated he was not correctly reported; Prime Minister then said it was not his intention to move motion. Speaker ruled that further discussion without a motion would be irregular and the subject was not further proceeded with.
13	**6 October 1922**	
	Service of summons on Member (Mr Blakeley) in precincts of Parliament House (concerning industrial dispute). VP 1922/190 (6.10.1922)	No motion moved; Speaker made a statement and the Attorney-General having undertaken to consider the matter carefully, the matter rested. Attorney-General made statement. Person who served summons had not intended to breach privilege; concluded that it was not a desirable practice that service should, under any circumstances, be made within the precincts of the House while the House is sitting. VP 1922/201 (11.10.1922)

	Matter	*Action by Speaker, House and Privileges Committee*
14	**7 March 1929**	
	Member's (Mr Hunter's) comments in a newspaper article (alleged misrepresentation of proceedings in committee). VP 1929/49 (7.3.1929)	Motion, that Member was guilty of a breach of privilege, etc., debated and, by leave, withdrawn.
15	**28 August 1929**	
	Report of alleged misuse of parliamentary facilities and precincts (in use of parliamentary stationery in production of certain political propaganda). VP 1929/105 (28.8.1929)	Motion, that Speaker make inquiries into matter, debated and negatived.
16	**5 November 1930**	
	Alleged misrepresentation in the *Advertiser* of Member's (Mr Yates') speech in the House. VP 1929–31/397 (5.11.1930)	Motion, that editor be declared guilty of contempt etc., debated. Motion further debated and withdrawn. VP 1929–31/405 (6.11.1930)
17	**13 November 1930**	
	Presence in the House of Member (Mr Theodore) who was subject of royal commission inquiry concerning business interests. VP 1929–31/413 (13.11.1930)	Motion, that Member be suspended from service of the House etc., ruled out of order as matter was not one of privilege.
18	**23 April 1931**	
	Proposed expulsion of member of press from precincts of the House by Speaker (journalist had been involved in publication of secret cables). VP 1929–31/592 (23.4.1931)	Motion, that expulsion was a question for the House to decide, not the Speaker either acting on his own authority or at the suggestion of the Ministry, debated and withdrawn. Motion again moved, debated and negatived on casting vote of Speaker. VP 1929–31/593 (24.4.1931)
19	**12 May 1931**	
	Statements in the *South Australian Worker* on actions of Speaker and his control of business of the House. VP 1929–31/613 (12.5.1931)	Motion, that comments were gross and malicious misrepresentations of the facts, and that the editor and publisher were guilty of contempt, debated and agreed to.
20	**26 October 1933**	
	Article in the *Sunday Sun* critical of Parliament in respect of allowances of Members. VP 1932–34/755 (26.10.1933)	Motion, that comments were mischievous and malicious and constitute a grave and unscrupulous attack upon the honour of the Parliament and its Members, and that the House declares the printer and publishers guilty of contempt, debated and agreed to.
21	**27 October 1933**	
	Article in the *Sun* critical of resolution of 26 October 1933 (*see above*). VP 1932–34/757 (27.10.1933)	Motion, that in view of the printer and publisher having been adjudged guilty of contempt they be called to the Bar of the House etc., debated; debate adjourned. Debate twice resumed and adjourned. VP 1932–34/767 (2.11.1933), 779 (8.11.1933)

	Matter	*Action by Speaker, House and Privileges Committee*
		Debate resumed; motion amended with effect that withdrawal made in letter to Prime Minister be accepted and that no further action be taken in matter. VP 1932–34/791–2 (16.11.1933)
22	**27 March 1935**	
	Letter to Speaker from Chairman of the Sydney Stock Exchange allegedly reflecting on motives and actions of a Member (Mr Blain) and making a threat (Member had made comments on commercial matters in the House). VP 1934–37/143 (27.3.1935)	Motion, that Chairman of Sydney Stock Exchange be adjudged guilty of contempt, debated and adjourned. Debate resumed; leave to withdraw motion not granted; motion amended with effect that letter was in defence of an attack made under parliamentary privilege which was the right of an individual but the Chairman was in error in addressing the letter to the Speaker instead of direct to the Member. Motion, as amended agreed to. VP 1934–37/149–50 (28.3.1935)
23	**21 November 1939**	
	Criticisms of Member's (Mr Cameron's) speech by public servant. VP 1937–40/534 (21.11.1939)	No motion submitted; several Members addressed themselves to question raised; Minister expressed regret at remarks of officer and apologised.
24	**3 July 1941**	
	Press censorship of reports of Members' speeches at instruction of censor. Direction allegedly given that no reports be published of any speeches delivered in the House the previous night on the subject of the international situation. VP 1940–43/157 (3.7.1941)	Members addressed themselves to question raised; Prime Minister stated that a mistake had been made and that one statement only ought to have been censored and he would inquire into the matter. Matter not further proceeded with.
25	**30 June 1943**	
	Alleged breach of conditions permitting filming of proceedings of the House. VP l940–43/564 (30.6.1943)	Motion, that the company concerned was guilty of contempt etc., debated and negatived.
26	**25 February 1944**	
	Censorship of correspondence addressed to Members (Mr Cameron raised issue). VP 1943–44/67 (25.2.1944)	Motion, that such action was breach of privilege etc., moved and debated; amendment moved; motion and amendment debated and withdrawn after it was agreed that a committee be appointed to consider the question (*see below*).
	(7 March 1944	**Committee of Privileges established by standing order)**
27	**7 March 1944**	
	Censorship of correspondence addressed to Members (*see above*). VP 1943–44/80 (7.3.1944)	**Matter referred to the Committee of Privileges**. Report presented. VP 1943–44/133 (30.3.1944) **Findings:** (a) The opening by censors of letters to Members was not a breach of any existing privilege of the House.

	Matter	*Action by Speaker, House and Privileges Committee*
		(b) There was no evidence that Mr Cameron's correspondence was subject to special scrutiny or any discrimination. H of R 1 (1943–44)
28	**14 March 1944**	
	Censorship control of broadcast of proceedings of the House (Member claimed speech he made was not broadcast but government reply was broadcast). VP 1943–44/89 (14.3.1944)	Speaker ruled that the matter was not one of privilege; notice of dissent given. Dissent motion withdrawn. VP 1943–44/107 (22.3.1944)
29	**3 May 1945**	
	Remarks in a newspaper allegedly made by a Member (Mr Cameron) reflecting upon the Chairman of Committees. VP 1945–46/63 (3.5.1945)	Motion, that the Member be suspended from service of the House etc., debated and withdrawn following an apology by the Member for the statement.
30	**26 July 1946**	
	Replay, at the request of the Speaker, of a recorded broadcast of certain proceedings in the House to a limited number of people. VP 1945–46/429 (26.7.1946)	Speaker made an explanation.
31	**24 October 1947**	
	Disclosure of committee proceedings. VP 1946–48/311 (24.10.1947)	Motion proposed that it was not a breach of privilege for a Member to discuss the decision of a statutory committee when such a decision was not required by statute to be reported to the House. Speaker ruled that it was not a matter of privilege. Notice of dissent given. Dissent moved and debated; debate adjourned. VP 1946–48/567 (17.6.1948) (Lapsed at prorogation.)
32	**3 December 1947**	
	Alleged wrongful use of parliamentary privileges (gold pass) by Member (Mr Blain) while a prisoner of war. VP 1946–48/440–1 (3.12.1947)	**Matter referred to the Committee of Privileges**. Report presented (not printed). VP 1946–48/506 (8.4.1948) **Findings:** (a) Member did not wrongfully use parliamentary privileges as a prisoner of war. (b) There was no impropriety in Member's use of his parliamentary pass while a prisoner. (c) No breach of privilege of the House had been committed by the Member.
33	**7 October 1948**	
	Alleged interrogation (or attempted interrogation) of Member by security police at the instigation of the Prime Minister in the precincts of Parliament in respect of matters arising out of the discharge of his public duties in Parliament (speech in the House). VP 1948–49/67 (7.10.1948)	Motion, that action was breach of privilege etc., proposed. Deputy Speaker ruled that no claim of breach of privilege could be sustained and no prima facie case made out which would justify precedence. Notice of dissent given. General business motion, that action was a breach of privilege etc., debated and negatived; dissent motion debated and negatived. VP 1948–49/81–3 (14.10.1948)

	Matter	*Action by Speaker, House and Privileges Committee*
34	**16 March 1951**	
	Reports that a federal conference of a political party had given direction to certain Members as to how they should vote and act in Parliament. VP 1950–51/333–4 (16.3.1951)	Motion debated and agreed to that any such attempt is a breach of privilege, that every Member should be free to speak and vote according to judgment and conscience, and that these **matters be referred to the Committee of Privileges.** Committee had not reported when both Houses were dissolved on 19 March 1951.
35	**3 October 1951**	
	Article in the *Sun* regarding Members' purchases in the parliamentary refreshment rooms. VP 1951–53/111 (3.10.1951)	Motion debated and agreed to that **truth of article and related matters be referred to the Committee of Privileges**. Report presented (not printed); consideration made an order of the day for the next sitting. VP 1951–53/149 (1.11.1951) **Findings:** (a) A breach of privilege had been committed. (b) The article, while not wholly untrue contained statements concerning conduct of Members which were grossly exaggerated and erroneous in their implications. (c) Committee recommended that no punitive action be taken and the House would best serve its own dignity by taking no further action. Motion, that report be agreed to, debated and agreed to. VP 1951–53/171 (13.11.1951)
36	**18 October 1951**	
	Speaker drew attention to newspaper report concerning an alleged criticism of the House Committee by the Prime Minister at a party meeting (decision to restrict use of parliamentary refreshment rooms). VP 1951–53/131 (18.10.1951)	**Statement in newspaper referred to the Committee of Privileges**. Report presented (not printed); no further action by House. VP 1951–53/165 (8.11.1951) **Finding:** Committee felt compelled to express its disapproval of publication, but did not feel publication amounted to a contempt and therefore did not constitute a breach of privilege.
37	**13 March 1953**	
	Speaker drew attention to presence in King's Hall during lunch suspension of Member (Mr Curtin) who that morning had been excluded from the building. VP 1951–53/609 (13.3.1953)	Speaker claimed presence of Member was contempt of House; consideration deferred. Motion, that the House was of opinion that contempt of its ruling and authority had taken place by Member, agreed to. Member apologised; House resolved to accept apology. VP 1951–53/611 (17.3.1953)
38	**2 December 1953**	
	Alleged tapping of telephones used by Members. VP 1953–54/68–9 (2.12.1953)	Motion, that matter be referred to the Committee of Privileges, debated and negatived.
39	**17 August 1954**	
	Paragraph in the *Melbourne Herald* concerning behaviour of Member (Mr Wentworth) at previous sitting. VP 1954–55/25 (17.8.1954)	Proposed motion, that reported conduct of Member be referred to the Committee of Privileges, ruled out of order. Motion, that paragraph in newspaper be referred to the Committee of Privileges, debated and negatived.

	Matter	*Action by Speaker, House and Privileges Committee*
40	**26 August 1954** Article in *Century*—Member alleged that confidential Hansard proofs had been made available to newspaper. VP 1954–55/43 (26.8.1954)	**Article referred to the Committee of Privileges**. Report presented; motion, that it be printed, debated and adjourned. VP 1954–55/81 (29.9.1954) **Finding:** Committee was unable to find any evidence that any person had been guilty of a breach of privilege. (Committee made other comments in relation to Hansard production.) Motion for printing not put; motion, that report be agreed to, debated and agreed to. VP 1954–55/94 (12.10.1954)
41	**3 May 1955** Article in the *Bankstown Observer* (allegation that Member (Mr Morgan) involved in immigration racket). VP 1954–55/184 (3.5.1955)	**Article referred to the Committee of Privileges**. Special report presented (not printed); motion, that committee's request be acceded to, debated and adjourned. VP 1954–55/225–6 (26.5.1955) Special report requested authority to consider further articles. Motion further debated and agreed to. VP 1954–55/239 (31.5.1955) Report presented; consideration made an order of the day for the next sitting. VP 1954–55/260 (8.6.1955) **Findings:** (a) Mr R E Fitzpatrick and Mr F Browne were guilty of a serious breach of privilege by publishing articles intended to influence and intimidate a Member in his conduct in the House and in attempting to impute corrupt conduct as a Member for express purpose of discrediting and silencing him. Committee recommended that the House take appropriate action. (b) There was no evidence of improper conduct by the Member in his capacity as Member of the House. (c) Some of the references to Parliament and the committee in the articles constituted a contempt of the Parliament. However, the House would best consult its own dignity by taking no action in this regard. H of R 2 (1954–55) Motion, that the House agrees with the committee in its report, debated and agreed to; motion, that Messrs Fitzpatrick and Browne attend at the Bar of the House next day, debated and agreed to. VP 1954–55/267 (9.6.1955) Messrs Fitzpatrick and Browne in attendance: (a) Speaker informed Mr Fitzpatrick of the House's decision and gave him opportunity to speak in extenuation of his offence. Mr Fitzpatrick addressed the House, apologised and withdrew. (b) Speaker similarly addressed Mr Browne. Mr Browne addressed the House and withdrew. (c) Motions, that Messrs Fitzpatrick and Browne be committed to custody and kept in custody until l0 September 1955 or until earlier prorogation or dissolution or order of the House for sooner discharge, debated and agreed to. (Amendments proposing the imposition of fines as appropriate action were negatived.) VP 1954–55/269–71 (10.6.1955) Motion, that offenders be released forthwith, debated and negatived. VP 1954–55/287–8 (31.8.1955)

	Matter	*Action by Speaker, House and Privileges Committee*
		Deputy Speaker informed the House of release of offenders on 10 September 1955. VP 1954–55/301 (13.9.1955)
42	**25 May 1955**	
	Remarks by Member (Mr Haylen) and report in the *Argus* alleging that a Member (Mr Keon) had peddled matter to newspapers. VP 1954–55/223 (25.5.1955)	Motion agreed to that **statements and newspaper report in reference to Mr Keon be referred to the Committee of Privileges**. Report relating to this matter (and following complaint) presented (not printed). Motion, that report be taken into consideration forthwith, debated and adjourned. VP 1954–55/245 (2.6.1955) **Findings:** (a) Remarks of Mr Haylen were not a matter of privilege but one of order. Committee stated that all words in the House are privileged, but the House is able to place restraint on conduct of Members including their offensive accusations against other Members. Committee noted that when the words were used no Member required their withdrawal. (b) the Argus report was a fair report of proceedings in the House and did not involve any breach of privilege. Motion further debated and debate adjourned. VP 1954–55/267 (9.6.1955) (Lapsed at dissolution.)
43	**25 May 1955**	
	Remarks by Member (Mr Haylen) and reported in the *Argus* that a Member (Mr W M Bourke) had attempted to sell caucus secrets. VP 1954–55/223 (25.5.1955)	**Remarks and newspaper report referred to the Committee of Privileges**. This matter was considered together with the previous matter and the one report made.
44	**17 March 1959**	
	Statements in circulated lettergram alleging that Member (Mr Pearce) had acted improperly (as lobbyist etc.). VP 1959–60/37 (17.3.1959)	Motion debated that **matter be referred to the Committee of Privileges**, debate adjourned. Motion further debated and agreed to. VP 1959–60/45 (18.3.1959) Report presented (not printed); no further action by House. VP 1959–60/76 (9.4.1959) **Finding:** Committee found that matter disclosed no breach of privilege.
45	**18 August 1965**	
	Advertisement in the *Canberra Times* and other newspapers containing photograph of the House in session (Leader of Opposition speaking). VP 1964–66/347 (18.8.1965)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of day for the next sitting. VP 1964–66/373 (16.9.1965) **Findings:** (a) Advertisement represented a breach of parliamentary privilege. (b) Ultimate responsibility for publication lay with 10 individuals. (c) Advertisement was published without malice towards the House or any Member or intent to libel any Member and appeared through negligence and lack of appreciation of what was involved. PP 210 (l964–66) Order of the day postponed to 23 September 1965. VP l964–66/377 (21.9.1965)

	Matter	*Action by Speaker, House and Privileges Committee*
		Motion proposed to effect that: (a) House agreed with committee that advertisement involved a breach of parliamentary privilege; (b) Advertisement was also defamatory of the Leader of the Opposition; (c) While the House accepted that the advertisement was published without malice, it was of the opinion that it should record its censure of the advertisement and its reprimand to those concerned in its publication; and (d) Publishers of the advertisement should publish this resolution in full. Motion debated and agreed to. Speaker stated he would transmit resolution to named offenders. VP 1964–66/386 (23.9.1965)
46	**19 March 1969**	
	Matters reflecting on Prime Minister raised earlier in debate by Member (Mr James) and based on news sheet *Things I hear*. VP 1968–69/376 (19.3.1969)	Motion proposed to refer matter to the Committee of Privileges. Speaker ruled that motion could not be accepted as a prima facie case of breach of privilege had not been made out. Further motion, that matter be referred to the Committee of Privileges, moved. Speaker of opinion that prima facie case of breach of privilege had not been made out, but would like time to consider the matter. Speaker stated that the matter did not fall easily into any accepted pattern but he would allow debate to proceed on the motion; motion debated and negatived. VP 1968–69/377–8 (20.3.1969)
47	**20 April 1971**	
	Commitment to prison of Member (Mr Uren) who had not paid court costs awarded against him. VP 1970–72/517–8 (20.4.1971)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of the day for the next sitting. VP 1970–72/628 (6.5.1971) **Findings:** (a) Commitment to prison of Member constituted a breach of parliamentary privilege. (b) Having regard to the complexities and circumstances of the case it recommended that the House best consult its own dignity by taking no further action. PP 40 (1971) Motion, that the report be noted, debated and agreed to. VP 1970–72/667 (23.8.1971)
48	**7 September 1971**	
	Article in the *Daily Telegraph* concerning 'count out' of the House. VP 1970–72/689 (7.9.1971)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of the day for 8 December 1971. VP 1970–72/863 (30.11.1971) **Findings:** (a) Article constituted a contempt of the House. (b) Writer of article and editor-in-chief were guilty of contempt. **Recommendations:** (a) Writer of the article be required to furnish a written apology to the Speaker. (b) Editor-in-chief be required to publish on the front page of the Daily Telegraph a correction and apology with the position and prominence of the original article. PP 242 (1971)

	Matter	*Action by Speaker, House and Privileges Committee*
		Motion, that the House agreed with findings and was of the opinion that it would best consult its own dignity by taking no further action, moved and debated; amendment moved to effect that the recommendations be carried out; amendment negatived after debate; motion agreed to. VP 1970–72/901–2 (8.12.1971)
49	**13 September 1971**	
	Letter to the editor published by the *Australian* accusing Members of accepting bribes etc. (Letter signed "P Wintle"). VP 1970–72/711 (13.9.1971)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of the day for 4 November 1971. VP 1970–72/796 (28.10.1971)
		Findings: (a) Publication of the letter constituted a contempt of Parliament. (b) Author of the letter and editor were both guilty of breach of privilege. (c) Letter was published without malice to the House or any Member. (d) No evidence to substantiate the allegations in the letter. **Recommendations**: (a) No further action be taken against editor of the *Australian* provided a prominent apology is published etc. (b) Above action does not absolve author of letter of guilt. PP 182 (1971)
		Motion, that the House agrees with committee report, debated and agreed to. VP 1970–72/818 (4.11.1971)
50	**25 May 1972**	
	Alleged premature release of press statement by Minister relating to change in excise duty. VP 1970–72/1106–7 (25.5.1972)	Motion, that the matter be referred to the Committee of Privileges, debated and negatived.
51	**20 September 1973**	
	Premature publication in article in the *Sun* of matter relating to the contents of a draft report of a parliamentary committee. VP 1973–74/368 (20.9.1973)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of the day for the next sitting. VP 1973–74/502 (8.11.1973)
		Findings: (a) A breach of privilege had occurred. (b) Editor and journalist were guilty of a contempt of the House.
		Recommendations: (a) Editor be required to publish a prominent and adequate apology. (b) As the editor accepted responsibility, no action be taken against the journalist. (c) Speaker communicate with the president of the press gallery and bring to notice of all journalists the long-standing rule against premature publication or disclosure of committee proceedings, evidence or reports. PP 217 (1973)

	Matter	*Action by Speaker, House and Privileges Committee*
		Motion, that the House agreed with the findings, that in view of editor's death no further action be taken regarding publication of an apology, and that the Speaker communicate with the president of the press gallery as recommended, debated and agreed to. VP 1973–74/518 (13.11.1973)
52	**11 October 1973**	
	Article in the *Daily Telegraph* regarding letter allegedly written by the Secretary of the Department of Aboriginal Affairs referring to actions of a Minister and a parliamentary committee. VP 1973–74/428–9 (11.10.1973)	Speaker was of opinion that a prima facie case had been made out. **Matter referred to the Committee of Privileges**. VP 1973–74/431 (15.10.1973) Report presented. VP 1973–74/562 (22.11.1973) **Findings:** No breach of privilege. PP 236 (1973)
53	**20 November 1973**	
	Remarks critical of Member (Dr Forbes) allegedly made by the Prime Minister and referred to in an article in the *Australian*. VP 1973–74/541–2 (20.11.1973)	Motion, that the matter be referred to the Committee of Privileges, debated and negatived.
54	**6 December 1973**	
	Allegation that a letter to the editor of the *Sun-News Pictorial* was fraudulently written in Member's (Mr Mathews') name. VP 1973–74/619 (6.12.1973)	**Matter referred to the Committee of Privileges**. Committee had not reported when Parliament was prorogued on 14 February 1974. **Matter again referred to the Committee of Privileges**. VP 1974/34 (7.3.1974) Report presented; consideration made an order of the day for the next sitting. VP 1974/84 (4.4.1974) **Findings:** (a) Letter was a forgery and as such would appear to constitute a criminal offence. (b) Letter misrepresented Member's attitude clearly displayed in the House. (c) Writer (unknown) of letter was guilty of serious contempt of the House. PP 65 (1974) Motion, that the House agrees with committee report, agreed to. VP 1974/98 (9.4.1974)
55	**12 December 1973**	
	Publication by the *Australian* of an article based on a teleprinter message addressed to a Minister. VP 1973–74/635 (12.12.1973)	Motion, that the matter be referred to the Committee of Privileges, moved and debated. Speaker stated he would consider whether a prima facie case made out. Speaker was of the opinion that a prima facie case had not been made out. VP 1973–74/640 (12.12.1973)
56	**14 November 1974**	
	Veracity of a statement in the House the previous day by the Prime Minister. VP 1974–75/310 (14.11.1974)	Speaker stated that as the matter was not raised at the earliest opportunity it was not in order to proceed with the matter.

	Matter	*Action by Speaker, House and Privileges Committee*
57	**26 February 1975**	
	Article in the *Sun* (Sydney) regarding staff assistance to Members and stating some Members would employ their wives etc. H.R. Deb. (26.2.1975) 772	Speaker to consider whether a prima facie case made out. No further action (Speaker resigned office next day).
58	**27 February 1975**	
	Alleged intimidation of Speaker (Mr Cope) by Prime Minister following the naming of a Member. VP 1974–75/506–7 (27.2.1975)	Motion, that the matter be referred to the Committee of Privileges, negatived.
59	**27 February 1975**	
	Statements and actions of a Minister (Mr C R Cameron) who had been named for refusing to apologise after disregarding the authority of the Chair. VP 1974–75/510 (27.2.1975)	Speaker stated prima facie case did not exist, situation had been dealt with by the Chair as a matter of order.
60	**5 June 1975**	
	Report appearing in the *Sun-News Pictorial* concerning the removal of a letter from a Minister's office. VP 1974–75/788 (5.6.1975)	Speaker stated that the matter did not constitute a prima facie case, it was more a matter of security. VP 1974–75/793 (5.6.1975)
61	**5 June 1975**	
	Alleged threat by Minister to private Member (Mr Wentworth) (Minister had indicated that if Member repeated certain actions he would move for his expulsion from the House). H.R. Deb. (24.9.1974) 1740	Notice given to refer matter to the Committee of Privileges. Notice not moved when called on and was therefore withdrawn from the Notice Paper. (*see* NP 82 (5.6.1975) 8523)
62	**20 August 1975**	
	Articles in the *Daily Telegraph* and *Daily Mirror* regarding Members' travel arrangements. VP 1974–75/849 (20.8.1975)	Speaker was of opinion that while published statements were to be deprecated, matter raised should not be accorded precedence over other business. VP 1974–75/858 (21.8.1975)
63	**24 February 1976**	
	Alleged investigations by Commonwealth Police into a Member's (Mr Fry's) activities. VP 1976–77/29 (24.2.1976)	Speaker could not find in the Member's remarks any precise instance of where the performance of his duties in the House had been affected and accordingly in his opinion no prima facie case had been made out. VP 1976–77/33 (25.2.1976)
64	**7 April 1976**	
	Remarks made by Member (Mr Neil) in the House claiming that another Member had abused privilege by attacks on outside persons etc. VP 1976–77/123 (7.4.1976)	Speaker stated that there was no question of privilege involved, remarks amounted to a vigorous rebuttal of another speech. VP 1976–77/129 (8.4.1976)
65	**7 April 1976**	
	Remarks allegedly made in court by Mr Rofe, QC, concerning a Member's (Mr James') speech in the House and reported in the *Canberra Times*. VP 1976–77/123 (7.4.1976)	Speaker was not satisfied that a prima facie case existed and the matter had not been raised at the earliest opportunity. VP 1976–77/129 (8.4.1976)

	Matter	*Action by Speaker, House and Privileges Committee*
66	**18 May 1976** Speech made in House by Member (Mr James)—Speaker requested to consider whether Member had conspired to deceive the House and so breached privilege. VP 1976–77/179 (18.5.1976)	Speaker stated that he was not satisfied that a prima facie case had been made out.
67	**4 June 1976** Inspection of House records and production of documents and attendance of officers at court proceedings. A motion having been moved in response to a petitioner's request to inspect and use in court documents tabled in the House, Member raised, as matter of privilege, that— (a) the motion was not in accord with the request of the petition. (b) production elsewhere of the documents requested would be a breach of privilege. VP 1976–77/247 (4.6.1976)	Speaker stated that he could not accept as a ground of breach of privilege either of the issues raised.
68	**5 May 1977** Proposed motion of censure of Member (Mr Neil) which was claimed to be intimidatory and preventing free speech etc. NP 21 (24.5.77)1088–9; VP 1977/107 (5.5.1977)	Speaker stated that the Member had failed to establish a prima facie case.
69	**28 February 1978** Editorial in the *Sunday Observer* concerning events of the opening week of the 31st Parliament. VP 1978–80/27 (28.2.1978)	Speaker was of opinion that a prima facie case had been made out. **Matter referred to the Committee of Privileges**. VP 1978–80/29 (28.2.1978) Report presented; consideration made an order of the day for the next sitting. VP 1978–80/110 (7.4.1978) **Findings:** (a) The publication of the editorial constituted a contempt of the House. (b) That the editor-in-chief and the editor were both guilty of contempt of the House. **Recommendations:** (a) As the editor-in-chief had published an apology no further action be taken. (b) Actions of editor not worthy of occupying the time of the House. PP 120 (1978) Motion, that the House agrees with committee's findings and recommendations in relation to the matter, debated and agreed to. VP 1978–80/147–8 (13.4.1978)

	Matter	*Action by Speaker, House and Privileges Committee*
70	**15 March 1978**	
	Cessation of mail services to Parliament House due to industrial dispute. VP 1978–80/75 (15.3.1978)	Speaker stated that although important issues were involved affecting the efficiency and workings of the House and its Members, the matter did not constitute a prima facie case of breach of privilege. VP 1978–80/76 (15.3.1978)
71	**8 June 1978**	
	Alleged conspiracy by Prime Minister and other Ministers to mislead the Parliament (concerning recent electoral redistribution). VP 1978–80/317–8 (8.6.1978)	Motion, that the Prime Minister had committed a breach of a privilege etc., debated; Speaker stated that no prima facie case existed; motion negatived.
72	**16 August 1978**	
	Question of whether improper pressure had been used to influence a Minister (Mr E L Robinson) in the performance of his parliamentary duties (article in the *Bulletin* claimed Prime Minister had asked Minister to write a certain letter). VP 1978–80/341–2 (16.8.1978)	Speaker stated that Mr Robinson had not raised the matter and had denied the basis of the allegation. Speaker stated that no prima facie case had been established. VP 1978–80/346 (16.8.1978)
73	**17 October 1978**	
	The reported removal of a Hansard proof from the desk of a Member (Mr Goodluck), its copying and the possible intimidation of the Member (based on an article in the *Sun Herald*). VP 1978–80/469 (17.10.1978)	Speaker stated that no complaint had been received from the Member, and that he had indicated he had not been intimidated. Speaker ruled that no prima facie case had been made out. VP 1978–80/471 (17.10.1978)
74	**14 November 1978**	
	Declaration of High Court relating to Crown privilege and the possible application of the principle as declared to the production of ministerial documents in the House. Member proposed that the Speaker ought to determine any claims concerning the status of documents in the future. VP 1978–80/529 (14.11.1978)	Speaker stated that the course proposed by Member could not be adopted and noted differences between role of the Speaker and judicial authorities. VP 1978–80/541 (15.11.1978)
75	**29 March 1979**	
	Alleged misconduct of Member (Mr Gillard) in writing to the Chief Justice of NSW regarding case. (Chief Justice had criticised action.) VP 1978–80/714 (29.3.1979)	Speaker stated there was no substance in the alleged breach of privilege. VP 1978–80/717 (29.3.1979)
76	**30 August 1979**	
	Petition of John Fairfax & Sons regarding the use of documents in court in case involving Member (Mr Uren). VP 1978–80/972 (30.8.1979)	**Petition referred to the Committee of Privileges**. Resolution referring petition to the Committee of Privileges rescinded (advice received that case had been settled). VP 1978–80/975 (11.9.1979)

	Matter	*Action by Speaker, House and Privileges Committee*
77	**11 September 1979**	
	Use of House records in court (issue raised following order of Supreme Court of NSW in case involving Mr Uren). VP 1978–80/975 (11.9.1979)	**Matter referred to the Committee of Privileges**. Report presented; consideration made an order of the day for 17 September 1980. VP 1978–80/1613 (9.9.1980) **Recommendations:** (a) The practice of petitioning the House for leave to produce documents in court should be maintained. (b) Such petitions be referred by the House to the Committee of Privileges. (c) Members and former Members, referred to in such petitions, be heard on their own behalf by the committee. (d) In reporting to the House its views on the petition the committee should recommend any conditions on the production of records or Hansard report. (e) The House should resolve that the broadcast of proceedings of the House and the publication of those proceedings in Hansard do not amount to a waiver of privilege. (f) The House reaffirms that— (i) In law there is no such thing as a waiver of parliamentary privilege. (ii) The House has the right to impose conditions on the production of documents. (iii) Such conditions are binding on the courts. PP 154 (1980) Motion, that (a) the report be considered early in the 32nd Parliament and (b) the order of the day for the consideration of the report be discharged, debated and agreed to. (Amendment proposing that the House agree to detailed procedures as recommended by the committee negatived.) VP 1978–80/1672 (17.9.1980)
78	**13 September 1979**	
	Claim by Member (Mr Morris) that he had been threatened by the Leader of the House. VP 1978–80/987 (13.9.1979)	Acting Speaker stated that, as the Member indicated he did not wish to pursue the matter and the Leader of the House had made an explanation, it would be idle of the House to pursue the matter. VP 1978–80/990 (13.9.1979)
79	**27 September 1979**	
	Allegation that a report in the *Age* reflected on the Chair in stating that, at the previous sitting, the Speaker had lost control of the House. VP 1978–80/1035 (27.9.1979)	Speaker stated that a prima facie case of breach of privilege did not exist.
80	**23 October 1979**	
	Alleged refusal of the Secretary to the Treasury to supply certain information to Standing Committee on Environment and Conservation. VP 1978–80/1100 (23.10.1979)	Speaker of opinion that no prima facie case existed. VP 1978–80/1101 (23.10.1979)
81	**8 November 1979**	
	Allegation that a report in the *Australian* reflected on the Parliament and its Members. VP 1978–80/1165 (8.11.1979)	Speaker stated that no part of the article was of sufficient relevance or directness to amount to breach of privilege or a contempt, nor was matter raised at earliest opportunity. VP 1978–80/1168 (8.11.1979)

	Matter	*Action by Speaker, House and Privileges Committee*
82	**1 April 1980**	
	Alleged discrimination against and intimidation of a witness (Mr Berthelsen) who had given evidence to a parliamentary subcommittee. VP 1978–80/1372 (1.4.1980)	Speaker stated that from the material produced he was unable to conclude that a prima facie case existed. VP 1978–80/1375 (1.4.1980)
	Matter again raised and additional documentary evidence presented. VP 1978–80/1417 (23.4.1980)	Speaker to consider papers and report to the House. Speaker allowed precedence to motion to refer matter. **Matter referred to the Committee of Privileges**. VP 1978–80/1422 (23.4.1980) Report presented; consideration made an order of the day for 17 September 1980. VP 1978–80/1648–9 (11.9.1980) **Findings:** (a) Committee was not satisfied that a breach of privilege was proven against any person. (b) Witness had been disadvantaged in public service career because of involvement with subcommittee. (The committee was also critical of the actions of the Department of Defence.) **Recommendations:** (a) Attention of the Public Service Board be drawn to the circumstances of the case. (b) Witness's career prospects in public service be restored. (c) Public Service Board to ensure witness suffers no further disadvantage as a result of the case. PP 158 (1980)
83	**27 November 1980**	
	Withholding from circulation to Members by the Parliamentary Library of a copy of a book, *Documents on Australian Defence and Foreign Policy 1968–1975*, pending a decision in a relevant matter before the High Court. VP 1980–83/26 (27.11.1980)	Speaker stated there was no prima facie case of breach of privilege as would warrant precedence, but he would be willing to re-examine the matter after the court decision. Speaker made statement that, consequent on the decision of the High Court, the Parliamentary Library had been directed to make the book available to Members on certain conditions. VP 1980–83/37 (2.12.1980)
84	**2 December 1980**	
	Conditions under which *Documents on Australian Defence and Foreign Policy, 1968–1975* would be made available. VP 1980–83/37 (2.12.1980)	Speaker stated that in his opinion no prima facie case existed.
85	**8 September 1981**	
	An article concerning Members by journalist (Mr Oakes) in the *Daily Mirror*. VP 1980–83/449 (8.9.1981)	Speaker stated that in his opinion a prima facie case existed but he would exercise his discretion not to give the matter precedence immediately, to give Member time to consider form of motion. **Matter referred to the Committee of Privileges**. VP 1980–83/458–9 (8.9.1981) Report presented; consideration made an order of the day. VP 1980–83/632 (27.10.1981)

	Matter	*Action by Speaker, House and Privileges Committee*
		Findings: (a) Printed references constituted a contempt by the author, editor and publisher. (b) The article was irresponsible and reflected no credit on its author, the editor or the publisher. (c) While a contempt had been committed, the matter was not worthy of occupying the further time of the House. (Three dissenting reports also presented.) PP 202 (1981) Motion that House take note of report, made an order of the day for the next sitting. VP 1980–83/655 (29.10.1981) Motion that House take note of report, debated, agreed to. VP 1980–83/805 (23.3.1982)
86	**20 October 1981** Alleged breach of confidentiality of material prepared for Member (Dr Theophanous) by Parliamentary Library. VP 1980–83/605 (20.10.1981)	Speaker did not believe that the Member was being influenced in any way in his conduct by the matter; no prima facie case of breach of privilege existed.
87	**20 October 1981** Advertisement on front page of the Melbourne *Herald*. VP 1980–83/605 (20.10.1981)	Speaker prepared to allow precedence to motion. **Matter referred to the Committee of Privileges**. VP 1980–83/608 (20.10.1981) Report presented; consideration made an order of the day. VP 1980–83/652 (29.10.1981) **Findings:** (a) The type of advertising involved could constitute a contempt. (b) The particular reference should not be further inquired into by the committee. (c) This type of advertising should be considered in context of general inquiry into privilege matters already recommended. PP 297 (1981) Motion that House take note of report agreed to. VP 1980–83/805 (23.3.1982)
88	**20 October 1981** Advertisement in the *Australian Financial Review*. VP 1980–83/608 (20.10.1981)	Speaker stated that a prima facie case had not been established, and even if a breach of privilege did exist the matter could not be given precedence as it had not been raised at the earliest opportunity as required by standing order 96. VP 1980–83/610 (20.10.1981)
89	**27 October 1981** Advertisement in *News Weekly* in which purported comments and photographs of former Prime Minister Menzies and current Prime Minister Fraser were used to solicit financial contributions to News Weekly Fighting Fund. VP 1980–83/629 (27.10.1981)	Speaker stated that no prima facie case of breach of privilege existed. To refer matter to committee would duplicate existing reference. VP 1980–83/629, 635 (27.10.1981)

	Matter	*Action by Speaker, House and Privileges Committee*
90	**13 October 1982**	
	Article in the *Australian* of deletions from documents tabled by Leader of Opposition (Mr Hayden). VP 1980–83/1089 (13.10.1982)	Speaker held that there was no breach of privilege as there was no obstruction of, or impediment to, the performance of the duties of the Member. VP 1980–83/1095 (13.10.1982)
91	**20 October 1982**	
	Certain remarks and actions of Member (Mr Dawkins) in Chamber. VP 1980–83/1119 (20.10.1982)	Matter not proceeded with.
92	**20 October 1982**	
	Whether Member (Mr D M Cameron) had gained access to confidential correspondence concerning overseas travel by Member (Mr Dawkins) and his wife. VP 1980–83/1119 (20.10.1982)	Speaker stated that no prima facie case existed.
93	**6 September 1983**	
	Article published in the *Daily Telegraph* under the heading 'Speaker probes spy in MP drama'. VP 1983–84/183 (6.9.1983)	Speaker stated no complaints had been raised in the House and he was not pursuing investigations into it. Speaker added that, while he would defend the privileges of the Parliament, he would not interfere in the normal processes of the law in respect of any Member. VP 1983–84/187 (6.9.1983)
94	**1 November 1983**	
	Alleged political party advertising on cover of certain copies of proposed ministerial statement. VP 1983–84/323 (1.11.1983)	Speaker stated that no question of privilege was involved.
95	**8 November 1983**	
	Alleged intimidation of Members in course of their duties (government party decisions on uranium mining). VP 1983–84/343 (8.11.1983)	Speaker held that no prima facie case had been made out, referred to principle of restraint in raising matter of privilege, referred to views that arrangements made within political parties were unlikely to raise questions of contempt and noted that no Member had claimed to have been intimidated in the discharge of their duties. VP 1983–84/350 (9.11.1983)
96	**8 May 1985**	
	Claim that a union ban on mail despatches would affect Members' mail to constituents. VP 1985–87/198 (8.5.1985)	Acting Speaker stated that as the union bans affected all mail and that Members were not being subjected to particular action in their capacity as Members, the matter did not constitute a prima facie case. Policy of restraint noted. Dissent moved and negatived. VP 1985–87/203 (8.5.1985)
97	**13 May 1985**	
	Distinction between Members of the House of Representatives and Senators serving on joint committees in respect of the requirement to declare certain interests. VP 1985–87/227 (13.5.1985)	Acting Speaker stated that the arrangements applying had come about by decision of the House itself; no breach of privilege had been established. VP 1985–87/232-3 (13.5.1985)

	Matter	*Action by Speaker, House and Privileges Committee*
98	**22 May 1985**	
	Provision to outside counsel of a final draft of a report of the Standing Committee on Expenditure without approval of the committee. VP 1985–87/306 (22.5.1985)	Speaker held that there were no precedents paralleling the case, but he was willing to accord precedence to a motion. Member who had raised matter said, in the circumstances, he would not move a motion. VP 1985–87/319 (23.5.1985); H.R. Deb. (23.5.1985) 3081
99	**20 August 1985**	
	Alleged authorisation by Minister of distribution of information contained in answer to question on notice asked by a Member (Mr Braithwaite) before the answer had been submitted to the Clerk and transmitted to the Member. VP 1985–87/350 (20.8.1985)	Speaker stated that breaches of standing orders or practices were not ordinarily dealt with as contempts and actions of the Minister would not actually obstruct the Member in the course of his duty; matter did not constitute a prima facie case of breach of privilege. VP 1985–87/367 (21.8.1985)
100	**19 September 1985**	
	Delays in the production of daily Hansard arising from alleged direction from Government to Government Printer to give priority to printing of taxation documents. VP 1985–87/441 (19.9.1985)	Speaker stated that comments of Member did not contain grounds on which he could consider that a prima facie case had been established.
101	**9 October 1985**	
	Question of fees required of Members in respect of their requests under the Freedom of Information Act. VP 1985–87/465 (9.10.1985)	Speaker stated that no obstruction or impediment of a Member was indicated such as would constitute contempt; no prima facie case established. VP 1985–87/473 (10.10.1985)
102	**28 November 1985**	
	Article in the *Sydney Morning Herald* relating to contents of Select Committee on Aircraft Noise report not yet presented to the House. VP 1985–87/635 (28.11.1985)	Speaker said he would allow precedence to a motion, but matter not further proceeded with. VP 1985–87/649 (29.11.1985)
103	**29 November 1985**	
	Press reports which appeared to have knowledge of the contents of a report of the Joint Committee on the National Crime Authority to be presented to the House later that day. VP 1985–87/650 (29.11.1985)	Speaker said he would allow precedence to a motion, but matter not further proceeded with.
104	**11 March 1986**	
	Report in the *Sun Weekend* indicating that the Treasurer had intimidated the Chairman of Committees. VP 1985–87/741 (11.3.1986)	Speaker stated that since events reported had been denied by person allegedly intimidated, matter did not constitute a prima facie case. VP 1985–87/745 (11.3.1986)
105	**18 March 1986**	
	Claim concerning alteration of Hansard transcripts by a Member. VP 1985–87/769 (18.3.1986)	Speaker stated matter should not be pursued as a matter of privilege, but she would examine it and advise House. Speaker later repeated that no question of privilege was involved. VP 1985–87/772 (18.3.1986)

	Matter	*Action by Speaker, House and Privileges Committee*
106	**18 March 1986**	
	Excerpts of proceedings of the House reported on radio and television news included remarks which were later withdrawn. VP 1985–87/769 (18.3.1986)	Speaker stated that the matter was one for the Joint Committee on the Broadcasting of Parliamentary Proceedings, and she had arranged for this to occur; she was not prepared to accord precedence to a motion. VP 1985–87/772 (18.3.1986)
107	**29 April 1986**	
	Article in the *Sydney Morning Herald* which alleged that Australian Trade Commission attempted to inhibit the Opposition's actions in connection with the Minister for Trade (Mr Dawkins). VP 1985–87/881 (29.4.1986)	Speaker stated actions did not constitute an attempt by improper means to influence Members in their parliamentary conduct; she had not found that a prima facie case had been made out. VP 1985–87/887 (29.4.1986)
108	**6 May 1986**	
	Reported consideration by the High Court of Australia in respect of the future of Mr Justice Murphy. VP 1985–87/919 (6.5.1986)	Speaker found no evidence of a prima facie case of breach of privilege. VP 1985–87/924 (6.5.1986)
109	**21 May 1986**	
	Response received by a Member (Mr N A Brown) from the Department of Foreign Affairs to a request for material under the Freedom of Information Act. VP 1985–87/956 (21.5.1986)	Speaker stated that no action had been taken or statement made which would constitute a prima facie case. VP 1985–87/961 (22.5.1986)
110	**16 September 1986**	
	Reported statements by Minister for Immigration and Ethnic Affairs in the *Daily Telegraph* (allegations re disciplining certain Members). VP 1985–87/1101 (16.9.1986)	Speaker stated that, on the basis of the material before her and in light of such precedents as were available, she would not accord precedence to a motion. VP 1985–87/1110 (16.9.1986)
111	**18 September 1986**	
	Letter from Presiding Officers to President of the Parliamentary Press Gallery relating to the activities of journalists at Parliament House. VP 1985–87/1123 (18.9.1986)	Speaker stated that matter was one of parliamentary administration, not of privilege. VP 1985–87/1128 (18.9.1986)
112	**22 September 1986**	
	Disruption caused to work of electorate office of Member (Mr Coleman) as a result of telephone calls made in response to false advertisements in the *Sydney Morning Herald*. VP 1985–87/1139 (22.9.1986)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1985–87/1143 (23.9.1986) Report presented; no further action by House. VP 1985–87/1272 (23.10.1986) **Findings:** (a) Harassment of a Member in the performance of his or her work by repeated, nuisance or orchestrated telephone calls could be judged a contempt.

	Matter	*Action by Speaker, House and Privileges Committee*
		(b) In all the circumstances and bearing in mind the general reluctance to extend the ambit of Parliament's penal jurisdiction, further action would be inconsistent with the dignity of the House. (Two dissenting reports also presented.) PP 282 (1986)
113	**17 November 1986**	
	Press reports relating to purported contents of report of Joint Select Committee on Telecommunications Interception yet to be presented to House. VP 1985–87/1315 (17.11.1986)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1985–87/1321 (18.11.1986) Special report presented. VP 1985–87/1361 (26.11.1986) Asking House to consider sending message to Senate asking it to grant leave for Senators who served on the joint select committee to attend before the Committee of Privileges of the House. House resolved that a message be sent to the Senate asking it to grant leave to Senators to attend before House Committee of Privileges for examination. VP 1985–87/1365 (27.11.1986) Senate granted leave for four Senators to attend committee if they thought fit. J 1985–87/1576 (5.12.1986) Report presented; consideration made an order of the day. VP 1985–87/1654 (12.5.1987) **Findings:** (a) Confidential committee deliberations had been disclosed, without authorisation, by persons with access to information. These persons were guilty of contempt. (b) The various acts of publication revealing confidential deliberations constituted contempts. **Recommendations:** (a) Having been unable to identify the person(s) responsible for the disclosure, the committee could make no recommendation on that matter. (b) If the House believed penalties were warranted, it should refer the matter back to the committee for consideration of an appropriate penalty, in which case the committee would recall witnesses. (Four dissenting reports also presented.) PP 135 (1987) House had not considered matter further when both Houses dissolved on 5 June 1987.
114	**23 March 1987**	
	Reported statements by Secretary of the Australian Council of Trade Unions—regarded by Member (Mr Braithwaite) as threat to intimidate him. VP 1985–87/1533 (23.3.1987)	Speaker stated evidence available to her did not disclose evidence of a prima facie case. VP 1985–87/1535 (23.3.1987)
115	**26 November 1987**	
	Arrangements for lunch for the King and Queen of the Belgians which caused Members not invited to the lunch to be excluded from dining room. VP 1987–90/270 (26.11.1987)	Speaker concluded that no question of privilege was involved. The Government was responsible for guest lists; she would draw Member's remarks to the Prime Minister's attention. VP 1987–90/277–8 (26.11.1987)

	Matter	*Action by Speaker, House and Privileges Committee*
116	**21 December 1988**	
	Reported statements by a spokeswoman for the Leader of the House on Government's intention to curtail debate in the House. VP 1987–90/989 (21.12.1988)	Speaker stated report did not appear to constitute a threat or attempt to interfere with the free exercise of the functions of the House or the free performance of Members' duties; a prima facie case of contempt had not been made out. VP 1987–90/1016 (21.12.1988)
117	**24 October 1989**	
	Alleged misleading of House—questionnaire issued to persons involved in the Australian Bureau of Statistics 1989–90 National Health Survey required answers to be provided to certain questions on women's health matters, which was contrary to advice presented to the House. VP 1987–90/1489 (24.10.1989)	Speaker stated that he was unable to find that a prima facie case of contempt or breach of privilege had been made out. VP 1987–90/1514 (25.10.1989)
118	**23 November 1989**	
	Allegation made by Member (Mr Aldred) during the grievance debate concerning another Member (Mr Kent). VP 1987–90/1646 (23.11.1989)	Speaker stated that the matter could be decided either by him or by a motion being moved that the matter be referred to the Committee of Privileges. **Matter referred to the Committee of Privileges**. Report presented. VP 1987–90/1686 (30.11.1989) **Findings:** (a) Matter ought to have been put forward in a substantive motion. (b) Members' attention should be drawn to the requirements of the standing orders and practices of the House which govern reflections on and charges against Members. (c) Member had offended against rules of the House. **Recommendation:** That Member be required to apologise to House and withdraw allegation. (Two dissenting reports also presented.) PP 498 (1989) Motion, that the House agrees with the findings, calls upon the Member (Mr Aldred) to withdraw allegation and apologise to the House, or be suspended for two sitting days, debated and agreed to. Speaker invited Member to withdraw allegation and apologise to House. Member declined to do so. Motion, that the Member be suspended from the service of the House for two sitting days, agreed to. Member suspended for two sitting days. VP 1987–90/1695–8 (21.12.1989)

	Matter	*Action by Speaker, House and Privileges Committee*
119	**16 May 1990** Publication of letter by the *Sydney Morning Herald* from Member (Mr N A Brown) to Minister (Senator Bolkus) and of the Minister's reply concerning one of his parliamentary entitlements (on the basis that the disclosure was intended to denigrate him and inhibit him in the proper exercise of his parliamentary duties). VP 1990–93/85 (16.5.1990)	Speaker stated that he was unable to find that a prima facie case of contempt or breach of privilege had been made out. VP 1990–93/93 (16.5.1990)
120	**21 August 1990** Article published in the *Sydney Morning Herald*, which contained an allegation concerning a Minister. VP 1990–93/137 (21.8.1990)	Speaker stated that he was unable to find that a prima facie case of contempt or breach of privilege had been made out. VP 1990–93/165 (23.8.1990)
121	**11 September 1990** Press reports relating to private deliberations and purported contents of report of Joint Standing Committee on Migration Regulations yet to be presented to House. VP 1990–93/169 (11.9.1990)	Speaker prepared to accord precedence to a motion but matter referred back to Joint Standing Committee to further investigate in first instance. VP 1990–93/172 (11.9.1990) Joint Standing Committee concluded that the articles did not constitute substantial interference and would not persist in seeking to have the matter referred to the Committee of Privileges. VP 1990–93/191–2 (18.9.1990)
122	**13 September 1990** Letter to Member (Mr Scholes) from solicitors regarding the circulation by Member of papers concerning the Farrow/Pyramid Group of Building Societies, which Member considered constituted interference with his duties as a Member of the House. VP 1990–93/183 (13.9.1990)	Speaker stated the matter was a borderline case upon which the House would benefit from the advice of the Committee of Privileges. M**atter referred to the Committee of Privileges**. VP 1990–93/187 (17.9.1990) Report presented. VP 1990–93/283 (6.11.1990) **Finding:** Terms of letter to Member did not constitute contempt. **Recommendation:** That the House take no further action on the matter. PP 428 (1990)
123	**17 September 1990** Article published in the *Sunday Herald* (Melbourne) appeared to reveal a knowledge of a confidential submission to Joint Standing Committee on Migration Regulations. VP 1990–93/187 (17.9.1990)	Speaker prepared to accord precedence to a motion. Referred matter back to Joint Standing Committee to further investigate in first instance. VP 1990–93/188–9 (17.9.1990) Committee concluded the article had seriously impeded its deliberations and work. VP 1990–93/191–2 (18.9.1990) **Matter referred to the Committee of Privileges**. VP 1990–93/195–6 (19.9.1990) Report presented. VP 1990–93/398 (4.12.1990)

	Matter	*Action by Speaker, House and Privileges Committee*
		Findings: (a) One or more persons involved with the disclosure(s) of the submission may have committed a contempt. (b) Persons responsible for the disclosure(s) did not act with deliberate intent to breach the prohibition on unauthorised disclosure. **Recommendation:** That no further action should be taken by the House. (Dissenting report also presented.) PP 429 (1990)
124	**17 April 1991**	
	Alleged intimidatory threats to a person as a result of his submission to Standing Committee on Legal and Constitutional Affairs. VP 1990–93/686 (17.4.1991)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1990–93/698 (18.4.1991) Report presented. VP 1990–93/920 (21.6.1991) **Finding:** No contempt had been committed—person had felt intimidated but this did not establish that intimidation had been intended. **Recommendation:** That the House take no further action on this matter. PP 455 (1991)
125	**31 May 1991 (am)**	
	Issues concerning arrangements between Prime Minister and Deputy Prime Minister regarding leadership of the majority party, allegedly infringing upon the privileges of individual members of the majority party. VP 1990–93/813 (30.5.1991)	Speaker stated no question of privilege or contempt had arisen. VP 1990–93/831 (4.6.1991)
126	3 June 1991	
	Possible intimidation of Members by Mr Bill Ludwig, Secretary, Queensland Branch, Australian Workers' Union regarding possible ALP leadership ballot. VP 1990–93/817 (3.6.1991)	Speaker stated that he was not aware of any exact precedents, and noted that no Member had claimed intimidation. Precedence not granted. VP 1990–93/858 (5.6.1991)
127	3 September 1991	
	Alleged threats to members of the Australian Labor Party caucus during recent leadership challenge to the Prime Minister. VP 1990–93/977 (3.9.1991)	Speaker reaffirmed the view expressed in his statement of 5 June 1991. VP 1990–93/981 (3.9.1991)
128	10 September 1991	
	Possible misleading evidence given by witness to Standing Committee on Finance and Public Administration. VP 1990–93/1003 (10.9.1991)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1990–93/1012 (11.9.1991) Report presented. VP 1990–93/1186 (14.11.1991) **Finding:** Answer had been ambiguous, but no intention to mislead; no contempt had been committed.

	Matter	*Action by Speaker, House and Privileges Committee*
		Recommendation: That the House take no further action on this matter. PP 456 (1991)
129	**25 February 1992**	
	Letter from a firm of solicitors threatening to sue Member (Mr Nugent) following representations by Member to a Minister on behalf of a constituent. VP 1990–93/1313 (25.2.1992)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1990–93/1324–5 (26.2.1992) Report presented. Motion moved, that the House take note of the report. VP 1990–93/1487 (7.5.1992)
		Finding: The terms of the letter and the circumstances of its receipt had a tendency to impair the Member's independence in the performance of his duties. PP 118 (1992) Motion debated; amendment, requiring solicitors to apologise to Member and Parliament, proposed and debated. VP 1990–93/1540 (1.6.1992) Amendment agreed to, motion, as amended, agreed to. VP 1990–93/1551 (3.6.1992) Speaker presented copies of a letter from solicitors to Member, apologising to the Member and Parliament, in response to resolution. VP 1990–93/1633 (18.8.1992)
130	**5 March 1992**	
	Article in the *Sydney Morning Herald* concerning Speaker's preselection in the seat of Grayndler. VP 1990–93/1359–60 (5.3.1992)	Speaker did not consider a prima facie case had been made out.
131	**24 March 1992**	
	Comments attributed to Senator Ray allegedly reflecting upon the Speaker reported in the *Sydney Morning Herald*. VP 1990–93/1367 (24.3.1992)	Speaker not prepared to accord precedence to a motion.
132	**26 March 1992**	
	Remarks by former Senator concerning the Speaker reported in the *Sydney Morning Herald*, and another article in the *Sydney Morning Herald*. VP 1990–93/1391 (26.3.1992)	Speaker not prepared to accord precedence to a motion.
133	**28 April 1992**	
	Possible contempt relating to Standing Committee on Legal and Constitutional Affairs (alleged unauthorised disclosure). VP 1990–93/1429 (28.4.1992)	Speaker indicated he would await committee's further consideration of matter. Speaker stated Standing Committee had concluded there had been no breach of standing order 340. VP 1990–93/1489 (7.5.1992)

	Matter	*Action by Speaker, House and Privileges Committee*
134	**27 May 1992** Article in the *Sunday Age* (Melbourne) open to the interpretation that Member (Dr Theophanous) had been subject to possible interference and intimidated in the performance of his duties as a Member. VP 1990–93/1514 (27.5.1992)	Speaker not prepared, at this stage, to accord precedence to a motion, but would consider any further information. VP 1990–93/1517–8 (27.5.1992)
135	**9 September 1992** Article in the *Melbourne Age* concerning forthcoming report of Joint Standing Committee on Migration Regulations. VP 1990–93/1684 (9.9.1992)	Acting Speaker indicated he would await Committee's further consideration of matter. Committee had not reported when the House was dissolved on 8 February 1993.
136	**17 September 1992** Article in the *Australian* concerning alleged remarks by the Prime Minister about the Acting Speaker's conduct of proceedings in the Chamber. VP 1990–93/1718 (17.9.1992)	Acting Speaker stated he felt completely free in conducting his duties in the Parliament.
137	**26 May 1993** Comments by Member (Mr Dawkins) concerning an Auditor-General's report. Member queried whether an attempt had been made to interfere with the reporting of the Auditor-General's report to Parliament. VP 1993–96/107 (26.5.1993)	Speaker stated that the information available to him did not indicate that a matter of privilege or contempt existed and, as no prima facie case had been made out, he was not willing to give precedence to a motion in relation to the matter. VP 1993–96/124 (27.5.1993)
138	**26 May 1993** Member allegedly pushing his way past a staff Member locking the Chamber doors for a division. VP 1993–96/116 (26.5.1993)	Speaker stated that after having made inquiries with regard to the matter, he did not believe any issue of privilege or contempt was involved. However, he would not tolerate any mistreatment of staff of the Parliament in carrying out their duties. VP 1993–96/124 (27.5.1993)
139	**27 October 1993** Articles in the *Australian* and the *Financial Review* which made reference to a draft report of Joint Committee of Public Accounts. One of the articles in the *Financial Review* and an item on WIN television evening news purported to reveal private proceedings of the committee. VP 1993–96/436 (27.10.1993)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/444 (28.10.1993) Chairman of Privileges Committee made statement to House regarding the committee's wish to take evidence from a Senator. Motion to send message to Senate, requesting leave be given to Senator to appear before the committee, agreed to. VP 1993–96/596 (15.12.1993) Message from Senate reported, authorising Senator to appear before the committee. VP 1993–96/649 (17.12.1993) Report presented; ordered to be printed. VP 1993–96/939 (9.5.1994)

	Matter	*Action by Speaker, House and Privileges Committee*
		Findings: Confidential deliberations of the Joint Committee had been disclosed without authorisation by a person or persons with access to the information. If such a person or persons acted deliberately he or she (or they) were guilty of a serious breach of the prohibitions. Unfortunately the committee was unable to ascertain the identity of the person or persons responsible on this occasion. **Recommendation:** The committee was unable to make any recommendation on the particular matters complained of, although it went on to make proposals for the consideration of the House in order to assist any future cases. PP 77 (1994)
140	**27 October 1993** Article published in the *Sydney Morning Herald* relating to the contents of a forthcoming report of Standing Committee on Procedure. VP 1993–96/436 (27.10.1993)	Speaker indicated he would await the committee's further consideration of the matter. VP 1993–96/444 (28.10.1993) Chairman of the committee, by indulgence, made statement to the effect that the committee had concluded that publication of the article did not interfere substantially with its work. VP 1993–96/534 (23.11.1993)
141	**16 November 1993** Remarks and actions of the Prime Minister, reported in the *Bulletin*, allegedly calculated to deny the Speaker independence in his office. VP 1993–96/453 (16.11.1993)	Speaker stated that he had not felt that there had been any attempt at improper interference with the performance of his duties as Speaker. No information presented which would cause him to allow precedence to a motion. VP 1993–96/460 (16.11.1993)
142	**17 November 1993** Serving on a Member (Mr Sciacca) of a writ seeking damages for libel arising out of a letter from him to a Minister. VP 1993–96/463 (17.11.1993)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/469–70 (17.11.1993) Report presented; ordered to be printed. VP 1993–96/939 (9.5.1994) **Conclusions:** (1) that Mr Sciacca regarded his action in writing to the Minister as an action taken in the course of the performance of his duties as a Member; (2) that as a result of plaintiff's actions in causing the writ of summons to be issued and served on Mr Sciacca, Mr Sciacca felt intimidated; (3) that as a result of plaintiff's actions in causing the writ of summons to be issued and served on Mr Sciacca, Mr Sciacca felt constrained in making further representations on behalf of his constituents in relation to decisions about COMCAR; (4) that no evidence had been presented to the committee which would establish that plaintiff had intended to interfere improperly with the free performance by Mr Sciacca of his duties as a Member. **Findings:** Having regard to all the circumstances of this case and, in particular to the fact that it had received no evidence that plaintiff had intended to interfere improperly in the performance of Mr Sciacca's duties as a Member, a finding of contempt should not be made. PP 78 (1994)

	Matter	*Action by Speaker, House and Privileges Committee*
143	**25 November 1993** Article in the *Canberra Times* purporting to disclose draft recommendations of Joint Committee on Migration Regulations. VP 1993–96/557 (25.11.1993)	No further action taken.
144	**13 December 1993** Ban by the Communication Workers' Union on delivery of mail to electorate offices of Members of Parliament. VP 1993–96/569 (13.12.1993)	Speaker prepared to accord precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/593 (15.12.1993) Report presented; ordered to be printed. VP 1993–96/1107 (27.6.1994) **Findings:** (1) actions taken in December 1993 by and on behalf of members of the Communications Workers' Union caused the delivery of mail to the electorate offices of a number of Members of the House to be stopped; (2) actions complained of resulted in disruption of the work of electorate offices of a number of Members of the House; (3) actions complained of impeded the ability of constituents of a number of Members of the House to communicate with those Members; and (4) actions complained of were not taken with any specific intention to infringe the law concerning the protection of the Parliament. **Conclusions:** While the actions complained of ought not to be regarded as an acceptable means of expression and were to be deprecated and although it would be open to the committee to make an adverse finding in respect of those responsible, for the reasons outlined in the report such a finding should not be made. PP 122 (1994)
145	**2 February 1994** Articles published in the *Australian* and the *Canberra Times* appearing to reveal details of a submission to Standing Committee on Environment, Recreation and the Arts. VP 1993–96/700 (2.2.1994)	Speaker stated he would await the results of the committee's deliberations on the matter. Committee considered the matter and decided not to seek to refer the matter to the Committee of Privileges. VP 1993–96/787 (21.2.1994)
146	**24 February 1994** Articles published in several newspapers purporting to reveal conclusions reached by Standing Committee on Environment, Recreation and the Arts. VP 1993–96/811 (24.2.1994)	Speaker prepared to allow precedence to a motion, although before a motion was moved the committee should attempt to ascertain the source(s) of disclosure. VP 1993–96/819 (24.2.1994) Committee stated that it had been unable to identify the source of the disclosure. Speaker stated that as the committee had now reported substantial interference with its work, he would allow precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/981 (12.5.1994) Report presented; ordered to be printed. VP 1993–96/1902 (6.3.1995)

	Matter	*Action by Speaker, House and Privileges Committee*
		Findings: The committee found that information concerning the draft report of the standing committee was disclosed without authorisation by a person or persons with access to the information. If such person or persons acted deliberately he or she (or they) were guilty of a serious breach of the prohibitions. The committee took a serious view of such actions. Unfortunately the committee was unable to ascertain the identity of the person or persons responsible on this occasion. **Recommendation:** In light of its findings, the committee was unable to make any recommendation on the particular matters complained of, although it again made proposals for the consideration of the House in order to assist in any future cases. PP 26 (1995)
147	**24 February 1994**	
	Remarks made by a Member of Standing Committee on Environment, Recreation and the Arts on a radio program allegedly revealing details of meetings. VP 1993–96/811 (24.2.1994)	Speaker did not find that a prima facie case had been made and would not allow precedence to a motion. VP 1993–96/819 (24.2.1994)
148	**23 March 1994**	
	Allegations that a witness before Standing Committee on Industry, Science and Technology had been denied access to defence premises on the grounds that he had appeared before the committee. VP 1993–96/862–3 (23.3.1994)	Acting Speaker stated that a prima facie case existed and he was willing to allow precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/868–9 (23.3.1994) Report presented; ordered to be printed. VP 1993–96/1164–5 (30.6.1994) **Findings:** Complainant did not proceed with complaint. PP 136 (1994)
149	**24 March 1994**	
	Article in the *Sydney Morning Herald* which allegedly represented an unauthorised disclosure of a small portion of a Standing Committee on Employment, Education and Training report. VP 1993–96/900–1 (24.3.1994)	Committee informed House that it had determined that substantial interference with its work had not occurred. VP 1993–96/931 (5.5.1994)
150	**3 May 1994**	
	Allegations that a witness to a Senate committee had not been appointed to a position in the Industrial Relations Commission because of evidence given to the committee. VP 1993–96/909 (3.5.1994)	Speaker stated that he did not see that the allegations went to the powers, privileges or immunities of the House or its Members. He was not willing to allow precedence to a motion on the matter. VP 1993–96/921 (4.5.1994)
151	**2 June 1994**	
	Member's (Mr Tuckey's) entitlement to a more considered response to a question the Member asked about alleged discrimination. VP 1993–96/1047 (2.6.1994)	Speaker stated that the matter did not involve an issue of privilege.

	Matter	*Action by Speaker, House and Privileges Committee*
152	**2 June 1994**	
	Allegations of sexual harassment against a Member of Parliament. VP 1993–96/1047 (2.6.1994)	Speaker stated that the matter did not involve an issue of privilege.
153	**8 June 1994**	
	The service of writs for defamation against certain persons who had been involved in an affidavit read to the House by a Member (Mr Katter). VP 1993–96/1074 (8.6.1994)	Speaker stated that while information had not been presented which would lead him to conclude absolutely that there was prima facie evidence of an attempt to interfere improperly in the performance of a Member's duties, it was a borderline case and he was prepared to allow precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1993–96/1092 (9.6.1994) Report presented; ordered to be printed. VP 1993–96/1697 (8.12.1994) **Conclusion:** Whether actions of Member's informants were covered by absolute privilege would be determined in court; no evidence had been produced which would establish that actions taken amounted to or were likely to amount to improper interference in the free performance of Member's duties. A Member's privilege of freedom of speech should be used judiciously where the reputation or welfare of persons may be an issue; Members would be judged according to their actions in such matters. **Finding:** A contempt was not committed in respect of the initiation of the action complained of. PP 407 (1994)
154	**27 June 1994**	
	Articles published in the *Herald-Sun* and the *Daily Telegraph-Mirror* purporting to disclose the contents of a draft report of Joint Select Committee on Certain Family Law Issues. VP 1993–96/1099 (27.6.1994)	Speaker stated that the committee should endeavour to ascertain whether substantial interference had occurred and the source of any disclosure. The committee announced that it had determined that there was no serious interference with its work. Deputy Speaker stated that he would bring this statement to the attention of the Speaker. VP 1993–96/1147 (29.6.1994)
155	**20 September 1994**	
	The requirement of the Australian Electoral Commission that Members present any objections to revised electoral boundaries for Victoria on a certain day, which was a sitting day. Member asked Deputy Speaker to write to the Australian Electoral Commission drawing its attention to the right of the House to the services of its Members. VP 1993–96/1303 (20.9.1994)	Speaker did not consider that a prima facie case had been made out; nevertheless the issue was an important one and he had written to the Australian Electoral Commissioner. VP 1993–96/1330–1 (22.9.1994) Speaker tabled correspondence from Australian Electoral Commission explaining the facts in relation to the matter and made a statement; motion, that the House take note of the papers, made an order of the day for the next sitting. VP 1993–96/1352 (11.10.1994)
156	**7 December 1994**	
	Release of bills to media prior to presentation. H.R. Deb. (7.12.1994) 4213	Speaker stated he did not consider that prima facie evidence of an issue of privilege was involved. VP 1993–96/1682 (8.12.1994)

	Matter	*Action by Speaker, House and Privileges Committee*
157	**28 February 1995**	
	Injunction reportedly sought to prevent the Commonwealth Ombudsman from publishing a report concerning Aboriginal and Torres Strait Islander Commission. VP 1993–96/1840–1 (28.2.1995)	Speaker stated that no prima facie case of privilege or contempt had been made out. Member asked Speaker if he would be prepared to allow precedence to a motion to require the Commonwealth Ombudsman to have a copy of the report presented to the House. Speaker stated that he would consider the matter and report back to the House. VP 1993–96/1857 (1.3.1995) Speaker stated that as no prima facie case of breach of privilege or contempt had been made out there was no basis for allowing precedence to such a motion. VP 1993–96/1900 (6.3.1995)
158	**27 March 1995**	
	Article in the *Financial Review*, which allegedly revealed details of Standing Committee on Banking, Finance and Public Administration report. VP 1993–96/1971 (27.3.1995)	Acting Speaker stated that he would await the results of the committee's deliberations on the matter. Committee reported that it had determined that substantial interference with its work had not occurred. VP 1993–96/2012 (30.3.1995)
159	**29 March 1995**	
	Content of articles in an Australian Associated Press report and in the *Australian*, *Herald Sun* and *Sydney Morning Herald* which attributed remarks to Prime Minister relating to the Speaker and Deputy Speaker and the performance of their duties. VP 1993–96/2001–2 (29.3.1995)	Acting Speaker advised the House that he did not believe anything improper had occurred or that there was evidence of an attempt to intimidate either the Speaker or himself. Acting Speaker stated that he did not believe that there was prima facie evidence of a breach of privilege or contempt and that he was not willing to allow precedence to a motion on the matter. VP 1993–96/2011 (30.3.1995)
160	**22 August 1995**	
	Matter raised under SO 97A on 28 July 1995 by Member (Mr E Cameron) concerning actions of Australian Federal Police in searching his electorate office on 26 July 1995. VP 1993–96/2303–4 (22.8.1995)	**Matter referred to the Committee of Privileges by Speaker**. When House next met, Speaker stated that he had concluded that it would be proper for the complaint to be referred to the Committee of Privileges. House endorsed response. Report presented, ordered to be printed. VP 1993–96/2567 (26.10.1995) **Findings:** (a) that the execution on the electorate office of Mr E H Cameron, MP on 26 July 1995 of a search warrant issued to a member of the Australian Federal Police caused disruption to the work of Mr Cameron's electorate office; (b) that the execution of the search warrant did impede the ability of constituents to communicate with Mr Cameron and apparently had a prejudicial effect on the willingness of some persons to do so; (c) that the disruption caused to the work of Mr Cameron's electorate office amounted to interference with the free performance by Mr Cameron of his duties as a Member; (d) that there was no evidence that the actions of the AFP officers involved were taken with any intention to infringe against the law concerning the protection of the Parliament; and (e) that there was no evidence that the interference caused to the work of Mr Cameron's electorate office should be regarded as improper.

	Matter	*Action by Speaker, House and Privileges Committee*
		Conclusion: Although the work of Mr Cameron's electorate office was undoubtedly disrupted by the actions complained of, and although these actions amounted to interference in the free performance by Mr Cameron of his duties as a Member, this interference should not be regarded as improper interference for the purposes of s.4 of the *Parliamentary Privileges Act 1987*. Accordingly, the committee concluded that no contempt was committed by the AFP officers involved. **Recommendation:** That the House request the Speaker to initiate discussions with the Minister for Justice with the object of reaching an understanding in respect of search warrants. PP 376 (1995) [Memorandum of understanding presented VP 2004–07/222 (9.3.2005)]
161	**28 August 1995**	
	Words used by Member (Dr Wooldridge) in making a personal explanation to the House on 24 August 1995 (allegedly misleading House). VP 1993–96/2332 (28.8.1995)	In response to comments from an Opposition Member that the matter was frivolous, Speaker stated that he did not believe it to be a frivolous matter when any issue of privilege or contempt was raised. H.R. Deb. (29.8.1995) 694
		Speaker stated that matter was best left to the judgement of the House and accordingly allowed precedence to a motion. Motion to censure Member moved and debated, amendment moved to censure Government, debated and negatived. Motion agreed to. VP 1993–96/2345–9 (30.8.1995)
162	**30 August 1995**	
	Issue of whether there had been prior disclosure to the Government of the Speaker's response to the Prime Minister's complaint of breach of privilege. VP 1993–96/2347–8 (30.8.1995)	Speaker made comments on his actions, but stated that he did not wish to be a judge in his own cause in such a matter and in the circumstances he would not prevent Member from moving a motion on the matter. Motion to refer matter to Committee of Privileges moved and negatived, after debate. VP 1993–96/2351–3 (30.8.1995)
163	**25 September 1995**	
	Allegations raised against certain persons by Member (Mr Aldred), documents referred to and used in raising the allegations later having been declared forgeries by Australian Federal Police. VP 1993–96/2405 (25.9.1995)	Speaker referred to the responsibility of Members to have regard to the rights and interests of citizens in their use of the privilege of freedom of speech, but advised the House that whilst acknowledging that some Members may take exception to the actions complained of, on the information available to him there was no evidence to support a conclusion that a prima facie case of contempt had been made out. Accordingly, he was not willing to allow precedence to a motion on the matter. VP 1993–96/2422 (27.9.1995)
164	**18 October 1995**	
	Work bans allegedly imposed in connection with the work of the electorate offices of certain Members in Western Australia. VP 1993–96/2468 (18.10.1995)	Speaker stated that it was not clear from the information presented that there was evidence of improper interference or attempted or intended improper interference with the free performance by Members of their duties as Members. Accordingly, he was not willing to allow precedence to a motion on the matter. VP 1993–96/2512 (19.10.1995)

	Matter	*Action by Speaker, House and Privileges Committee*
165	**23 November 1995** Article in the *Sunday Age* allegedly revealing details of deliberations of Joint Committee on the National Crime Authority on a report, the committee concluding that its work had been interfered with. VP 1993–96/2626 (23.11.1995)	Speaker stated that, in accordance with the practice of the House, before the complaint could be considered any further, the committee would be required to take whatever steps it could to ascertain the source or sources of disclosure. The Speaker further stated that it would assist if any additional information could be provided on the question of whether substantial interference had occurred. VP 1993–96/2649 (28.11.1995) (No information presented to House before dissolution on 29 January 1996.)
166	**27 June 1996** Claims that allegations made in previous Parliament by Member (Mr Aldred) were based on false and fabricated information (*and see* matter 163 above). VP 1996–98/339 (27.6.1996)	Speaker responded: Members must take responsibility for their own actions; if a Member makes accusations and it later emerges that they are false, Member would have duty to withdraw and apologise, it may be considered a matter of regret that this did not happen in present case. Prima facie case not found. VP 1996–98/360 (27.6.1996)
167	**6 November 1996** Threatening and offensive letter received by Member (Dr Theophanous). VP 1996–98/791 (6.11.1996)	Speaker noted letter was anonymous and, while it was irrational and offensive, he was not prepared to allow precedence. Speaker asked any other Members who had received such letters to advise his office so he could consider appropriate action. VP 1996–98/803 (7.11.1996)
168	**3 June 1997** Article published in the *Australian* concerning the presidency of the Queensland Liberal Party and reports that Members had their pre-selections threatened. VP 1996–98/1585 (3.6.1997)	Speaker stated that he endorsed the view that the House should not intervene in arrangements made within political parties and as no Member had claimed to have been intimidated or subject to improper interference he was not prepared to allow precedence to a motion on the matter. VP 1996–98/1587 (3.6.1997)
169	**30 September 1997** Articles in the *Australian* and the *Weekend Australian* revealing details of a report of the Standing Committee on Financial Institutions and Public Administration. VP 1996–98/2067 (30.9.1997)	The committee was unable to ascertain the source of the disclosure. It considered that the disclosure did not constitute a substantial interference in the work of the committee and did not seek further action on the matter. VP 1996–98/2110 (2.10.1997)
170	**1 October 1997** Letter to a Member threatening 'treason trials'. VP 1996–98/2100–1 (1.10.1997)	Speaker stated that Members were sometimes subject to such extravagant and irrational representations. He concluded that a prima facie case of improper interference had been made out and he was willing to allow precedence to a motion. Member stated he did not wish to refer the matter to the Committee of Privileges. VP 1996–98/2109 (2.10.1997)
171	**2 October 1997** Article in the *Age* revealing details of a report of the Standing Committee on Employment, Education and Training. VP 1996–98/2109 (2.10.1997)	The committee had considered the matter and resolved to report the matter to the House, but did not consider that its work had been substantially interfered with and therefore did not request a Committee of Privileges investigation.

	Matter	*Action by Speaker, House and Privileges Committee*
172	**2 October 1997** Allegations against the Attorney-General in respect of the presentation by the Australian Law Reform Commission of a submission to the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. VP 1996–98/2110 (2.10.1997)	Attorney-General referred to the matter. VP 1996–98/2122–3 (20.10.1997) Speaker stated that he was unable to form the opinion that a prima facie case of contempt had been made out and he did not consider that the papers presented to the House constituted evidence of improper interference. VP 1996–98/2155 (22.10.1997)
173	**20 October 1997** Presentation by the Attorney-General of certain papers purportedly from the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. VP 1996–98/2123 (20.10.1997)	Speaker stated that it was not clear that in fact either document would be covered by the provisions of relevant standing orders dealing with the unauthorised disclosure of documents and that accordingly, in his opinion, a prima facie case had not been made. VP 1996–98/2155–6 (22.10.1997)
174	**28 October 1997** Alleged unauthorised disclosure of information concerning the deliberations of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund. VP 1996–98/2199 (28.10.1997)	The committee would consider the matter and report to the House. The committee had considered that the disclosures constituted substantial interference to its work. VP 1996–98/2462 (18.11.1997) Speaker stated that it was neither desirable nor practicable for him to make an assessment of the validity of any assessment and, as the committee had concluded that substantial interference had occurred, he was willing to allow precedence to a motion on the matter. **Matter referred to the Committee of Privileges**. VP 1996–98/2487 (20.11.1997) Committee had not reported when the House was dissolved on 31 August 1998.
175	**25 November 1997** Articles published in *Australian*, *Australian Financial Review* and *Daily Telegraph* concerning a video recording involving a Member (Ms Hanson). VP 1996–98/2503 (25.11.1997)	Speaker stated that the information available did not establish a prima facie case of improper interference and he was not prepared to allow precedence to a motion on the matter. VP 1996–98/2504–5 (25.11.1997)
176	**8 February 1999** Subpoena from the Family Court of Australia ordering the production of records held by Member (Mr Price). VP 1998–2001/278 (8.2.1999)	Speaker undertook to look in detail at the issue raised and, if necessary and appropriate, to raise it with an appropriate committee. The matter was not pursued as an individual case, however, following representations by the Member, the Leader of the House moved that **the question of the status of records and correspondence held by Members be referred to the Committee of Privileges**. Motion debated and agreed to. VP 1998–2001/483 (31.3.1999) Committee reported no extension of privilege was justified, but practical measures, such as the development of guidelines to cover the execution of search warrants, should be taken. PP 417 (2000) [Guidelines presented VP 2004–07/222 (9.3.2005), s*ee also* Chapter on 'Parliamentary privilege']

	Matter	*Action by Speaker, House and Privileges Committee*
177	**22 March 1999**	
	Premature publication on the AM radio program and other media of the contents of report of the Standing Committee on Economics, Finance and Public Administration. VP 1998–2001/412 (22.3.1999)	Speaker stated that the issues must be considered in the first instance by the committee itself. Speaker also stated that if the committee concluded that substantial interference had occurred, it must explain why it reached this conclusion. VP 1998–2001/417 (23.3.1999) Committee reported that it had been unable to identify the source of the disclosure and had resolved that the disclosure did not constitute a substantial interference to its work but that it did constitute a substantial interference with the committee system, and recommended that the matter be referred to the Committee of Privileges. VP 1998–2001/433–4 (24.3.1999) Speaker allowed precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1998–2001/445 (25.3.1999) Report presented; ordered to be printed. VP 1998–2001/712 (30.6.1999) **Findings:** The committee found that a person or persons with access to the information disclosed such information concerning the report without authorisation. If such person or persons acted deliberately, then he or she (or they) were guilty of a serious breach of the prohibitions. The committee viewed such unauthorised disclosures very seriously as they, in the words of a predecessor committee 'display an offensive disregard for the committee itself and others associated with it, and ultimately a disregard for the rules and conventions of the Houses'. Unfortunately, it had not been possible to ascertain the identity of the person or persons responsible. **Recommendation:** The committee was unable to make any recommendation on the particular matters complained of, although it reiterated proposals made by a predecessor committee for the consideration of the House. The committee hoped that those proposals would assist in any future cases of a similar nature. PP 149 (1999)
178	**29 June 1999**	
	Actions of National Crime Authority officers in relation to inquiries involving Member (Dr Theophanous), who stated that the actions constituted an improper and substantial interference in the discharge of his duties as a Member. VP 1998–2001/681 (29.6.1999)	Speaker stated that it did appear that information obtained from tapped telephone calls had been used in the questioning of people and that alleged actions of, or statements by, the Member had been referred to in interviews. Speaker further stated that, as he comprehended it, the information provided to that point did not reveal evidence that the National Crime Authority was acting other than in accordance with lawful authority, or evidence of an improper purpose on the part of those involved. Speaker concluded that, in the circumstances known to him, he would not be justified in allowing precedence to a motion. VP 1998–2001/702 (30.6.1999)

	Matter	*Action by Speaker, House and Privileges Committee*
179	**15 February 2000**	
	An article published in the *Sun Herald* of 9 January 2000 reported that a person who had provided information to the Joint Standing Committee on Foreign Affairs, Defence and Trade could face disciplinary action by the Australian Federal Police. VP 1998–2001/1186 (15.2.2000)	Speaker stated that, before giving a decision on the matter, it would be desirable that he had the benefit of any information the Joint Committee itself could provide and that he had taken action to seek such information. VP 1998–2001/1201 (16.2.2000) Speaker referred to importance of the protection of witnesses but said that given the statement by the Australian Federal Police Commissioner that issues being pursued with the witness did not relate to his involvement with the committee he was not convinced that improper interference had occurred and that a prima facie case had not been made out. Speaker said that because of the seriousness of the matter if further evidence came to light he would be prepared to reconsider the matter. VP 1998–2001/1298 (15.3.2000)
180	**3 October 2000**	
	Alleged intimidation or interference with Mr Wayne Sievers following his involvement in an inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade VP 1998–2001/1750 (3.10.2000)	Speaker stated that while the Member had informed the House of further developments in relation to Mr Sievers, and while the protection of committee witnesses was most important, as far as he could see no new information concerning any issue of privilege had been presented. If the committee wished to present further information, he would consider it. VP 1998–2001/1775 (5.10.2000)
181	**4 April 2000**	
	Alleged improper interference with the performance of his duties as a Member (Dr Theophanous) by officers of National Crime Authority. VP 1998–2001/1350 (4.4.2000)	Speaker stated that while there appeared to be a number of unresolved issues in respect of the matters complained of, it was not clear to him at that stage that there was evidence of an offence against parliamentary privilege such as would allow him to give precedence to a motion. Speaker further stated that the Committee of Privileges currently had a general inquiry into the status of records held by Members, and that the Member might feel that he could take up aspects of his current concerns with the committee in connection with that inquiry. VP 1998–2001/1389 (10.4.2000)
182	**12 April 2000**	
	Actions of an officer of the Australian Taxation Office in relation to questions a Member (Ms J S McFarlane) had placed on the Notice Paper. VP 1998–2001/1401 (12.4.2000)	Speaker stated that he had had some discussions with the Member on her complaint and that the information available to him to that point was not such as to establish that priority should be given to a motion to refer the matter to the Committee of Privileges. Speaker stated that, with the Member's concurrence, he would seek more information from the Australian Taxation Office through the Treasurer. VP 1998–2001/1413 (13.4.2000) Speaker stated that he had discussed the advice he had received from the Office of the Treasurer with Ms McFarlane and that the advice confirmed that the matter did not constitute a contempt. VP 1998–2001/1527 (8.6.2000)
183	**7 September 2000**	
	Alleged deliberate misleading of the Standing Committee on Family and Community Affairs and alleged intimidation of a prospective witness before the committee. (Matter raised by committee) VP 1998–2001/1731 (7.9.2000)	Speaker stated that in light of the committee's finding that it had not been able to reconcile different accounts in respect of the possible intimidation of a witness and its conclusion that that matter should be pursued, he was willing to allow precedence to a motion on the matter. **Matter referred to the Committee of Privileges**. VP 1998–2001/1812 (12.10.2000)

	Matter	*Action by Speaker, House and Privileges Committee*
		Report presented; ordered to be printed. VP 1998–2001/2653 (26.9.2001) **Finding:** Whilst stating that the inquiry was made difficult due to the time lapsed and the differing evidence given, the committee concluded that an interference with the free exercise of the Standing Committee on Family and Community Affairs' authority and functions had occurred. However it did not find that this conduct amounted to improper interference with the committee's inquiry and functions. **Recommendation:** The committee recommended that all governments ensure that managers and staff of their departments are advised of the rights and responsibilities of witnesses appearing before parliamentary committees. In particular departments/authorities should make clear the distinction between staff appearing as a representative of the department/authority or in a private capacity. PP 208 (2001)
184	**3 October 2000** Actions of Australian Federal Police officers in the execution of a search warrant at the home of an adviser to Shadow Minister (Mr Brereton). VP 1998–2001/1750 (3.10.2000)	Speaker stated that the warrant had been issued under the Crimes Act and authorised certain actions. Speaker stated that while he understood the Member's concerns and his claim that the execution of the warrant had meant that officers involved had seen confidential material relating to his parliamentary duties, he had seen no evidence that improper interference, as required by section 4 of the Parliamentary Privileges Act, had occurred. Accordingly, he was not able to allow precedence to a motion on the matter. VP 1998–2001/1772 (5.10.2000)
185	**6 November 2000** Publication in *Time* magazine of an article dealing with matters under consideration by the Defence subcommittee of Joint Standing Committee on Foreign Affairs, Defence and Trade which appeared to reveal confidential information. VP 1998–2001/1857 (6.11.2000)	Chair of subcommittee stated that the matter would be considered by the subcommittee and the full committee and the outcome would be reported to the House. Speaker stated that he would await the results of the committee's deliberations. The committee concluded that substantial interference had occurred but was not able to ascertain the source or sources of disclosure. Speaker stated that in light of the committee's conclusions and having regard to the practice and precedents of the House, he was willing to allow precedence to a motion. **Matter referred to the Committee of Privileges**. VP 1998–2001/1884–5 (9.11.2000) Report presented; ordered to be printed. VP 1998–2001/2342–3 (7.6.2001) **Findings:** The committee found that a person or persons with access to the proof transcript of in camera evidence had inadvertently or deliberately disclosed such information. Unfortunately, it had not been possible to ascertain the identity of the person or persons responsible. The committee also found unauthorised disclosure to an officer in the Department of Defence of a copy of the proof transcript of in camera evidence. The committee expressed concern that certain committee staff had not been frank with the committee regarding this matter, and about circumstances surrounding the retrieval of this transcript.

	Matter	*Action by Speaker, House and Privileges Committee*
		Recommendation: The committee was unable to make recommendations on the particular matter complained of, but recommended that the following procedures be adopted in the handling of in camera transcripts: · A minimum number of copies be made to meet the needs of witnesses, committee members and secretariat staff; · Copies be made on a distinctively coloured paper to stand out from other material and be appropriately labelled as confidential; · Copies be numbered and a register be kept of the issuing of copies; · Both committee members and secretariat staff retain in camera material in a lockable cabinet that is locked at times when the area is not occupied; · Committee members return in camera evidence to secretariats when they have no further use for it; and · Secretariats destroy copies of in camera evidence when they have no further use for them. PP 105 (2001) **Later action:** Speaker reported to the House that the department had reviewed procedures adopted by committee secretariats for the handling of in camera evidence and had taken a number of steps to ensure that secretariats fully complied with the Privileges Committee recommendation. An independent review commissioned by the Clerk of the House had concluded that there had been a series of cumulative errors in judgment by different persons, most not serious in themselves but having a serious cumulative effect. The matter was being considered within the context of performance improvement processes of the department. The Clerk had directed that work be commenced as a matter of urgency relating to the conduct of staff appearing before parliamentary committees and the terms and conditions of staff seconded from outside the parliamentary service to assist committees. VP 1998–2001/2501 (20.8.2001)
186	**8 November 2000** Alleged intimidation or interference with Corporal Craig Smith following his involvement in an inquiry of the Defence subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade concerning the conduct of military justice. VP 1998–2001/1872–3 (8.11.2000)	Speaker stated that the matter should first be considered by the committee. VP 1998–2001/1872–3 (8.11.2000) The Defence subcommittee reported that the witness had confirmed that he had been harassed and received death threats and the committee had concluded that the matter should be referred to the Committee of Privileges. **Matter referred to the Committee of Privileges**. VP 1998–2001/1885 (9.11.2000) Report presented; ordered to be printed. VP 1998–2001/2342–3 (7.6.2001) **Findings:** The committee was unable to find that a breach of parliamentary privilege had been proved against any person or persons. However, it did not regard the report as necessarily concluding its inquiry into the matter. Should the committee be provided with information during the current Parliament that suggested to it that the matter was ongoing, then it might seek further evidence and report to the House on the evidence and its conclusions. The committee also wished to see that Corporal Smith had every opportunity to complete his career with the ADF with safety and confidence.

	Matter	*Action by Speaker, House and Privileges Committee*
		Recommendation: The committee recommended that the attention of the Director General Personnel – Army and the equivalent officers in the Navy and Air Force be drawn to the circumstances of this case and that the Director General and equivalent officers do all within their power to accommodate any request for a service transfer by Corporal Craig Smith. PP 104 (2001)
187	**8 November 2000** Alleged unauthorised disclosure of Joint Committee of Public Accounts and Audit deliberations on IT outsourcing. VP 1998–2001/1873 (8.11.2000)	Member stated that subsequent inquiries indicated that there was no substance to the matter and he apologised for any time spent on consideration. VP 1998–2001/1895 (27.11.2000)
188	**8 February 2001** Alleged improper interference with the performance of his duties as Chair of the Joint Standing Committee on Electoral Matters and as a Member. The Member (Mr Pyne) claimed that he had been threatened and intimidated by the Members for Rankin and Lilley. VP 1998–2001/2079, 2080 (8.2.2001)	Speaker stated that he had considered the matter and consulted with many people. At the Speaker's request a temporary record taken for security purposes by the establishment at which the alleged intimidation had occurred, had been examined and the result was inconclusive. Speaker also had had regard to the matter raised in 1979 by the then Member for Shortland. In that instance, in slightly different circumstances, the Speaker had stated that it would be idle for the House to pursue the matter. Mr Pyne had advised the Speaker that he had raised the matter on the principle at issue. As further investigation had proved inconclusive, the Speaker concluded that the dignity of the House would best be preserved by not pursuing the matter. VP 1998–2001/2091 (26.2.2001)
189	**18 June 2001** Articles published in the *Adelaide Advertiser*, *Sydney Morning Herald* and *Daily Telegraph* which appeared to reveal a number of recommendations of a report of the Joint Standing Committee on Electoral Matters before the report had been tabled. VP 1998–2001/2352, 2354 (18.6.2001)	The Chair of the Joint Committee on Electoral Matters reported that the committee had considered the matter in accordance with the Speaker's request and had resolved that it was inconclusive whether an unauthorised disclosure had occurred, was unable to ascertain the source of the alleged disclosure and the alleged disclosure did not constitute a substantial interference to its work or the committee system. The committee recommended that the matter not be pursued further. VP 1998–2001/2430 (28.6.2001)
190	**7 August 2001** Possible conflict of evidence given to Standing Committee on Employment, Education and Workplace Relations by Australian Taxation Office officers during its inquiry into employee share ownership and the information contained in an Auditor-General's report. VP 1998–2001/2461 (7.8.2001)	Speaker stated that the matter should be considered in the first instance by the committee. VP 1998–2001/2467 (8.8.2001)

	Matter	*Action by Speaker, House and Privileges Committee*
191	**24 June 2002**	
	An alleged threat of legal action that a Member claimed Telstra executives had made against him in connection with a press release he had issued following evidence given by a Telstra executive at a Senate estimates hearing. VP 2002–04/285 (24.6.2002)	In responding to the matter, the Speaker noted that the matter also raised the question of the proper relationship between the Parliament and government controlled entities. He stated that as he did not have sufficient information to make a final decision on the Member's complaint, he could therefore not give precedence to a motion at that time. VP 2002–04/289 (25.6.2002)
192	**27 June 2002**	
	A Member's inclusion in a question without notice of material concerning private deliberations of the Standing Committee on Ageing. VP 2002–04/305 (27.6.2002)	Chair of the committee reported to the House that the Member concerned had informed the committee that he regretted any inadvertent premature disclosure, the committee had considered that the disclosure had not substantially interfered with its work, and the matter was now resolved to the satisfaction of the committee. VP 2002–04/313 (27.6.2002)
193	**12 August 2003**	
	Alleged misleading of the House by the Prime Minister in relation to answers to questions on notice on the Government's ethanol policy. VP 2002–04/1062 (12.8.2003)	Speaker stated that the matter had not been raised at the earliest opportunity and he would not grant precedence to a motion.
194	**13 August 2003**	
	A Member raised a claim by another Member during a media interview that there had been attempts by Ministers to silence and intimidate him in relation to his views about the full privatisation of Telstra. VP 2002–04/1070 (13.8.2003)	The Speaker stated that he did not intend to accord the matter precedence as the Member had not raised the issue himself.
195	**21 August 2003**	
	Alleged misleading of the House by a Minister during his answer to a question without notice. VP 2002–04/1126 (21.8.2003)	The Speaker stated that in his opinion a prima facie case had not been made.
196	**2 December 2004**	
	Claim by two Members (Mr Latham and Mr Murphy) that a journalist who had phoned their offices earlier in the day had tried to unreasonably influence their conduct as Members of Parliament. VP 2004–07/80 (2.12.2004)	Speaker allowed precedence to a motion. **Matter referred to the Committee of Privileges.** VP 2004–07/82 (2.12.2004) Report presented. Ordered to be made a Parliamentary Paper. VP 2004–07/190 (16.2.2005) **Finding:** The committee found that there had been no breach of privilege when the remarks of the journalist were placed in the context of the relationship between Members and journalists. The committee, however, also included a warning to the media to be conscious in their exchanges with MPs of any appearance of trying to influence Members. PP 50 (2005)

	Matter	*Action by Speaker, House and Privileges Committee*
197	**10 August 2005** Two incidents where alleged fraudulent and inaccurate documents were written and distributed purportedly in a Member's name (Mr Nairn). VP 2004–07/505 (10.8.2005)	Speaker allowed precedence to a motion. **Matter referred to the Committee of Privileges.** VP 2004–07/507 (10.8.2005) Report presented. Ordered to be made a Parliamentary Paper. VP 2004–07/1927 (31.5.2007) **Finding:** The committee found that Ms Harriett Swift, on five occasions in 2005 and 2006, deliberately misrepresented the Hon Gary Nairn MP by producing and distributing documents that fabricated Mr Nairn's letterhead and signature to make it appear that the documents were prepared and sent by Mr Nairn. The committee finds Ms Swift guilty of a contempt of the House in that she has undertaken conduct which amounts to an improper interference in the free performance by Mr Nairn of his duties as a Member. **Recommendation:** The committee recommended that the House: 1. Find Ms Swift guilty of a contempt of the House in that she undertook conduct that amounted to an improper interference with the free performance by Mr Nairn of his duties as a Member; and 2. Reprimand Ms Swift for her conduct. PP 111 (2007) **Action by House:** The House resolved: That the House agrees with the recommendation of the report of the Committee of Privileges presented on 31 May 2007 about allegations of documents fraudulently and inaccurately written and issued in a Member's name, and: 1. finds Ms Harriett Swift guilty of a contempt of the House in that she undertook conduct that amounted to an improper interference with the free performance by the Member for Eden-Monaro of his duties as a Member; and 2. reprimands Ms Swift for her conduct. VP 2004–07/1954 (14.6.2007)
198	**17 August 2005** Claim by a Member (Mr Baldwin) concerning an email and facsimile letter received by him from the Mayor of Douglas Shire Council, which he considered constituted interference with his duties as a Member of the House. VP 2004–07/540 (17.8.2005)	The Speaker stated that the warnings made in the letter were not desirable. However, on the information available to this point it was not clear that a prima facie case of contempt had been established. He further stated that if any additional material or similar approaches were made, he would be prepared to reconsider the issue. VP 2004–07/566–7 (5.9.2005)
199	**31 October 2005** Alleged interference of a Member's (Mr Schultz) role as a Member of Parliament in relation to interference with his telephone answering service. VP 2004–07/694 (31.10.2005)	The Deputy Speaker stated that he would draw the matter to the attention of the Speaker who would consider the matter and report back as appropriate at a later time.

	Matter	*Action by Speaker, House and Privileges Committee*
200	**19 June 2006**	
	Alleged interference with a Member's (Mr Price) ability to do his job due to non-delivery of mail items by Australia Post. VP 2004–07/1217 (19.6.2006)	The Speaker stated that he had not been given detailed evidence of improper interference with the performance of the Member's duties and he was not prepared to give precedence to a motion. VP 2004–07/1263 (22.6.2006)
201	**21 June 2006**	
	Claim by a Member (Mr Randall) that a public servant had negatively commented on the Member's submission to an inquiry by the Joint Committee of Public Accounts and Audit, misleading the committee and improperly interfering with the Member's capacity to carry out his duties. VP 2004–07/1249–50 (21.6.2006)	The Speaker stated that the matter should be considered in the first instance by the committee concerned. VP 2004–07/1263 (22.6.2006) The Speaker noted that he had been advised by the Chair of the committee concerned that it had concluded that no issue of privilege had arisen. VP 2004–07/1319 (15.8.2006)
202	**10 August 2006**	
	Claim by Members (Mr Beazley, Ms King and Ms A Burke) concerning the use (quoting in an answer to a question without notice) of information by a Minister contained in correspondence between the Members and Ministers. VP 2004–07/1304 (10.8.2006)	The Speaker stated that the Committee of Privileges in its report on the records and correspondence of Members had noted that there was no general protection of privilege afforded to the correspondence of Members, including their correspondence with Ministers. He further stated that in this particular case, he did not consider that the Minister's disclosure of the contents of representations made to her by the Members concerned was designed to interfere with their ability to raise such matters in the future. He therefore did not consider a prima facie case had been made such as would permit precedence being given to a motion. VP 2004–07/1314 (14.8.2006)
203	**7 September 2006**	
	Alleged improper interference with the free performance of a Member's (Mr Lindsay) duties as a result of the actions of a Member of the Queensland Parliament. VP 2004–07/1386 (7.9.2006)	The Deputy Speaker stated that the Speaker would consider the matter.
204	**19 October 2006**	
	Alleged withdrawal of a Member's (Mr Wilkie) invitation to the launch of a Green Corps project in his electorate. VP 2004–07/1516 (19.10.2006)	The Speaker stated that whilst the cancellation of the foreshadowed invitation was regrettable for the Member, he did not believe that it constituted an improper interference in the Member's performance of his duties and that he did not propose to give precedence to a motion. VP 2004–07/1533 (31.10.2006)
205	**4 December 2006**	
	Articles published in the *Sunday Age* and *Sun-Herald* which appeared to reveal recommendations of a report of the Standing Committee on Family and Human Services before the report had been tabled. VP 2004–07/1619 (4.12.2006)	The Speaker stated that he would await further advice [i.e. after the matter had been taken up with the committee].
206	**19 June 2007**	
	An article published in the *Australian* titled "Bishop's last crack at Speaker's chair", and alleged possible intimidation of the Speaker. VP 2004–07/1973 (19.6.2007)	The Speaker stated that there were no privilege issues in the matter raised by the Member, and that he did not propose to give precedence to a motion. VP 2004–07/1977 (20.6.2007)

	Matter	*Action by Speaker, House and Privileges Committee*
207	**12 September 2007**	
	Alleged remarks made by a Member (Mr Hardgrave) in the House about an Australian Federal Police investigation of three Liberal Party Members of the House, in Queensland. VP 2004–07/2111 (12.9.2007)	The Speaker stated that there were no privilege issues in the matter raised by the Member, and that he did not propose to give precedence to a motion. VP 2004–07/2119 (13.9.2007)
208	**17 June 2008**	
	Exchange of remarks made between two Members (Ms Neal and Mrs Mirabella) and the subsequent withdrawal and apology by Ms Neal to the House. VP 2008–10/386–9 (17.6.2008)	**Matter referred to the Committee of Privileges and Members' Interests** (motion moved by leave). Report presented. Ordered to be made a Parliamentary Paper. VP 2008–10/679 (23.10.2008) **Finding:** The committee found that the Member for Robertson (Ms Neal) did not deliberately mislead the Main Committee (Federation Chamber) and the House such that it would give rise to a possible contempt. Hence no breach of privilege arose from the exchange between the Member for Robertson and the Member for Indi (Mrs Mirabella). However, the committee observed that the Member for Robertson's responses in the Main Committee fell below the standards expected of a Member and did not reflect well upon her. PP 499 (2008)
209	**22 October 2008**	
	Remarks made about a Member (Mr Schultz) by the New South Wales Leader of the Nationals, Mr Andrew Stoner. VP 2008–10/649 (22.10.2008)	The Speaker stated that whilst the words reportedly used were undesirable, having regard to the political context in which the comments were made and to the desire that contempt powers should be used sparingly, he was of the opinion that precedence should not be given to a motion on this occasion. VP 2008–10/675–6 (23.10.2008)
210	**23 October 2008**	
	An article published in the *Daily Telegraph* on a report of the Standing Committee of Privileges and Members' Interests before the report had been tabled. VP 2008–10/673 (23.10.2008)	The Speaker stated that the Committee of Privileges and Members' Interests should consider the matter, in particular whether the matter has caused or is likely to cause substantial interference with its work, with the committee system or with the functioning of the House. VP 2008–10/674 (23.10.2008) The Chair of the committee reported that the committee had considered the matter in accordance with the Speaker's request and had concluded that an unauthorised disclosure had occurred, but that the unauthorised disclosure had had no effect on the immediate inquiry conducted by the committee and the committee would take the matter into account in its review of the committee's procedures. VP 2008–10/790 (4.12.2008)
211	**24 February 2009**	
	A letter from the Minister of Education (Ms Gillard) relating to infrastructure projects in schools [concerning arrangements for the participation of Members]. VP 2008–10/893–4 (24.2.2009)	The Speaker noted that Members' duties extended to electorate responsibilities although the range of these duties to which parliamentary privilege would apply had not been fully defined. He stated that he had not seen evidence sufficient to support a view that a contempt had been made, and that he would not propose to give precedence to a motion. VP 2008–10/908 (26.2.2009)

	Matter	*Action by Speaker, House and Privileges Committee*
212	**27 May 2009**	
	Government criticisms of opposition Members' support for infrastructure projects in their electorates. VP 2008–10/1054 (27.5.2009)	The Speaker stated that the matters referred to may be seen to be part of robust political debate and, on the information presented, as not constituting improper interference with Members continuing to perform their duties in representing their constituents. In relation to the possible differential treatment of Members with respect to infrastructure projects, he stated that government programs were matters for the Government to administer, and unless there was evidence that such administration amounted to an improper interference with Members performing their duties as Members within their electorates, it was not easy to see that a matter of privilege arose. The Speaker said that he did not see evidence of such interference, and that he did not propose to give precedence to a motion. VP 2008–10/1067 (28.5.2009)
213	**8 February 2010**	
	Article in the *Townsville Bulletin* revealing details of a confidential briefing to a private meeting of the Public Works Committee, the source being identified as a member of the committee. VP 2008–10/1589 (8.2.2010)	Matter raised by the Chief Government Whip, a member of the committee, who subsequently presented the committee's report on the matter *Unauthorised disclosure of committee proceedings and evidence* PP 41 (2010). VP 2008–10/1598 (9.2.2010) Having considered the report, the Speaker stated that he regarded the unauthorised disclosure of private information given to committees very seriously. He noted that the source of the disclosure had been identified and the Member involved had apologised and given undertakings not to disclose information in the future. He also noted that the Public Works Committee had expressed the view that the alleged disclosure may result in substantial interference with its future work, particularly affecting its relationship with key witnesses. The Speaker said that he would be very concerned if there were a continuing effect on these relationships. The circumstances of the matter should give assurance to witnesses that the House and its committees regard these matters very seriously and will take action to protect the confidentiality of committee proceedings. The Speaker further stated that it was not only a matter of privilege but also an action that related to the ethical behaviour of a Member and was yet another case where a Members' code of conduct might have been of some assistance. As there was no disagreement as to the key facts and as the Public Works Committee had dealt with matters that would ordinarily be covered by the Committee of Privileges and Members' Interests, the Speaker stated that little would be achieved by further inquiry. The Speaker thanked the Public Works Committee for having thoroughly and expeditiously dealt with the matter on behalf of the House. VP 2008–10/1612 (11.2.2010)

	Matter	*Action by Speaker, House and Privileges Committee*
214	**18 March 2010**	
	Photograph of a Member (Mr Slipper) in the Chamber, apparently taken by another Member using a mobile phone, and its publication in the *Sunshine Coast Daily*. VP 2008–10/1711 (18.3.2010)	The Speaker stated that while the taking of an unauthorised photograph in the Chamber could potentially be seen as a contempt, he would take action directly against a Member for disorderly conduct should he become aware of such behaviour. The Speaker stated that he could understand that the publication of the photograph was embarrassing to the Member and he could see how it might influence the views that his constituents might have of him. In the absence of more specific evidence of the effect that this has had on the free performance of his duties, however, and given the consistently held view that the House's privileges and contempt powers should be exercised sparingly, he did not find that a prima facie case had been established. Leader of House moved, by leave, that the following matter be **referred to the Committee of Privileges and Members' Interests**: 'whether formal rules should be adopted by the House to ensure that the use of mobile devices during proceedings does not interfere with the free exercise by a House or a committee of its authority or functions, or with the free performance by a Member of his or her duties as a Member'. VP 2008–10/1718 (18.3.2010) Committee had not reported when the House was dissolved on 19 July 2010.
215	**31 May 2010**	
	Alleged attempt to intimidate a Member (Mr Johnson) into resigning from Parliament by an official of his former party. VP 2008–10/1797, 1819 (31.5.2010)	The Speaker made a statement noting that the allegations went to the ability of a Member to be able to perform his duties freely, and the fact that they had occurred within the context of a political party did not make them immune from considerations of possible improper interference, and allowed precedence to a motion. **Matter referred to the Committee of Privileges and Members' Interests**. VP 2008–10/1825–6 (3.6.2010) Committee had not reported when the House was dissolved on 19 July 2010.
216	**23 May 2011**	
	Allegation that a Minister had deliberately misled the House in an answer to a question. VP 2010–13/525 (23.5.2011)	The Speaker made a statement noting that the matter concerned a dispute over the interpretation of data and that such matters were best pursued as debating issues using the various forms of the House available; a prima facie case had not been made. VP 2010–13/557 (26.5.2011)
217	**16 June 2011**	
	Newspaper reports apparently revealing details of confidential proceedings of the Parliamentary Joint Committee on Law Enforcement. VP 2010–13/652 (16.6.2011)	The Speaker stated that the joint committee itself should consider the matter in the first instance. He later presented a letter from the committee Chair, advising of the results of the committee's consideration [the committee had found that while an unauthorised disclosure appeared to have occurred, it had not led to actual or potential substantial interference]. VP 2010–13/652, 685 (22.6.2011)

	Matter	*Action by Speaker, House and Privileges Committee*
218	**22 November 2011** Allegation that a Minister had made misleading statements regarding a provision of a bill in his second reading speech, on his website and on a radio program. [The speech did not clearly reflect the bill as introduced, but as it was intended to be after proposed government amendments]. VP 2010–13/1080 (22.11.2011)	Following the passage of the amended bill, the Speaker made a statement noting that: the bill as passed put beyond doubt the stated scope of the legislation; such matters were best pursued as debating issues using the various forms of the House available; a prima facie case had not been made. VP 2010–13/1131 (23.11.2011)
219	**22 May 2012** Whether a Member (Mr C Thomson) had deliberately misled the House in his statement to the House on 21 May 2012. VP 2010–13/1467 (22.5.2012)	The Deputy Speaker stated she would refer the matter to the Speaker, and later made a statement on behalf of the Speaker, noting that: Deliberately misleading the House was one of the matters that could be found to be a contempt. While claims that Members had deliberately misled the House had been raised as matters of privilege or contempt on a number of occasions, no Speaker had ever given precedence to a motion on such a matter. To establish that contempt had been committed it would need to be shown that: (1) a statement had in fact been misleading; (2) the Member knew at the time the statement was incorrect; and (3) the misleading had been deliberate. While it did not seem that a prima facie case had been made out in terms of the detail that Speakers had always required in relation to such allegations, he understood the concerns many Members had about the matters raised. While in accordance with the practice of the House, precedence as of right to a motion for the matter to be referred to the Committee of Privileges and Members' Interests could not be given, it was still open to the House itself to determine a course of action in relation to the matter. Motion moved by leave. **Matter referred to the Committee of Privileges and Members' Interests**. VP 2010–13/1468–9 (22.5.2012) Later, the Member having been charged with a number of criminal matters, the committee suspended its inquiry because of sub judice considerations. H.R. Deb. (14.2.2013) 1387 *See* item 229 for matter re-referred in following Parliament

	Matter	*Action by Speaker, House and Privileges Committee*
220	**13 September 2012**	
	Allegation that a Minister had misled the House by stating he had not been reading from a document [a photo was produced purportedly showing the Minister reading]. VP 2010–13/1779 (13.9.2012)	The Deputy Speaker stated she would refer the matter to the Speaker, and at the next sitting read a statement on behalf of the Speaker, noting, inter alia: · the practice of the House in regard to requests for documents to be presented pursuant to standing order 201; · that, although different in its particulars, this complaint had elements in common with other claims that a Member had deliberately misled the House; · that no Speaker had given precedence to allow such a matter to be referred to the Committee of Privileges and Members' Interests, and it was clear that the present complaint would not require a departure from the approach taken by successive Speakers. VP 2010–13/1791–2 (17.9.2012)
221	**31 October 2012**	
	Allegation that a Minister had misled the House in an answer to a question without notice. VP 2010–13/1934 (31.10.2012)	The Speaker made a statement covering this matter and another matter [item 222 below] to the effect that, as with similar cases in the past, a prima facie case had not been made out. VP 2010–13/1984 (27.11.2012)
222	**1 November 2012**	
	Allegation that a Parliamentary Secretary had misled the House in a statement made in the Federation Chamber. VP 2010–13/1956 (1.11.2012)	The Speaker made a statement covering this matter and another matter [item 221 above] to the effect that, as with similar cases in the past, a prima facie case had not been made out. VP 2010–13/1984 (27.11.2012)
223	**11 February 2013**	
	An article published in the *West Australian* containing details of a report of the Standing Committee on Regional Australia before the report had been tabled. VP 2010–13/2082 (11.2.2013)	A report by the Standing Committee on Regional Australia on its investigation into the unauthorised disclosure recommended that the matter be referred to the Standing Committee of Privileges and Members' Interests. The Speaker noted that the committee had identified the source of the disclosure and that the Member concerned had apologised. The Speaker indicated she was not prepared to give precedence to a motion as the committee had found the disclosure did not immediately interfere with its work. VP 2010–13/2301–2 (29.5.2013)
224	**30 May 2013**	
	Remarks made by a Member about a Senator. VP 2010–13/2320 (30.5.2013)	The Speaker stated that the information provided did not constitute prima facie evidence that a contempt had been committed. VP 2010–13/2327 (3.6.2013)
225	**4 June 2013**	
	Allegation that the Deputy Leader of the Opposition misled the House in statements made in the House. VP 2010–13/2348 (4.6.2013)	The Speaker made a statement in response to this matter and another matter [item 227 below]. The Speaker indicated that there was no prima facie evidence of a contempt and did not give precedence to a motion. VP 2010–13/2366 (5.6.2013)
226	**4 June 2013**	
	Whether a letter from the Manager of Opposition Business to non-aligned Members regarding a motion of no confidence had been sent, and the reporting of the matter. VP 2010–13/2348 (4.6.2013)	The Speaker made a statement in response to this matter and another matter [item 226 above]. The Speaker indicated that there was no prima facie evidence of a contempt and did not give precedence to a motion. VP 2010–13/2366 (5.6.2013)

	Matter	*Action by Speaker, House and Privileges Committee*
227	**6 June 2013**	
	Proposer not present for the matter of public importance. VP 2010–13/2389 (6.6.2013)	The Speaker advised that she did not consider that the proposer of the matter of public importance being absent when the matter was read out gave rise to any issue of contempt such as would warrant precedence being given to a motion. VP 2010–13/2395 (17.6.2013)
228	**24 February 2014**	
	Whether a former Member (Mr C Thomson) [now convicted of criminal offences] had deliberately misled the House in his statement to the House on 21 May 2012. VP 2013–16/309 (24.2.2014) For preceding action *see* item 219	The Speaker stated that in light of the fact that the House had referred the matter to the Committee of Privileges and Members' Interests in the last Parliament and that the proceedings had been suspended, and the findings of guilt by the Melbourne Magistrates Court, she would give precedence to the matter. **Matter referred to the Committee of Privileges and Members' Interests.** VP 2013–16/311 (24.2.2014) Report presented. Ordered to be made a Parliamentary Paper. VP 2013–16/2007 (17.3.2016) **Findings:** The committee found that Mr Thomson's actions and words, in informing the House he would be making a statement and then making the statement, to be behaviour which was deliberate in nature, and demonstrated a sense of purpose or intention. The committee could find no evidence to support Mr Thomson's version of what took place in relation to himself or of his claims about the truth of his statement, and found the explanation in the statement to be implausible. From all the circumstances, the committee believed it could draw the inference that Mr Thomson, the then Member for Dobell, in the course of his statement to the House, deliberately misled the House and found that his conduct constituted a contempt of the House. **Recommendation:** The committee recommended that the House: 1. Find Mr Craig Thomson, the former Member for Dobell, guilty of a contempt of the House in that in the course of his statement to the House on 21 May 2012, as the then Member for Dobell, he deliberately misled the House; and 2. Reprimand Mr Thomson for his conduct. PP 84 (2016) **Action by House:** The House resolved: That the House: (1) agrees with the recommendation of the report of the Committee of Privileges and Members' Interests presented on 17 March 2016 about whether the former Member for Dobell, Mr Craig Thomson, deliberately misled the House; (2) finds Mr Craig Thomson, the former Member for Dobell, guilty of a contempt of the House in that, in the course of his statement to the House on 21 May 2012, as the then Member for Dobell, he deliberately misled the House; and (3) reprimands Mr Thomson for his conduct. VP 2013–16/75 (4.5.2016)

	Matter	*Action by Speaker, House and Privileges Committee*
229	**26 May 2014**	
	Use of the Speaker's suite for a Liberal Party fundraiser. VP 2013–16/485 (26.5.2014)	The Speaker ruled that the Member raising the matter was entitled to write directly to the Committee of Privileges and Members' Interests about the matter. The Member then moved a motion, without notice, that the matter be referred to the Committee of Privileges and Members' Interests, and debate ensued. The motion was negatived on division. VP 2013–16/485–7 (26.5.2014)
230	**27 October 2014**	
	Alteration of the Hansard record by the Minister for Agriculture. VP 2013–16/927 (27.10.2014)	The Speaker stated the Minister had made an explanation to the House shortly after the matter was raised about the circumstances around the changes made to the Hansard record of his answer in the House including that he had counselled his staff about their actions and requested the Hansard record to be corrected. In light of the Minister's explanation it did not appear that a prima facie case had been made out. She added that she considered the matter was now closed. VP 2013–16/937 (28.10.2014)
231	**25 March 2015**	
	Statements allegedly made by a Member after he had apologised to the House for his actions in the Federation Chamber and had been suspended from the House. VP 2013–16/1239 (25.3.2015)	The Speaker stated that the actions of the Member were, quite properly, dealt with by the House as a matter of order. She accepted the Member's apology to the House for his actions, and expected him to honour that apology. She added any attempt by the Member to pursue the matter in a similar way in the future would also be dealt with as a matter of order. VP 2013–16/1252–3 (26.3.2015)
232	**3 December 2015**	
	Whether the Special Minister of State, in his statements in the House from 23 November to 3 December 2015, had deliberately misled the House. VP 2013–16/1814 (3.12.2015)	The Speaker stated that while claims that Members have deliberately misled the House had been raised as matters of privilege or contempt on a number of occasions, to date no Speaker of the House had found that a prima facie case had been made out. On the information available to him, the circumstances of the matters which the Member raised would not justify a departure from the position that had been taken by his predecessors. VP 2013–16/1826 (2.2.2016)
233	**12 September 2016**	
	Whether there had been improper interference with the free performance by Members of their duties in relation to a report in *The Daily Telegraph* that the Leader of the House has ordered that Members be prevented from leaving the House. VP 2016–18/102 (12.9.2016)	The Speaker made a statement in response to this matter. The Speaker stated that he did not see any privilege issues were raised by the matter which the Manager of Opposition Business had put forward. The Speaker reminded Members that privilege relates to the special rights and immunities of the Houses, their committees and members to ensure the Parliament is able to operate without improper interference. VP 2016–18/113 (13.9.2016)

	Matter	*Action by Speaker, House and Privileges Committee*
234	**11 October 2016** Member for Blaxland's claim that material seized by the Australian Federal Police following the execution of a search warrant in Parliament House on 24 August 2016 was protected by parliamentary privilege. VP 2016–18/187 (11.10.2016)	The Speaker made a statement to the House, noting that this was the first occasion such a ruling had been sought and that he had undertaken consultations with the assistance of the Clerk of the House to determine the way in which the matter would be dealt with. The Speaker proposed that the Committee of Privileges and Members' Interests be tasked with considering the Member's claim and making a recommendation to the House, and gave precedence to a motion to refer the matter. The Manager of Opposition Business moved that the matter be **referred to the Committee of Privileges and Members' Interests** so that the committee could consider the claim for privilege and make a recommendation to the House about its ruling on the claim. VP 2016–18/187–8 (11.10.2016) Report presented. Report made a Parliamentary Paper. VP 2016–18/388 (28.11.2016) **Recommendation:** The committee recommended that the House rule to uphold the claim of parliamentary privilege by the Member for Blaxland in relation to material seized under a search warrant executed by the Australian Federal Police on 24 August 2016, that the Australian Federal Police be advised of the ruling by the House and that the material held by the Clerk of the House be returned to the Member for Blaxland. PP 462 (2016) **Action by House:** The House resolved: That: (1) The House: (a) agree with the recommendation of the report of the Committee of Privileges and Members' Interests, presented to the House on 28 November 2016, in relation to the request from the Member for Blaxland for a ruling from the House on his claim of parliamentary privilege for material seized by the Australian Federal Police under a search warrant executed on the Department of Parliamentary Services at Parliament House on 24 August 2016; and (b) rule to uphold the claim of parliamentary privilege by the Member for Blaxland in relation to the material seized under the search warrant; and (2) the Australian Federal Police be advised of the ruling of the House, and the seized material in the custody of the Clerk of the House be returned to the Member for Blaxland. VP 2016–18/428 (1.12.2016)

	Matter	*Action by Speaker, House and Privileges Committee*
235	**15 August 2017** The acceptance by the former Member for Dunkley, Mr Bruce Billson, of an appointment as a paid director of the Franchise Council of Australia whilst still a Member of the House. VP 2016–18/979 (15.8.2017)	The Speaker made a statement on issues relating to the matter. He also stated that he had not made a determination that there was a prima facie case, but was sufficiently concerned by the matters raised to consider they should be examined by the Committee of Privileges and Members' Interests, and was willing to give precedence to a motion. VP 2016–18/1017–18 (4.9.2017) The following matters were **referred to the Committee of Privileges and Members' Interests**: Whether the former Member for Dunkley, Mr Bruce Billson, by accepting an appointment as, and acting as, a paid director of the Franchise Council of Australia whilst still a Member of the House gives rise either to any issues that may constitute a contempt of the House or to any issues concerning the appropriate conduct of a Member having regard to their responsibilities to their constituents and to the public interest. VP 2016–18/1018 (4.9.2017) Report presented. Report made a Parliamentary Paper. VP 2016–18/1442 (26.3.2018) **Recommendation:** The committee recommended: (1) Mr Billson be censured for his conduct when he was the Member for Dunkley prior to the dissolution of the House of Representatives at the end of the 44th Parliament, by the passage of the following motion: The House censures the former member for Dunkley, Mr Bruce Billson, for failing to discharge his obligations as a Member to the House in taking up paid employment for services to represent the interests of an organisation while he was a Member of the House, and failing to fulfil his responsibilities as a Member by appropriately declaring his personal and pecuniary interests, in respect of this paid employment, in accordance with the resolutions and standing orders of the House. (2) The standing orders be amended to include an express prohibition on a Member engaging in services of a lobbying nature for reward or consideration while still a Member of the House of Representatives. PP 106 (2018) **Action by House:** The House resolved: That the House censure the former member for Dunkley, Mr Bruce Billson, for failing to discharge his obligations as a Member to the House in taking up paid employment for services to represent the interests of an organisation while he was a Member of the House, and failing to fulfil his responsibilities as a Member by appropriately declaring his personal and pecuniary interests, in respect of this paid employment, in accordance with the resolutions and standing orders of the House. VP 2016–18/1462 (27.3.2018)

RULES FOR JOINT SITTINGS

PURSUANT TO SECTION 57 OF THE CONSTITUTION

(Adopted by Senate and House of Representatives on 1 August 1974)

GENERAL RULE FOR CONDUCT OF BUSINESS

1. In any matter of procedure not provided for in the following rules, the standing orders of the Senate, in force for the time being, shall be followed as far as they can be applied.

APPOINTMENT OF CHAIRMAN

2. The appointment of the Chairman shall be conducted in the following manner:

(a) A member, addressing himself to the Clerk acting as Chairman, shall propose some member, then present, to the joint sitting for its Chairman, which proposal shall be seconded. A member when proposed and seconded shall inform the joint sitting whether he accepts nomination.

(b) If there is no further proposal the Clerk shall, without question put, declare the member so proposed and seconded to have been appointed as Chairman, and such member shall take the Chair of the joint sitting as Chairman.

(c) If more than one member is proposed as Chairman, the joint sitting shall proceed to a ballot, but, before proceedings, the bells shall be rung for three minutes.

(d) When only two members are proposed and seconded as Chairman, each member present at the joint sitting shall give to the Clerk a ballot-paper, containing the name of the candidate for whom he votes, and the votes shall be counted by the Clerks at the Table; and the candidate who has the greater number of votes shall be the Chairman, and take the Chair.

(e) When more than two members are so proposed and seconded, the votes shall be taken in like manner, and the member who has the greatest number of votes shall be the Chairman, provided he has also a majority of the votes cast; but if no candidate has such a majority, the name of the candidate having the smallest number of votes shall be excluded and a fresh ballot shall take place; and this shall be done as often as necessary until one candidate is declared to be appointed as Chairman by such majority, when such member shall take the Chair.

(f) If, at a ballot at which no candidate receives a majority of the votes cast, two or more candidates receive an equal number of votes and no candidate receives a lesser number of votes, the Clerk shall cause another ballot to be taken. If, in the further ballot, no candidate receives a majority of the votes cast but two or more candidates receive an equal number of votes and no candidate receives a lesser number of votes, the Clerk shall determine by lot which of the candidates so receiving an equal number of votes shall be excluded.

RELIEF OF CHAIRMAN

3. A Presiding Officer or a Chairman of Committees of either House of the Parliament shall take the Chair as Acting Chairman of the joint sitting whenever requested so to do by the Chairman, without any formal communication.

CLERKS OF THE JOINT SITTING

4. The Clerk of the Senate and the Clerk of the House of Representatives shall act as Joint Clerks of the joint sitting and either of them may exercise a function expressed to be exercisable by the Clerk.

HOURS OF SITTING

5. Unless otherwise ordered, the hours of sitting each day shall be:

10.30 a.m. to 1.00 p.m.
2.15 p.m. to 6.00 p.m.
8.00 p.m. to 11.00 p.m.

SITTING AND ADJOURNMENT

6. A motion for the adjournment of the joint sitting may be moved by a Minister and shall be put forthwith without debate.

7. A motion for the purpose of fixing the next meeting of the joint sitting may be moved by a Minister at any time.

TIME LIMIT ON SPEECHES

8. No member may speak for more than 20 minutes on any question before the joint sitting.

CLOSURE

9. (a) Until the expiration of 4 hours consideration of, or 12 speakers have spoken on, the question "That the proposed law be affirmed" (whichever is the later event), no motion may be moved by any member "That the question be now put". Such motion may not be moved by any member who has already spoken on the question and the member so moving shall not interrupt any other member who is addressing the Chair. Such motion shall be put forthwith and decided without debate.

The provisions of this paragraph shall apply in the case of a cognate debate.

(b) On any other question a motion may be moved at any time by any member rising in his place, but not so as to interrupt any other member who is addressing the Chair, "That the question be now put", and such motion shall be put forthwith and decided without debate.

(c) Senate standing order 407b shall not apply to the joint sitting.

ENTITLEMENT TO VOTE

10. On each question arising in the joint sitting each Senator and each Member of the House of Representatives, including the person chosen to preside, shall have one vote.

QUESTION ON PROPOSED LAW

11. (a) The question to be put from the Chair upon any proposed law before the joint sitting shall be, "That the proposed law be affirmed", and a division shall be taken on that question.

(b) The question that any proposed law be affirmed shall be resolved in the affirmative if, and only if, an absolute majority of the total number of the members of the Senate and House of Representatives vote in the affirmative.

VOTING ON OTHER QUESTIONS

12. Questions, other than the question that a proposed law be affirmed or the question on a motion for the suspension of a rule, shall be decided by a simple majority of the members present and voting, and, if the votes are equal, the question shall be resolved in the negative.

DIVISIONS

13. (a) Whenever the Chairman states, on putting a question, that the "Ayes" or "Noes" (as the case may be) have it, his opinion may be challenged by members calling for a division.

(b) Before a division is taken, the Clerk shall ring the division bells and turn a three minute sand glass and the doors shall not be closed until after the lapse of three minutes, as indicated by such sand glass.

(c) The doors shall be closed and locked as soon after the lapse of three minutes as the Chairman shall think proper to direct; and then no member may enter or leave the Chamber until after the division.

(d) When the doors have been locked, and all the members are in their places, the Chairman shall state the question to the joint sitting, shall direct the "Ayes" to proceed to the right of the Chair, and the "Noes" to the left, and members having accordingly taken seats, shall appoint three tellers for each side.

(e) On the tellers being appointed, every member within the seats allotted to members shall vote and no member may move from his place until the result of the division is announced.

(f) Every member within the seats allotted to members shall then be counted, and his name taken down by the tellers, who shall sign their list, and present the same to the Chairman, who will declare the result to the joint sitting.

OBJECTION TO RULING OF CHAIRMAN

14. If any objection is taken to any ruling of the Chairman, such objection must be taken at once, and a motion of dissent, to be submitted in writing, moved, which, if seconded, shall be proposed to the joint sitting, and the debate thereon shall proceed forthwith.

MINUTES OF PROCEEDINGS

15. Proceedings of the joint sitting shall be recorded by the Joint Clerks, and such records shall constitute the minutes of proceedings of the joint sitting and shall be signed by the Joint Clerks.

SUSPENSION OF RULE

16. Any rule, other than rules 8 and 9, may be suspended, on motion, duly moved and seconded: Provided that such motion is carried by an absolute majority of the total number of the members of the Senate and House of Representatives.

PRESENTATION OF PROPOSED LAW FOR ASSENT

17. Where, at the joint sitting, a proposed law as last proposed by the House of Representatives has been affirmed in accordance with section 57 of the Constitution, the Clerk of the Senate and the Clerk of the House of Representatives shall, for the purpose of presentation of the proposed law by the Chairman to the Governor-General for the Royal Assent, certify on a fair print of the proposed law as so affirmed that it is a fair print of the proposed law, as last proposed by the House of Representatives and as affirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives at the joint sitting.

TELEVISING OF PROCEEDINGS

18. On any televising of the proceedings of the joint sitting, each speaker speaking on the question "That the proposed law be affirmed" shall speak from a place to be provided near the Table. There shall be a balanced presentation of the affirmative and negative arguments put before the joint sitting.

PURSUANT TO SECTION 44 OF THE COMMONWEALTH ELECTORAL ACT 1918 *

(Adopted by the Senate and House of Representatives on 16 February 1988)

MATTER TO BE CONSIDERED AT JOINT SITTING

1. The purpose of a Joint Sitting being to choose a person to hold the vacant place in the Senate pursuant to section 44 of the Commonwealth Electoral Act 1918, no other matter shall be considered at a Joint Sitting.

GENERAL RULE FOR CONDUCT OF BUSINESS

2. In any matter of procedure not provided for in the following rules, the Standing Orders of the Senate, in force for the time being, shall be followed as far as they can be applied.

CHAIRMAN OF JOINT SITTING

3. The President of the Senate or, in the absence of the President, the Speaker of the House of Representatives, shall be the Chairman of a Joint Sitting.

CLERKS OF JOINT SITTING

4. The Clerk of the Senate and the Clerk of the House of Representatives shall act as Joint Clerks of a Joint Sitting and either of them may exercise a function expressed to be exercisable by the Clerk.

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* A joint sitting to select a person to fill a vacant Senate place for the Australian Capital Territory pursuant to s. 44 of the Commonwealth Electoral Act was held on 16 February 1988, being the second such joint sitting, another having taken place on 5 May 1981. The Act now provides for a joint sitting for this purpose only in respect of Territories other than the Australian Capital Territory or the Northern Territory (should any gain Senate representation).

MINUTES OF PROCEEDINGS

5. Proceedings of a Joint Sitting shall be recorded by the Joint Clerks, and such records shall constitute the minutes of proceedings of a Joint Sitting and shall be signed by the Joint Clerks.

TIME LIMIT ON SPEECHES

6. No Senator or Member of the House of Representatives may speak for more than five minutes on any proposal or question before a Joint Sitting.

OBJECTION TO RULINGS OF CHAIR

7. If any objection is taken to any ruling of the Chairman, such objection must be taken at once, and a motion of dissent, to be submitted in writing, moved, which, if seconded, shall be proposed to the Joint Sitting, and debate thereon shall proceed forthwith.

ENTITLEMENT TO VOTE

8. On any question arising in a Joint Sitting each Senator and Member of the House of Representatives, including the Chairman, shall have one vote.

VOTING

9. Questions arising in a Joint Sitting shall be decided by a simple majority of the Senators and Members of the House of Representatives present and voting and, if the votes are equal, the question shall be resolved in the negative.

CHOICE OF A PERSON TO HOLD VACANT PLACE IN THE SENATE

10. (a) A Senator or Member of the House of Representatives, addressing the Chair, shall propose a person to hold the vacant place in the Senate and such proposal shall be seconded. When any person is so proposed the proposer shall state that that person is willing to hold the vacant place if chosen.

(b) In proposing a person to hold the vacant place in the Senate, the proposer shall declare that that person is eligible to be chosen for the Senate and that the nomination is in accordance with the provisions of subsection 44 (3) of the Commonwealth Electoral Act 1918.

(c) If only one person is proposed and seconded, the Chairman shall put the question that that person shall be the person to hold the place of the Senator for the Australian Capital Territory whose place has become vacant.

(d) If the question is passed, the Chairman shall declare that the person has been chosen to hold the place of the Senator for the Australian Capital Territory whose place has become vacant.

(e) If more than one person is proposed and seconded, the person to hold the vacant place shall be chosen by ballot. Before the ballot proceeds the bells shall be rung for three minutes.

(f) Before giving directions to proceed with the ballot, the Chairman shall ask if any Senator or Member of the House of Representatives desires to propose any other person to hold the vacant place, and no other person shall be proposed after the ballot is commenced.

(g) Each Senator and Member of the House of Representatives present shall be provided with a ballot-paper certified by one of the Joint Clerks, and shall vote by writing thereon the name of one of the persons duly proposed, and shall place the ballot-paper in the ballot-box.

(h) The Chairman shall appoint a person from each House to be a scrutineer. The scrutineers, with the Joint Clerks, shall ascertain the number of votes for each of the persons duly proposed, and the scrutineers shall report the result to the Chairman.

(i) No informal vote shall be taken into account.

(j) If on the first ballot no person receives an absolute majority of the votes cast, the name of the person who receives the fewest votes at the first ballot shall be excluded, and a second ballot shall be taken; but if at the first ballot the names of only two persons are submitted and the number of votes for each such person is equal, the scrutineers shall by drawing lots determine which of such persons shall be chosen to hold the vacant place, and the person whose name shall be first drawn shall be deemed to have been duly chosen.

(k) Until one of the persons proposed obtains an absolute majority of the votes cast, or (as the case may be) is chosen by lot to hold the vacant place, successive ballots shall be taken, and at each such ballot the name of the person who receives the fewest votes at the preceding ballot shall be excluded.

(l) If on any ballot it is necessary to decide which of two or more persons is to be excluded from a subsequent ballot because of the number of votes for such persons being equal, a special ballot shall be taken at which the names of only those persons shall be submitted, and the name of the person having the fewest votes at such special ballot shall be excluded; but if on any special ballot it shall be necessary to decide which of two or more persons is to be excluded from a subsequent ballot because of the number of votes for such persons being equal, the scrutineers shall by drawing lots determine which of such persons shall be excluded, and the name of the person last drawn shall be excluded.

(m) If at any ballot, other than the first ballot or a special ballot, the names of only two persons are submitted and the number of votes for such persons is equal, the scrutineers shall by drawing lots determine which of those persons shall be chosen to hold the vacant place, and the person whose name is first drawn shall be deemed to have been duly chosen.

(n) As soon as any person obtains an absolute majority of the votes cast, or (as the case may be) is chosen by lot to hold the vacant place, the Chairman shall declare that such person has been chosen to hold the place of the Senator for the Australian Capital Territory whose place has become vacant.

(o) The ballot-papers shall be retained by the Clerk of the Senate, who shall be the custodian thereof.

CONCLUSION OF JOINT SITTING

11. Upon the declaration of the person chosen to fill the vacant place in the Senate, the Chairman shall announce that the President of the Senate will certify the choice to His Excellency the Governor-General, and shall then declare the Joint Sitting closed.

Parliamentary Privileges Act 1987

No. 21, 1987

Compilation No. 4

Compilation date:	21 October 2016
Includes amendments up to:	Act No. 61, 2016
Registered:	21 October 2016

Prepared by the Office of Parliamentary Counsel, Canberra

Contents

An Act to declare the powers, privileges and immunities of each House of the Parliament and of the members and committees of each House, and for related purposes

1 Short title

This Act may be cited as the *Parliamentary Privileges Act 1987*.

2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

committee means:

(a) a committee of a House or of both Houses, including a committee of a whole House and a committee established by an Act; or

(b) a sub-committee of a committee referred to in paragraph (a).

court means a federal court or a court of a State or Territory.

document includes a part of a document.

House means a House of the Parliament.

member means a member of a House.

tribunal means any person or body (other than a House, a committee or a court) having power to examine witnesses on oath, including a Royal Commission or other commission of inquiry of the Commonwealth or of a State or Territory having that power.

(2) For the purposes of this Act, the submission of a written statement by a person to a House or a committee shall, if so ordered by the House or the committee, be deemed to be the giving of evidence in

accordance with that statement by that person before that House or committee.

(3) In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

3A Application of the *Criminal Code*

(1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) To avoid doubt, subsection (1) does not apply the *Criminal Code* to an offence against a House.

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

5 Powers, privileges and immunities

Except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of this Act, continue in force.

6 Contempts by defamation abolished

(1) Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a committee or a member.

(2) Subsection (1) does not apply to words spoken or acts done in the presence of a House or a committee.

7 Penalties imposed by Houses

(1) A House may impose on a person a penalty of imprisonment for a period not exceeding 6 months for an offence against that House determined by that House to have been committed by that person.

(2) A penalty of imprisonment imposed in accordance with this section is not affected by a prorogation of the Parliament or the dissolution or expiration of a House.

(3) A House does not have power to order the imprisonment of a person for an offence against the House otherwise than in accordance with this section.

(4) A resolution of a House ordering the imprisonment of a person in accordance with this section may provide that the President of the Senate or the Speaker of the House of Representatives, as the case requires, is to have power, either generally or in specified circumstances, to order the discharge of the person from imprisonment and, where a resolution so provides, the President or the Speaker has, by force of this Act, power to discharge the person accordingly.

(5) A House may impose on a person a fine:

(a) not exceeding $5,000, in the case of a natural person; or

(b) not exceeding $25,000, in the case of a corporation;

for an offence against that House determined by that House to have been committed by that person.

(6) A fine imposed under subsection (5) is a debt due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by a House for that purpose.

(7) A fine shall not be imposed on a person under subsection (5) for an offence for which a penalty of imprisonment is imposed on that person.

(8) A House may give such directions and authorise the issue of such warrants as are necessary or convenient for carrying this section into effect.

8 Houses not to expel members

A House does not have power to expel a member from membership of a House.

9 Resolutions and warrants for committal

Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to constitute that offence.

10 Reports of proceedings

(1) It is a defence to an action for defamation that the defamatory matter was published by the defendant without any adoption by the defendant of the substance of the matter, and the defamatory matter was contained in a fair and accurate report of proceedings at a meeting of a House or a committee.

(2) Subsection (1) does not apply in respect of matter published in contravention of section 13.

(3) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

11 Publication of tabled papers

(1) No action, civil or criminal, lies against an officer of a House in respect of a publication to a member of a document that has been laid before a House.

(2) This section does not deprive a person of any defence that would have been available to that person if this section had not been enacted.

12 Protection of witnesses

(1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other

improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty:

(a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or

(b) in the case of a corporation, 250 penalty units.

(2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:

(a) the giving or proposed giving of any evidence; or

(b) any evidence given or to be given;

before a House or a committee.

Penalty:

(a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or

(b) in the case of a corporation, 250 penalty units.

(3) This section does not prevent the imposition of a penalty by a House in respect of an offence against a House or by a court in respect of an offence against an Act establishing a committee.

13 Unauthorised disclosure of evidence

A person shall not, without the authority of a House or a committee, publish or disclose:

(a) a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera; or

(b) any oral evidence taken by a House or a committee in camera, or a report of any such oral evidence;

unless a House or a committee has published, or authorised the publication of, that document or that oral evidence.

Penalty:

(a) in the case of a natural person, imprisonment for 6 months or 50 penalty units; or

(b) in the case of a corporation, 250 penalty units.

14 Immunities from arrest and attendance before courts

(1) A member:

(a) shall not be required to attend before a court or a tribunal; and

(b) shall not be arrested or detained in a civil cause;

on any day:

(c) on which the House of which that member is a member meets;

(d) on which a committee of which that member is a member meets; or

(e) which is within 5 days before or 5 days after a day referred to in paragraph (c) or (d).

(2) An officer of a House:

(a) shall not be required to attend before a court or a tribunal; and

(b) shall not be arrested or detained in a civil cause;

on any day:

(c) on which a House or a committee upon which that officer is required to attend meets; or

(d) which is within 5 days before or 5 days after a day referred to in paragraph (c).

(3) A person who is required to attend before a House or a committee on a day:

(a) shall not be required to attend before a court or a tribunal; and

(b) shall not be arrested or detained in a civil cause;

on that day.

(4) Except as provided by this section, a member, an officer of a House and a person required to attend before a House or a committee has no immunity from compulsory attendance before a court or a tribunal or from arrest or detention in a civil cause by reason of being a member or such an officer or person.

15 Application of laws to Parliament House

It is hereby declared, for the avoidance of doubt, that, subject to section 49 of the Constitution and this Act, a law in force in the Australian Capital Territory applies according to its tenor (except as otherwise provided by that or any other law) in relation to:

(a) any building in the Territory in which a House meets; and

(b) any part of the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.

16 Parliamentary privilege in court proceedings

(1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.

(2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, ***proceedings in Parliament*** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

(a) the giving of evidence before a House or a committee, and evidence so given;

(b) the presentation or submission of a document to a House or a committee;

(c) the preparation of a document for purposes of or incidental to the transacting of any such business; and

(d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

(4) A court or tribunal shall not:

(a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or

(b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence;

unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

(5) In relation to proceedings in a court or tribunal so far as they relate to:

(a) a question arising under section 57 of the Constitution; or

(b) the interpretation of an Act;

neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission in evidence of a record of proceedings in Parliament published by or with the authority of a House or a committee or the making of statements, submissions or comments based on that record.

(6) In relation to a prosecution for an offence against this Act or an Act establishing a committee, neither this section nor the Bill of Rights, 1688 shall be taken to prevent or restrict the admission of evidence, the asking of questions, or the making of statements, submissions or comments, in relation to proceedings in Parliament to which the offence relates.

(7) Without prejudice to the effect that article 9 of the Bill of Rights, 1688 had, on its true construction, before the commencement of this Act, this section does not affect proceedings in a court or a tribunal that commenced before the commencement of this Act.

17 Certificates relating to proceedings

For the purposes of this Act, a certificate signed by or on behalf of the President of the Senate, the Speaker of the House of Representatives or a chairman of a committee stating that:

(a) a particular document was prepared for the purpose of submission, and submitted, to a House or a committee;

(b) a particular document was directed by a House or a committee to be treated as evidence taken in camera;

(c) certain oral evidence was taken by a committee in camera;

(d) a document was not published or authorised to be published by a House or a committee;

(e) a person is or was an officer of a House;

(f) an officer is or was required to attend upon a House or a committee;

(g) a person is or was required to attend before a House or a committee on a day;

(h) a day is a day on which a House or a committee met or will meet; or

(i) a specified fine was imposed on a specified person by a House;

is evidence of the matters contained in the certificate.

Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Parliamentary Privileges Act 1987	21, 1987	20 May 1987	20 May 1987 (s 2)	
Parliamentary Precincts Act 1988	9, 1988	5 Apr 1988	s 12 and Sch 2: 1 Aug 1988 (s 2(2) and gaz 1988, No S229)	s 12
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	Note about section heading: 11 Dec 1992 (s 2(1))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 38: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 355–360): 21 Oct 2016 (s 2(1) item 1)	—

Amendment history

Provision affected	How affected
s 3A	ad No 24, 2001
s 12	am No 61, 2016
s 13	am No 61, 2016
s 14	am No 165, 1992
s 15	am No 9, 1988

Parliamentary Precincts Act 1988

Act No. 9 of 1988

This compilation was prepared on 1 July 2004
taking into account amendments up to Act No. 64 of 2004

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

Contents

An Act relating to the precincts of the new Parliament House, and to amend the *Parliament Act 1974*, the *Parliament House Construction Authority Act 1979* and the *Parliamentary Privileges Act 1987*

1 Short title [*see* Note 1]

This Act may be cited as the *Parliamentary Precincts Act 1988*.

2 Commencement [*see* Note 1]

(1) Sections 1, 2, 3, 4 and 7, and the amendment of the *Parliament House Construction Authority Act 1979* made by this Act, commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

House means a House of the Parliament.

order means a standing or other order, and includes a rule or resolution.

Parliament House means the new Parliament House.

precincts means:

(a) the Parliamentary precincts defined by section 4; and

(b) any property to which section 5 applies.

Presiding Officer means the President of the Senate or the Speaker of the House of Representatives.

property means:

(a) land; or

(b) a building or part of a building.

protective service officer means:

(a) a protective service officer; or

(b) a special protective service officer;

within the meaning of the *Australian Federal Police Act 1979*.

(2) A reference in this Act to a Presiding Officer includes a reference to a person for the time being exercising powers, and performing functions, vested in a Presiding Officer apart from this Act.

(3) A reference in this Act to the Presiding Officers is a reference to those Officers acting jointly.

4 Parliamentary precincts

(1) The Parliamentary precincts consist of the land on the inner side of the boundary defined by subsection (2), and all buildings, structures and works, and parts of buildings, structures and works, on, above or under that land.

(2) The boundary of the Parliamentary precincts is the approximately circular line comprising:

(a) the arcs formed by the outer edge of the top of the retaining wall; and

(b) in places where there is no retaining wall—arcs completing the circle partly formed by the first-mentioned arcs.

(3) In this section:

inner means nearer to Parliament House, and ***outer*** has the opposite meaning.

retaining wall means the wall of varying height that partly surrounds the perimeter of the site of Parliament House and is near the inner kerb of Capital Circle, but does not include any part of the road tunnel on Capital Circle.

(4) The location of the Parliamentary precincts defined by this section is indicated by shading on the plan set out in Schedule 1.

5 Premises included in Parliamentary precincts

(1) This section applies to property that is owned or held under lease by the Commonwealth and is not within the Parliamentary precincts defined by section 4.

(2) If the Presiding Officers certify in writing that specified property is required for purposes of the Parliament, the regulations may declare that the property shall be treated as part of the Parliamentary precincts for the purposes of this Act.

6 Control and management of precincts

(1) The precincts are under the control and management of the Presiding Officers.

(2) The Presiding Officers may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.

(3) In respect of the Ministerial Wing in Parliament House, the powers and functions given to the Presiding Officers by subsections (1) and (2) are subject to any limitations and conditions agreed between the Presiding Officers and the Minister.

7 Leases and licences

(1) The Presiding Officers may, on behalf of the Commonwealth:

(a) grant leases and licences in respect of property in the precincts to be used for commercial purposes; and

(b) exercise any rights of the Commonwealth in respect of such leases and licences.

(2) Leases and licences shall be on such terms and conditions, and subject to payment of such consideration, as the Presiding Officers think fit.

(3) This section has effect notwithstanding anything to the contrary in any law of the Australian Capital Territory relating to leases.

(4) In this section:

precincts does not include any property to which section 5 applies.

Section 8

8 Australian Federal Police

(1) Where, under an order of either House relating to the powers, privileges and immunities of that House, a person is required to be arrested or held in custody, the person may be arrested or held by a member or special member of the Australian Federal Police in accordance with general arrangements agreed between the Presiding Officers and the Minister administering the *Australian Federal Police Act 1979*.

(2) Subsection (1) has effect notwithstanding the *Australian Federal Police Act 1979*.

9 Australian Protective Service

The functions of protective service officers in relation to the precincts shall be performed in accordance with general arrangements agreed between the Presiding Officers and the Minister administering the *Australian Federal Police Act 1979*.

10 Prosecutions

The functions of the Director of Public Prosecutions in respect of offences committed in the precincts shall be performed in accordance with general arrangements agreed between the Presiding Officers and the Director of Public Prosecutions.

11 Public Order (Protection of Persons and Property) Act 1971

The *Public Order (Protection of Persons and Property) Act 1971* applies to the precincts as if they were Commonwealth premises within the meaning of that Act.

12 Saving of powers, privileges and immunities

Nothing in this Act shall be taken to derogate from the powers, privileges and immunities of each House, and of the members and committees of each House, under any other law.

13 Regulations

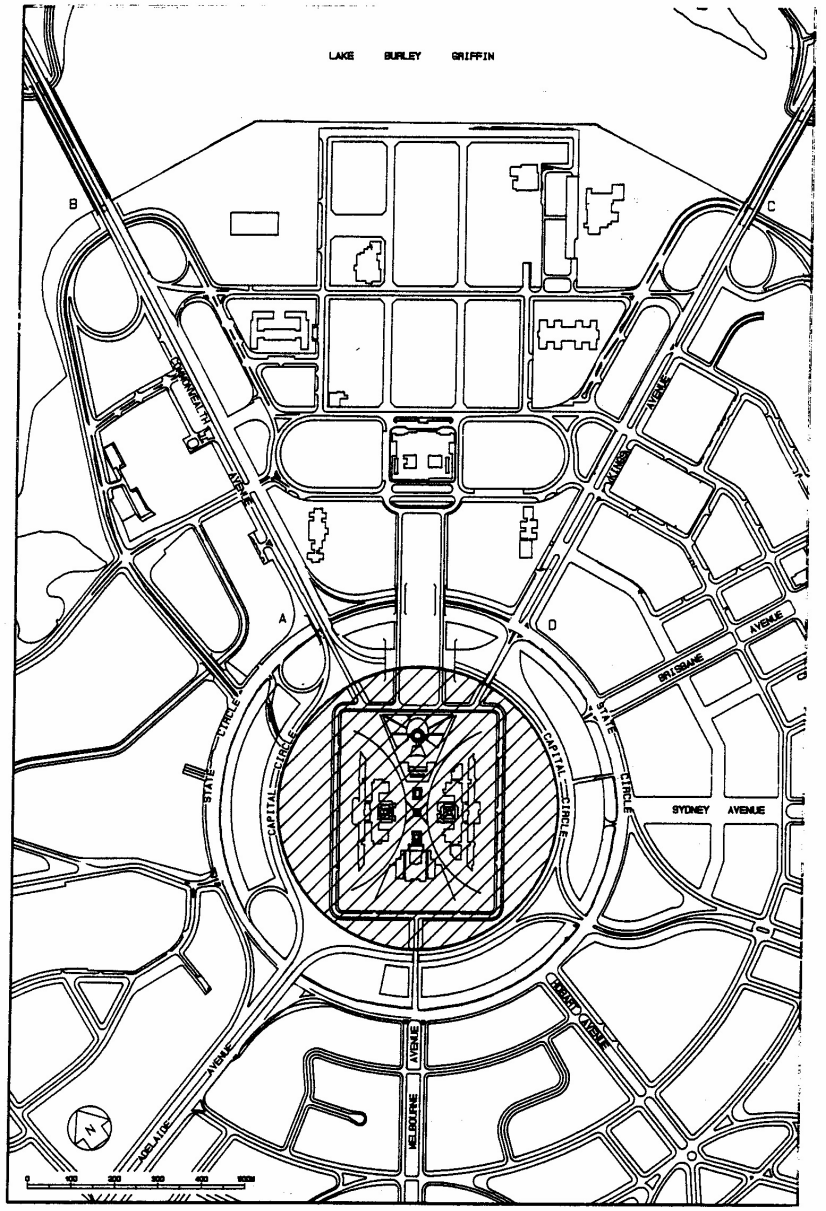
The Governor-General may make regulations for the purposes of subsection 5(2).

14 Amendments of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1—Parliamentary Precincts

Section 4



Schedule 2—Amendments of other Acts

Section 14

Parliament Act 1974

Section 3:

Omit the section, substitute the following section:

'3 Parliamentary zone

'(1) For the purposes of this Act, the Parliamentary zone is the area of land bounded by a line commencing at a point where the eastern boundary of Commonwealth Avenue intersects the inner boundary of State Circle and proceeding thence in a northerly direction along the eastern boundary of Commonwealth Avenue until it intersects the southern shore of Lake Burley Griffin, thence in a generally easterly direction along that shore until it intersects the western boundary of Kings Avenue, thence in a south westerly direction along that boundary until it intersects the inner boundary of State Circle, and thence clockwise around that inner boundary to the point of commencement.

'(2) The location of the Parliamentary zone is indicated by shading on the plan set out in the Schedule.'.

Section 5:

Omit subsection (1), substitute the following subsection:

'(1) No building or other work is to be erected on land within the Parliamentary zone unless:

(a) if the land is within the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*—the President of the Senate and the Speaker of the House of Representatives jointly have; or

(b) in any other case—the Minister has;

caused a proposal for the erection of the building or work to be laid before each House of the Parliament and the proposal has been approved by resolution of each House.'.

Schedule:

Omit the Schedule, substitute the Schedule set out in Schedule 3 to this Act.

Parliament House Construction Authority Act 1979

Section 10:

After subsection (2) insert the following subsection:

'(2A) The consent of the Authority is not required for a lease or licence to be granted under section 7 of the *Parliamentary Precincts Act 1988*.'.

Parliamentary Privileges Act 1987

Section 15:

Omit all the words after 'tenor', substitute:

'(except as otherwise provided by that or any other law) in relation to:

(a) any building in the Territory in which a House meets; and

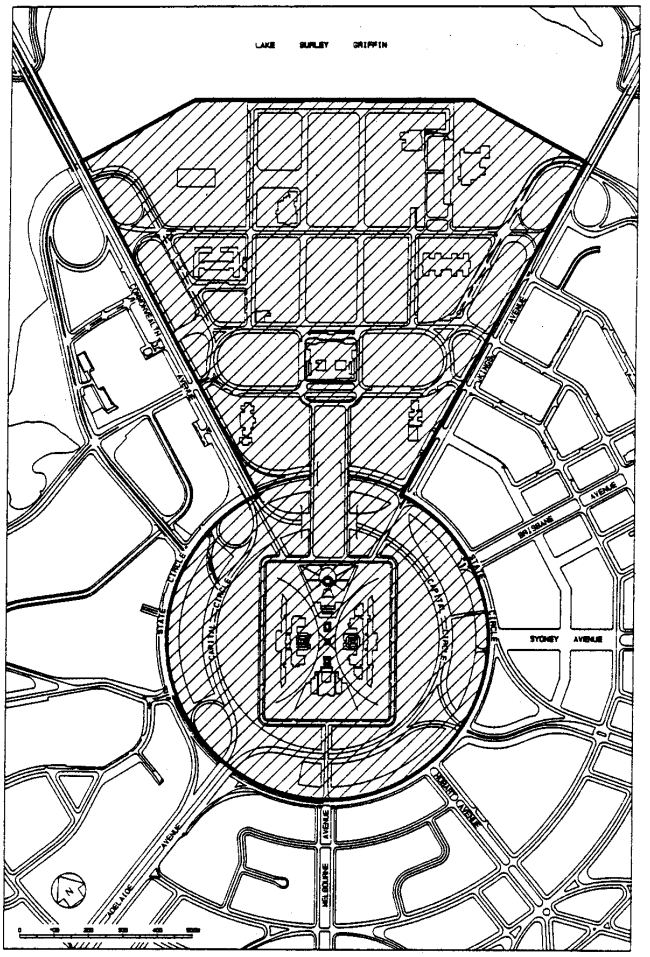
(b) any part of the precincts as defined by subsection 3(1) of the *Parliamentary Precincts Act 1988*.'.

Schedule 3—Schedule to be inserted in Parliament Act 1974

Section 14

Sections 3 and 4 SCHEDULE

PARLIAMENTARY ZONE



Notes to the *Parliamentary Precincts Act 1988*

Note 1

The *Parliamentary Precincts Act 1988* as shown in this compilation comprises Act No. 9, 1988 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Parliamentary Precincts Act 1988	9, 1988	5 Apr 1988	Ss. 5, 6, 8–10, 12–13 and s. 14 (in part): 1 Aug 1988 (*see Gazette* 1988, No. S229) S. 11: 6 May 1988 (*see Gazette* 1988, No. S129) Remainder: Royal Assent	
Australian Federal Police and Other Legislation Amendment Act 2004	64, 2004	22 June 2004	Schedule 2 (items 10, 11): 1 July 2004	—

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	am. No. 64, 2004
S. 9	am. No. 64, 2004

COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT*

(63 & 64 VICTORIA, CHAPTER 12)

An Act to constitute the Commonwealth of Australia.

[9th July 1900]

WHEREAS the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, humbly relying on the blessing of Almighty God, have agreed to unite in one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland, and under the Constitution hereby established:

And whereas it is expedient to provide for the admission into the Commonwealth of other Australasian Colonies and possessions of the Queen:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the Commonwealth of Australia Constitution Act.

Act to extend to the Queen's successors.

2. The provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom.

Proclamation of Commonwealth.

3. It shall be lawful for the Queen, with the advice of the Privy Council, to declare by proclamation† that, on and after a day therein appointed, not being later than one year after the passing of this Act, the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, and also, if Her Majesty is satisfied that the people of Western Australia have agreed thereto, of Western Australia, shall be united in a Federal Commonwealth under the name of the Commonwealth of Australia. But the Queen may, at any time after the proclamation, appoint a Governor-General for the Commonwealth.

Commencement of Act.

4. The Commonwealth shall be established, and the Constitution of the Commonwealth shall take effect, on and after the day so appointed. But the Parliaments of the several colonies may at any time after the passing of this Act make any such laws, to come into operation on the day so appointed, as they might have made if the Constitution had taken effect at the passing of this Act.

Operation of the constitution and laws.

5. This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.‡

Definitions.

6. " The Commonwealth " shall mean the Commonwealth of Australia as established under this Act.

" The States " shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South

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* NOTE.—This text of the Constitution Act contains all the alterations of the Constitution which have been made up to 1 December 1977. The Acts by which the Constitution was altered are the *Constitution Alteration (Senate Elections)* 1906 (assented to 3 April 1907); the *Constitution Alteration (State Debts)* 1909 (assented to 6 August 1910); the *Constitution Alteration (State Debts)* 1928 (assented to 13 February 1929); the *Constitution Alteration (Social Services)* 1946 (assented to 19 December 1946); the *Constitution Alteration (Aboriginals)* 1967 (assented to 10 August 1967); the *Constitution Alteration (Senate Casual Vacancies)* 1977 (assented to 29 July 1977); the *Constitution Alteration (Retirement of Judges)* 1977 (assented to 29 July 1977); and the *Constitution Alteration (Referendums)* 1977 (assented to 29 July 1977).

† The proclamation under covering clause 3 was made on 17 September 1900 and is published in *Gazette* 1901, p. 1, and in Commonwealth Statutory Rules 1901-1956, Vol. v., p. 5300.

‡ *Cf.* section 3 of the Statute of Westminster, 1931.

Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called " a State. "

" Original States " shall mean such States as are parts of the Commonwealth at its establishment.

Repeal of Federal Council Act. 48 & 49 Vict. c. 60.

7. The Federal Council of Australasia Act, 1885, is hereby repealed, but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth.

Any such law may be repealed* as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof.

Application of Colonial Boundaries Act. 58 & 59 Vict. c. 34.

8. After the passing of this Act the Colonial Boundaries Act, 1895, shall not apply to any colony which becomes a State of the Commonwealth; but the Commonwealth shall be taken to be a self-governing colony for the purposes of that Act.

Constitution.

9. The Constitution of the Commonwealth shall be as follows:—

THE CONSTITUTION.

This Constitution is divided as follows:—

Chap. I The Parliament.

Part I. General.

CHAPTER I.

THE PARLIAMENT.

PART I.—GENERAL.

Legislative power.

1. The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is herein-after called " The Parliament, " or " The Parliament of the Commonwealth. "

Governor-General.

2. A Governor-General appointed by the Queen shall be Her Majesty's representative in the Commonwealth, and shall have and may exercise in the Commonwealth during the Queen's pleasure, but subject to this Constitution, such powers and functions of the Queen as Her Majesty may be pleased to assign to him.

Salary of Governor-General.

3. There shall be payable to the Queen out of the Consolidated Revenue fund of the Commonwealth, for the salary of the Governor-General, an annual sum which, until the Parliament otherwise provides, shall be ten thousand pounds.

The salary of a Governor-General shall not be altered during his continuance in office.

Provisions relating to Governor-General.

4. The provisions of this Constitution relating to the Governor-General extend and apply to the Governor-General for the time being, or such person as the Queen may appoint to administer the Government of the Commonwealth; but no such person shall be entitled to receive any salary from the Commonwealth in respect of any other office during his administration of the Government of the Commonwealth.

* The following Commonwealth Acts have repealed Acts passed by the Federal Council of Australasia:

Defence Act 1903, s. 6.
Pearl Fisheries Act 1952, s. 3.
Service and Execution of Process Act 1901, s. 2.

5. The Governor-General may appoint such times for holding the sessions of the Parliament as he thinks fit, and may also from time to time, by Proclamation or otherwise, prorogue the Parliament, and may in like manner dissolve the House of Representatives. Sessions of Parliament. Prorogation and dissolution.

After any general election the Parliament shall be summoned to meet not later than thirty days after the day appointed for the return of the writs. Summoning Parliament.

The Parliament shall be summoned to meet not later than six months after the establishment of the Commonwealth. First session.

6. There shall be a session of the Parliament once at least in every year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session. Yearly session of Parliament.

PART II.—THE SENATE.

Part II. The Senate.

7. The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. The Senate.

But until the Parliament of the Commonwealth otherwise provides, the Parliament of the State of Queensland, if that State be an Original State, may make laws dividing the State into divisions and determining the number of senators to be chosen for each division, and in the absence of such provision the State shall be one electorate.

Until the Parliament otherwise provides there shall be six senators for each Original State. The Parliament may make laws increasing or diminishing the number of senators for each State,* but so that equal representation of the several Original States shall be maintained and that no Original State shall have less than six senators.

The senators shall be chosen for a term of six years, and the names of the senators chosen for each State shall be certified by the Governor to the Governor-General.

8. The qualification of electors of senators shall be in each State that which is prescribed by this Constitution, or by the Parliament, as the qualification for electors of members of the House of Representatives; but in the choosing of senators each elector shall vote only once. Qualification of electors.

9. The Parliament of the Commonwealth may make laws prescribing the method of choosing senators, but so that the method shall be uniform for all the States. Subject to any such law, the Parliament of each State may make laws† prescribing the method of choosing the senators for that State. Method of electior of senators.

The Parliament of a State may make laws† for determining the times and places of elections of senators for the State. Times and places.

* The number of senators for each State was increased to ten by the *Representaton Act* 1948, s. 4.

† The following State Acts have been passed in pursuance of the powers conferred by section 9:

State	*Number*	*Short Title*	*How Affected*
New South Wales	No. 73, 1900	Federal Elections Act, 1900	Sections 2, 3, 4, 5 and 6 and the Schedule repealed by No. 9, 1903; wholly repealed by No. 41, 1912
New South Wales	No. 9, 1903	Senators' Elections Act, 1903	Amended by No. 75, 1912
New South Wales	No. 75, 1912	Senators' Elections (Amendment) Act, 1912	(*Still in force*)
Victoria	No. 1715	*Federal Elections Act* 1900	Repealed by No. 1860
Victoria	No. 1860	*Senate Elections (Times and Places) Act* 1903	Repealed and re-enacted by No. 2723
Victoria	No. 2723	*Senate Elections (Times and Places) Act* 1915	Repealed and re-enacted by No. 3769
Victoria	No. 3769	*Senate Elections (Times and Places) Act* 1928	Repealed and re-enacted by No. 6365
Victoria	No. 6365	*Senate Elections Act* 1958	(*Still in force*)
Queensland	64 Vic. No. 25	*The Parliament of the Commonwealth Elections Act and The Elections Acts* 1885 *to* 1898 *Amendment Act of* 1900	Operation exhausted
Queensland	3 Edw. VII. No. 6	*The Election of Senators Act of* 1903	Repealed by 9 Eliz. II. No. 20
Queensland	9 Eliz. II. No. 20	*The Senate Elections Act of* 1960	(*Still in force*)
South Australia	No. 834	The Election of Senators Act, 1903	(*Still in force*)
Western Australia	No. 11, 1903	*Election of Senators Act* 1903	Amended by No. 27, 1912
Western Australia	No. 27, 1912	*Election of Senators Amendment Act*, 1912	(*Still in force*)
Tasmania	64 Vic. No. 59	The Federal Elections Act, 1900	Repealed by 26 Geo. V. No. 3
Tasmania	3 Edw. VII. No. 5	The Election of Senators Act, 1903	Repealed by 26 Geo. V. No. 3
Tasmania	26 Geo. V. No. 3	*Senate Elections Act*, 1935	(*Still in force*)

Application of State laws.

10. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State, for the time being, relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections of senators for the State.

Failure to choose senators.

11. The Senate may proceed to the despatch of business, notwithstanding the failure of any State to provide for its representation in the Senate.

Issue of writs.

12. The Governor of any State may cause writs to be issued for elections of senators for the State. In case of the dissolution of the Senate the writs shall be issued within ten days from the proclamation of such dissolution.

Rotation of senators.

Altered by No. 1, 1907, s. 2.

13. As soon as may be after the Senate first meets, and after each first meeting of the Senate following a dissolution thereof, the Senate shall divide the senators chosen for each State into two classes, as nearly equal in number as practicable; and the places of the senators of the first class shall become vacant at the expiration of ~~the third year~~ **three years,** and the places of those of the second class at the expiration of ~~the sixth year~~ **six years,** from the beginning of their term of service; and afterwards the places of senators shall become vacant at the expiration of six years from the beginning of their term of service.

The election to fill vacant places shall be made ~~in the year at the expiration of which~~ **within one year before** the places are to become vacant.

For the purposes of this section the term of service of a senator shall be taken to begin on the first day of ~~January~~ **July** following the day of his election, except in the cases of the first election and of the election next after any dissolution of the Senate, when it shall be taken to begin on the first day of ~~January~~ **July** preceding the day of his election.

Further provision for rotation.

14. Whenever the number of senators for a State is increased or diminished, the Parliament of the Commonwealth may make such provision for the vacating of the places of senators for the State as it deems necessary to maintain regularity in the rotation.*

Casual vacancies.

Substituted by No. 82, 1977, s. 2.

15.† If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term. But if the Parliament of the State is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens.

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was so chosen, he was publicly recognized by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, a person chosen or appointed under this section in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where—

(a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant; and

(b) before taking his seat he ceases to be a member of that party (otherwise than by reason of the party having ceased to exist),

he shall be deemed not to have been so chosen or appointed and the vacancy shall be again notified in accordance with section twenty-one of this Constitution.

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* For the provisions applicable upon the increase in the number of Senators to ten made by the *Representation Act* 1948 (No. 16, 1948), see ss. 4 and 5 of that Act.

† Section 15, before its substitution by the *Constitution Alteration (Senate Casual Vacancies)* 1977, provided as follows:

" 15. If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen shall, sitting and voting together, choose a person to hold the place until the expiration of the term, or until the election of a successor as hereinafter provided, whichever first happens. But if the Houses of Parliament of the State are not in session at the time when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State, or until the election of a successor, whichever first happens.

" At the next general election of members of the House of Representatives, or at the next election of senators for the State, whichever first happens, a successor shall, if the term has not then expired, be chosen to hold the place from the date of his election until the expiration of the term.

" The name of any senator so chosen or appointed shall be certified by the Governor of the State to the Governor-General. "

The name of any senator chosen or appointed under this section shall be certified by the Governor of the State to the Governor-General.

If the place of a senator chosen by the people of a State at the election of senators last held before the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977 became vacant before that commencement and, at that commencement, no person chosen by the House or Houses of Parliament of the State, or appointed by the Governor of the State, in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, held office, this section applies as if the place of the senator chosen by the people of the State had become vacant after that commencement.

A senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977, being a senator appointed by the Governor of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State, shall be deemed to have been appointed to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State that commenced or commences after he was appointed and further action under this section shall be taken as if the vacancy in the place of the senator chosen by the people of the State had occurred after that commencement.

Subject to the next succeeding paragraph, a senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977 who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the *Constitution Alteration (Senate Casual Vacancies)* 1977, a law to alter the Constitution entitled "*Constitution Alteration (Simultaneous Elections)* 1977" came into operation,* a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a Senator chosen by the people of the State shall be deemed to have been chosen to hold office—

(a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight—until the expiration or dissolution of the first House of Representatives to expire or be dissolved after that law came into operation; or

(b) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and eighty-one—until the expiration or dissolution of the second House of Representatives to expire or be dissolved after that law came into operation or, if there is an earlier dissolution of the Senate, until that dissolution.

Qualifications of senator.

16. The qualifications of a senator shall be the same as those of a member of the House of Representatives.

Election of President.

17. The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of President.

18. Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

Resignation of senator.

19. A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

20. The place of a senator shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the Senate, fails to attend the Senate.

Vacancy to be notified.

21. Whenever a vacancy happens in the Senate, the President, or if there is no President or if the President is absent from the Commonwealth the Governor-General, shall notify the same to the Governor of the State in the representation of which the vacancy has happened.

Quorum.

22. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the senators shall be necessary to constitute a meeting of the Senate for the exercise of its powers.

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* The proposed law to alter the Constitution entitled "*Constitution Alteration (Simultaneous Elections)* 1977" was submitted to the electors in each State of the Commonwealth on 21 May 1977. It was not approved by a majority of all the electors voting in a majority of the States. See *Gazette* 1977, No. S100, p.1.

Voting in the Senate.

23. Questions arising in the Senate shall be determined by a majority of votes, and each senator shall have one vote. The President shall in all cases be entitled to a vote; and when the votes are equal the question shall pass in the negative.

Part III. House of Representatives.

PART III.—THE HOUSE OF REPRESENTATIVES.

Constitution of House of Representatives.

24. The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The number of members chosen in the several States shall be in proportion to the respective numbers of their people, and shall, until the Parliament otherwise provides, be determined, whenever necessary, in the following manner:—

(i.) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:

(ii.) The number of members to be chosen in each State shall be determined by dividing the number of the people of the State, as shown by the latest statistics of the Commonwealth, by the quota; and if on such division there is a remainder greater than one-half of the quota, one more member shall be chosen in the State.

But notwithstanding anything in this section, five members at least shall be chosen in each Original State.

Provision as to races disqualified from voting.

25. For the purposes of the last section, if by the law of any State all persons of any race are disqualified from voting at elections for the more numerous House of the Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race resident in that State shall not be counted.

Representatives in first Parliament.

26. Notwithstanding anything in section twenty-four, the number of members to be chosen in each State at the first election shall be as follows:—

New South Wales	twenty-three;
Victoria	twenty;
Queensland	eight;
South Australia	six;
Tasmania	five;

Provided that if Western Australia is an Original State, the numbers shall be as follows:—

New South Wales	twenty-six;
Victoria	twenty-three;
Queensland	nine;
South Australia	seven;
Western Australia	five;
Tasmania	five.

Alteration of number of members.

27. Subject to this Constitution, the Parliament may make laws for increasing or diminishing the number of the members of the House of Representatives.

Duration of House of Representatives.

28. Every House of Representatives shall continue for three years from the first meeting of the House, and no longer, but may be sooner dissolved by the Governor-General.

Electoral divisions.

29. Until the Parliament of the Commonwealth otherwise provides, the Parliament of any State may make laws* for determining the divisions in each State for which members of the House of Representatives may be chosen, and the number of members to be chosen for each division. A division shall not be formed out of parts of different States.

In the absence of other provision, each State shall be one electorate.

* The following State Acts were passed in pursuance of the powers conferred by section 29, but ceased to be in force upon the enactment of the *Commonwealth Electoral Act* 1902:

State	*Number*	*Short Title*
New South Wales	No. 73, 1900	Federal Elections Act, 1900
Victoria	No. 1667	*Federal House of Representatives Victorian Electorates Act* 1900
Queensland	64 Vic. No. 25	*The Parliament of the Commonwealth Elections Act and The Elections Acts* 1885 *to* 1898 *Amendment Act of* 1900
Western Australia	64 Vic. No. 6	Federal House of Representatives Western Australian Electorates Act, 1900

Qualification of electors.

30. Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be in each State that which is prescribed by the law of the State as the qualification of electors of the more numerous House of Parliament of the State; but in the choosing of members each elector shall vote only once.

Application of State laws.

31. Until the Parliament otherwise provides, but subject to this Constitution, the laws in force in each State for the time being relating to elections for the more numerous House of the Parliament of the State shall, as nearly as practicable, apply to elections in the State of members of the House of Representatives.

Writs for general election.

32. The Governor-General in Council may cause writs to be issued for general elections of members of the House of Representatives.

After the first general election, the writs shall be issued within ten days from the expiry of a House of Representatives or from the proclamation of a dissolution thereof.

Writs for vacancies.

33. Whenever a vacancy happens in the House of Representatives, the Speaker shall issue his writ for the election of a new member, or if there is no Speaker or if he is absent from the Commonwealth the Governor-General in Council may issue the writ.

Qualifications of members.

34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—

(i.) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:

(ii.) He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.

Election of Speaker.

35. The House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

Absence of Speaker.

36. Before or during any absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.

Resignation of member.

37. A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Vacancy by absence.

38. The place of a member shall become vacant if for two consecutive months of any session of the Parliament he, without the permission of the House, fails to attend the House.

Quorum.

39. Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

Voting in House of Representatives.

40. Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

Part IV. Both Houses of the Parliament.

PART IV—BOTH HOUSES OF THE PARLIAMENT.

Right of electors of States.

41. No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

Oath or affirmation of allegiance.

42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution.

Member of one House ineligible for other.

43. A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

Disqualification.

44. Any person who

(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

(ii.) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or

(iii.) Is an undischarged bankrupt or insolvent: or

(iv.) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or

(v.) 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 twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Vacancy on happening of disqualification.

45. If a senator or member of the House of Representatives—

(i.) Becomes subject to any of the disabilities mentioned in the last preceding section: or

(ii.) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

(iii.) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

Penalty for sitting when disqualified.

46. Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.

Disputed elections.

47. Until the Parliament otherwise provides, any question respecting the qualification of a senator or of a member of the House of Representatives, or respecting a vacancy in either House of the Parliament, and any question of a disputed election to either House, shall be determined by the House in which the question arises.

Allowance to members.

48. Until the Parliament otherwise provides, each senator and each member of the House of Representatives shall receive an allowance of four hundred pounds a year, to be reckoned from the day on which he takes his seat.

Privileges, &c. of Houses.

49. The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Rules and orders.

50. Each House of the Parliament may make rules and orders with respect to—

(i.) The mode in which its powers, privileges, and immunities may be exercised and upheld:

(ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

PART V.—POWERS OF THE PARLIAMENT.

Part V. Powers of the Parliament.

Legislative powers of the Parliament.

51. The Parliament shall, subject to this Constitution, have power* to make laws for the peace, order, and good government of the Commonwealth with respect to:—

(i.) Trade and commerce with other countries, and among the States:

(ii.) Taxation; but so as not to discriminate between States or parts of States:

(iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:

(iv.) Borrowing money on the public credit of the Commonwealth:

(v.) Postal, telegraphic, telephonic, and other like services:

(vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:

(vii.) Lighthouses, lightships, beacons and buoys:

(viii.) Astronomical and meteorological observations:

(ix.) Quarantine:

(x.) Fisheries in Australian waters beyond territorial limits:

(xi.) Census and statistics:

(xii.) Currency, coinage, and legal tender:

(xiii.) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:

(xiv.) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:

(xv.) Weights and measures:

(xvi.) Bills of exchange and promissory notes:

(xvii.) Bankruptcy and insolvency:

(xviii.) Copyrights, patents of inventions and designs, and trade marks:

(xix.) Naturalization and aliens:

(xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:

(xxi.) Marriage:

(xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

(xxiii.) Invalid and old-age pensions:

Inserted by No. 81, 1946, s. 2.

(xxiiiA.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:

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* The following Imperial Acts extended the legislative powers of the Parliament:
Whaling Industry (Regulation) Act, 1934, s. 15.
Geneva Convention Act, 1937, s. 2
Emergency Powers (Defence) Act, 1939, s. 5.
Army and Air Force (Annual) Act, 1940, s. 3.

(xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:

(xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:

Altered by No. 55, 1967, s. 2.

(xxvi.) The people of any race, ~~other than the aboriginal race in any State~~, for whom it is deemed necessary to make special laws:

(xxvii.) Immigration and emigration:

(xxviii.) The influx of criminals:

(xxix.) External affairs:

(xxx.) The relations of the Commonwealth with the islands of the Pacific:

(xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

(xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:

(xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:

(xxxiv.) Railway construction and extension in any State with the consent of that State:

(xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:

(xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:

(xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States*, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:

* The following Acts have been passed by the Parliaments of the States to refer matters to the Parliament under section 51 (xxxvii):

State	*Number*	*Short Title*	*How Affected*
New South Wales	No. 65, 1915	Commonwealth Powers (War) Act, 1915	Expired 9 January 1921; *see* s. 5
	No. 33, 1942	Commonwealth Powers Act, 1942	Expired; *see* s. 4
	No. 18, 1943	Commonwealth Powers Act, 1943	Expired; *see* s. 4
Victoria	No. 3108	*Commonwealth Powers (Air Navigation) Act* 1920	Repealed by No. 4502
	No. 3658	*Commonwealth Arrangements Act* 1928 (Part III)	Repealed by No. 4502
	No. 4009	*Debt Conversion Agreement Act* 1931 (No. 2)	(*Still in force*)
	No. 4950	*Commonwealth Powers Act* 1943	Not proclaimed to come into operation and cannot now be so proclaimed
Queensland	12 Geo. V. No. 30	*The Commonwealth Powers (Air Navigation) Act of* 1921	Repealed by 1 Geo. VI. No. 8
	22 Geo. V. No. 30	*The Commonwealth Legislative Power Act*, 1931	(*Still in force*)
	7 Geo. VI. No. 19	*Commonwealth Powers Act* 1943	Expired; *see* s. 4
	14 Geo. VI. No. 2	*The Commonwealth Powers (Air Transport) Act of* 1950	(*Still in force*)
South Australia	No. 1469, 1921	Commonwealth Powers (Air Navigation) Act, 1921	Repealed by No. 2352, 1937
	No. 2061, 1931	Commonwealth Legislative Power Act, 1931	(*Still in force*)
	No. 3, 1943	Commonwealth Powers Act, 1943	Expired; *see* s. 5
Western Australia	No. 4, 1943	*Commonwealth Powers Act* 1943	Repealed by No. 58, 1965
	No. 57, 1945	*Commonwealth Powers Act* 1945	Repealed by No. 58, 1965
	No. 30, 1947	*Commonwealth Powers Act*, 1943, *Amendment Act*, 1947	Repealed by No. 58, 1965
	No. 31, 1947	*Commonwealth Powers Act*, 1945, *Amendment Act*, 1947	Repealed by No. 58, 1965
	No. 73, 1947	*Commonwealth Powers Act*, 1945, *Amendment Act* (No. 2), 1947	Repealed by No. 58, 1965
	No. 81, 1947	*Commonwealth Powers Act* 1945-1947, *Amendment* (*Continuance*) *Act*, 1947	Repealed by No. 58, 1965
Tasmania	11 Geo. V. No. 42	*Commonwealth Powers* (*Air Navigation*) *Act* 1920	Repealed by 1 Geo. VI. No. 14
	No. 46, 1952	*Commonwealth Powers* (*Air Transport*) *Act* 1952	(*Still in force*)
	No. 62, 1966	*Commonwealth Powers* (*Trade Practices*) *Act* 1966	Expired; *see* s. 2

(xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

(xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

Exclusive powers of the Parliament.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

(i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes:

(ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth:

(iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

Powers of the Houses in respect of legislation.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Appropriation Bills.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Tax Bill.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure.

Recommendations by Governor-General.

The Governor-General may return to the house in which it originated any proposed law so presented to him, and may transmit therewith any amendments which he may recommend, and the Houses may deal with the recommendation.

Disallowance by the Queen.

59. The Queen may disallow any law within one year from the Governor-General's assent, and such disallowance on being made known by the Governor-General by speech or message to each of the Houses of the Parliament, or by Proclamation, shall annul the law from the day when the disallowance is so made known.

Signification of Queen's pleasure on Bills reserved.

60. A proposed law reserved for the Queen's pleasure shall not have any force unless and until within two years from the day on which it was presented to the Governor-General for the Queen's assent the Governor-General makes known, by speech or message to each of the Houses of the Parliament, or by Proclamation, that it has received the Queen's assent.

Chap. II. The Government.

CHAPTER II.

THE EXECUTIVE GOVERNMENT.

Executive power.

61. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Federal Executive Council.

62. There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

Provisions referring to Governor-General.

63. The provisions of this Constitution referring to the Governor-General in Council shall be construed as referring to the Governor-General acting with the advice of the Federal Executive Council.

Ministers of State.

64. The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen's Ministers of State for the Commonwealth.

Ministers to sit in Parliament.

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

Number of Ministers.

65. Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

Salaries of Ministers.

66. There shall be payable to the Queen, out of the Consolidated Revenue Fund of the Commonwealth, for the salaries of the Ministers of State, an annual sum which, until the Parliament otherwise provides, shall not exceed twelve thousand pounds a year.

Appointment of civil servants.

67. Until the Parliament otherwise provides, the appointment and removal of all other officers of the Executive Government of the Commonwealth shall be vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council or by a law of the Commonwealth to some other authority.

Command of naval and military forces.

68. The command in chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative.

Transfer of certain departments.

69. On a date or dates to be proclaimed by the Governor-General after the establishment of the Commonwealth the following departments of the public service in each State shall become transferred to the Commonwealth:—

Posts, telegraphs, and telephones:
Naval and military defence:
Lighthouses, lightships, beacons, and buoys:
Quarantine.

But the departments of customs and of excise in each State shall become transferred to the Commonwealth on its establishment.

Certain powers of Governors to vest in Governor-General.

70. In respect of matters which, under this Constitution, pass to the Executive Government of the Commonwealth, all powers and functions which at the establishment of the Commonwealth are vested in the Governor of a Colony, or in the Governor of a Colony with the advice of his Executive Council, or in any authority of a Colony, shall vest in the Governor-General, or in the Governor-General in Council, or in the authority exercising similar powers under the Commonwealth, as the case requires.

CHAPTER III.

Chap. III. The Judicature.

THE JUDICATURE.

Judicial power and Courts.

71. The judicial power of the Commonwealth shall be vested in a Federal Supreme Court, to be called the High Court of Australia, and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice, and so many other Justices, not less than two, as the Parliament prescribes.

Judges' appointment, tenure and remuneration.

72. The Justices of the High Court and of the other courts created by the Parliament—

(i.) Shall be appointed by the Governor-General in Council:

(ii.) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity:

(iii.) Shall receive such remuneration as the Parliament may fix; but the remuneration shall not be diminished during their continuance in office.

Paragraph added by No. 83, 1977, s. 2.

The appointment of a Justice of the High Court shall be for a term expiring upon his attaining the age of seventy years, and a person shall not be appointed as a Justice of the High Court if he has attained that age.

Paragraph added by No. 83, 1977, s. 2.

The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court.

Paragraph added by No. 83, 1977, s. 2.

Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years.

Paragraph added by No. 83, 1977, s. 2.

The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by the Parliament and may at any time repeal or amend such a law, but any such repeal or amendment does not affect the term of office of a Justice under an appointment made before the repeal or amendment.

Paragraph added by No. 83, 1977, s. 2.

A Justice of the High Court or of a court created by the Parliament may resign his office by writing under his hand delivered to the Governor-General.

Paragraph added by No. 83, 1977, s. 2.

Nothing in the provisions added to this section by the *Constitution Alteration (Retirement of Judges)* 1977 affects the continuance of a person in office as a Justice of a court under an appointment made before the commencement of those provisions.

Paragraph added by No. 83, 1977, s. 2.

A reference in this section to the appointment of a Justice of the High Court or of a court created by the Parliament shall be read as including a reference to the appointment of a person who holds office as a Justice of the High Court or of a court created by the Parliament to another office of Justice of the same court having a different status or designation.

Appellate jurisdiction of High Court.

73. The High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences—

(i.) Of any Justice or Justices exercising the original jurisdiction of the High Court:

(ii.) Of any other federal court, or court exercising federal jurisdiction; or of the Supreme Court of any State, or of any other court of any State from which at the establishment of the Commonwealth an appeal lies to the Queen in Council:

(iii.) Of the Inter-State Commission, but as to questions of law only:

and the judgment of the High Court in all such cases shall be final and conclusive.

But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth an appeal lies from such Supreme Court to the Queen in Council.

Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Courts of the several States shall be applicable to appeals from them to the High Court.

Appeal to Queen in Council.

74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked,* but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure.

Original jurisdiction of High Court.

75. In all matters—

(i.) Arising under any treaty:

(ii.) Affecting consuls or other representatives of other countries:

(iii.) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party:

(iv.) Between States, or between residents of different States, or between a State and a resident of another State:

(v.) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction.

Additional original jurisdiction.

76. The Parliament may make laws conferring original jurisdiction on the High Court in any matter—

(i.) Arising under this Constitution, or involving its interpretation:

(ii.) Arising under any laws made by the Parliament:

(iii.) Of Admiralty and maritime jurisdiction:

(iv.) Relating to the same subject-matter claimed under the laws of different States.

Power to define jurisdiction.

77. With respect to any of the matters mentioned in the last two sections the Parliament may make laws—

(i.) Defining the jurisdiction of any federal court other than the High Court:

(ii.) Defining the extent to which the jurisdiction of any federal court shall be exclusive of that which belongs to or is invested in the courts of the States:

(iii.) Investing any court of a State with federal jurisdiction.

Proceedings against Commonwealth or State.

78. The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power.

Number of judges.

79. The federal jurisdiction of any court may be exercised by such number of judges as the Parliament prescribes.

Trial by jury.

80. The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

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* *See Privy Council (Limitation of Appeals) Act* 1968 and *Privy Council (Appeals from the High Court) Act* 1975.

CHAPTER IV.

FINANCE AND TRADE.

Consolidated Revenue Fund.

81. All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth in the manner and subject to the charges and liabilities imposed by this Constitution.

Expenditure charged thereon.

82. The costs, charges, and expenses incident to the collection, management, and receipt of the Consolidated Revenue Fund shall form the first charge thereon; and the revenue of the Commonwealth shall in the first instance be applied to the payment of the expenditure of the Commonwealth.

Money to be appropriated by law.

83. No money shall be drawn from the Treasury of the Commonwealth except under appropriation made by law.

But until the expiration of one month after the first meeting of the Parliament the Governor-General in Council may draw from the Treasury and expend such moneys as may be necessary for the maintenance of any department transferred to the Commonwealth and for the holding of the first elections for the Parliament.

Transfer of officers.

84. When any department of the public service of a State becomes transferred to the Commonwealth, all officers of the department shall become subject to the control of the Executive Government of the Commonwealth.

Any such officer who is not retained in the service of the Commonwealth shall, unless he is appointed to some other office of equal emolument in the public service of the State, be entitled to receive from the State any pension, gratuity, or other compensation, payable under the law of the State on the abolition of his office.

Any such officer who is retained in the service of the Commonwealth shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State if his service with the Commonwealth were a continuation of his service with the State. Such pension or retiring allowance shall be paid to him by the Commonwealth; but the State shall pay to the Commonwealth a part thereof, to be calculated on the proportion which his term of service with the State bears to his whole term of service, and for the purpose of the calculation his salary shall be taken to be that paid to him by the State at the time of the transfer.

Any officer who is, at the establishment of the Commonwealth, in the public service of a State, and who is, by consent of the Governor of the State with the advice of the Executive Council thereof, transferred to the public service of the Commonwealth, shall have the same rights as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Transfer of property of State.

85. When any department of the public service of a State is transferred to the Commonwealth—

(i.) All property of the State of any kind, used exclusively in connexion with the department, shall become vested in the Commonwealth; but, in the case of the departments controlling customs and excise and bounties, for such time only as the Governor-General in Council may declare to be necessary:

(ii.) The Commonwealth may acquire any property of the State, of any kind used, but not exclusively used in connexion with the department; the value thereof shall, if no agreement can be made, be ascertained in, as nearly as may be, the manner in which the value of land, or of an interest in land, taken by the State for public purposes is ascertained under the law of the State in force at the establishment of the Commonwealth:

(iii.) The Commonwealth shall compensate the State for the value of any property passing to the Commonwealth under this section; if no agreement can be made as to the mode of compensation, it shall be determined under laws to be made by the Parliament:

(iv.) The Commonwealth shall, at the date of the transfer, assume the current obligations of the State in respect of the department transferred.

86. On the establishment of the Commonwealth, the collection and control of duties of customs and of excise, and the control of the payment of bounties, shall pass to the Executive Government of the Commonwealth.

87. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, of the net revenue of the Commonwealth from duties of customs and of excise not more than one-fourth shall be applied annually by the Commonwealth towards its expenditure.

The balance shall, in accordance with this Constitution, be paid to the several States, or applied towards the payment of interest on debts of the several States taken over by the Commonwealth.

Uniform duties of customs.

88. Uniform duties of customs shall be imposed within two years after the establishment of the Commonwealth.

Payment to States before uniform duties.

89. Until the imposition of uniform duties of customs—

(i.) The Commonwealth shall credit to each State the revenues collected therein by the Commonwealth.

(ii.) The Commonwealth shall debit to each State—

(*a*) The expenditure therein of the Commonwealth incurred solely for the maintenance or continuance, as at the time of transfer, of any department transferred from the State to the Commonwealth;

(*b*) The proportion of the State, according to the number of its people, in the other expenditure of the Commonwealth.

(iii.) The Commonwealth shall pay to each State month by month the balance (if any) in favour of the State.

Exclusive power over customs, excise, and bounties.

90. On the imposition of uniform duties of customs the power of the Parliament to impose duties of customs and of excise, and to grant bounties on the production or export of goods, shall become exclusive.

On the imposition of uniform duties of customs all laws of the several States imposing duties of customs or of excise, or offering bounties on the production or export of goods, shall cease to have effect, but any grant of or agreement for any such bounty lawfully made by or under the authority of the Government of any State shall be taken to be good if made before the thirtieth day of June, one thousand eight hundred and ninety-eight, and not otherwise.

Exceptions as to bounties.

91. Nothing in this Constitution prohibits a State from granting any aid to or bounty on mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Parliament of the Commonwealth expressed by resolution, any aid to or bounty on the production or export of goods.

Trade within the Commonwealth to be free.

92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

Payment to States for five years after uniform tariffs.

93. During the first five years after the imposition of uniform duties of customs, and thereafter until the Parliament otherwise provides—

(i.) The duties of customs chargeable on goods imported into a State and afterwards passing into another State for consumption, and the duties of excise paid on goods produced or manufactured in a State and afterwards passing into another State for consumption, shall be taken to have been collected not in the former but in the latter State:

(ii.) Subject to the last subsection, the Commonwealth shall credit revenue, debit expenditure, and pay balances to the several States as prescribed for the period preceding the imposition of uniform duties of customs.

Distribution of surplus.

94. After five years from the imposition of uniform duties of customs, the Parliament may provide, on such basis as it deems fair, for the monthly payment to the several States of all surplus revenue of the Commonwealth.

Customs duties of Western Australia.

95. Notwithstanding anything in this Constitution, the Parliament of the State of Western Australia, if that State be an Original State, may, during the first five years after the impositon of uniform duties of customs, impose duties of customs on goods passing into that State and not originally imported from beyond the limits of the Commonwealth; and such duties shall be collected by the Commonwealth.

But any duty so imposed on any goods shall not exceed during the first of such years the duty chargeable on the goods under the law of Western Australia in force at the imposition of uniform duties, and shall not exceed during the second, third, fourth, and fifth of such years respectively, four-fifths, three-fifths, two-fifths, and one-fifth of such latter duty, and all duties imposed under this section shall cease at the expiration of the fifth year after the imposition of uniform duties.

If at any time during the five years the duty on any goods under this section is higher than the duty imposed by the Commonwealth on the importation of the like goods, then such higher duty shall be collected on the goods when imported into Western Australia from beyond the limits of the Commonwealth.

Financial assistance to States.

96. During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

Audit.

97. Until the Parliament otherwise provides, the laws in force in any Colony which has become or becomes a State with respect to the receipt of revenue and the expenditure of money on account of the Government of the Colony, and the review and audit of such receipt and expenditure, shall apply to the receipt of revenue and the expenditure of money on account of the Commonwealth in the State in the same manner as if the Commonwealth, or the Government or an officer of the Commonwealth, were mentioned whenever the Colony, or the Government or an officer of the Colony, is mentioned.

Trade and commerce includes navigation and State railways.

98. The power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping, and to railways the property of any State.

Commonwealth not to give preference.

99. The Commonwealth shall not, by any law or regulaton of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.

Nor abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

Inter-State Commission.

101. There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.

Parliament may forbid preferences by State

102. The Parliament may by any law with respect to trade or commerce forbid, as to railways, any preference or discrimination by any State, or by any authority constituted under a State, if such preference or discrimination is undue and unreasonable, or unjust to any State; due regard being had to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways. But no preference or discrimination shall, within the meaning of this section, be taken to be undue and unreasonable, or unjust to any State, unless so adjudged by the Inter-State Commission.

Commissioners' appointment, tenure, and remuneration.

103. The members of the Inter-State Commission—

(i.) Shall be appointed by the Governor-General in Council:

(ii.) Shall hold office for seven years, but may be removed within that time by the Governor-General in Council, on an address from both Houses of the Parliament in the same session praying for such removal on the ground of proved misbehaviour or incapacity:

(iii.) Shall receive such remuneration as the Parliament may fix; but such remuneration shall not be diminished during their continuance in office.

Saving of certain rates.

104. Nothing in this Constitution shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Inter-State Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Taking over public debts of States.
Altered by No. 3, 1910, s. 2.

105. The Parliament may take over from the States their public debts ~~as existing at the establishment of the Commonwealth,~~ or a proportion thereof according to the respective numbers of their people as shown by the latest statistics of the Commonwealth, and may convert, renew, or consolidate such debts, or any part thereof; and the States shall indemnify the Commonwealth in respect of the debts taken over, and thereafter the interest payable in respect of the debts shall be deducted and retained from the portions of the surplus revenue of the Commonwealth payable to the several States, or if such surplus is insufficient, or if there is no surplus, then the deficiency or the whole amount shall be paid by the several States.

Agreements with respect to State debts.
Inserted by No. 1, 1929, s. 2.

105A.—(1.) The Commonwealth may make agreements with the States with respect to the public debts of the States, including—

(*a*) the taking over of such debts by the Commonwealth;

(*b*) the management of such debts;

(*c*) the payment of interest and the provision and management of sinking funds in respect of such debts;

(*d*) the consolidation, renewal, conversion, and redemption of such debts;

(*e*) the indemnification of the Commonwealth by the States in respect of debts taken over by the Commonwealth; and

(*f*) the borrowing of money by the States or by the Commonwealth, or by the Commonwealth for the States.

(2.) The Parliament may make laws for validating any such agreement made before the commencement of this section.

(3.) The Parliament may make laws for the carrying out by the parties thereto of any such agreement.

(4.) Any such agreement may be varied or rescinded by the parties thereto.

(5.) Every such agreement and any such variation thereof shall be binding upon the Commonwealth and the States parties thereto notwithstanding anything contained in this Constitution or the Constitution of the several States or in any law of the Parliament of the Commonwealth or of any State.

(6.) The powers conferred by this section shall not be construed as being limited in any way by the provisions of section one hundred and five of this Constitution.

Chap. V. The States.

CHAPTER V.

THE STATES.

Saving of Constitutions.

106. The Constitution of each State of the Commonwealth shall, subject to this Constitution, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be, until altered in accordance with the Constitution of the State.

Saving of Power of State Parliaments.

107. Every power of the Parliament of a Colony which has become or becomes a State, shall, unless it is by this Constitution exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continue as at the establishment of the Commonwealth, or as at the admission or establishment of the State, as the case may be.

Saving of State laws.

108. Every law in force in a Colony which has become or becomes a State, and relating to any matter within the powers of the Parliament of the Commonwealth, shall, subject to this Constitution, continue in force in the State; and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State shall have such powers of alteration and of repeal in respect of any such law as the Parliament of the Colony had until the Colony became a State.

Inconsistency of laws.

109. When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Provisions referring to Governor.

110. The provisions of this Constitution relating to the Governor of a State extend and apply to the Governor for the time being of the State, or other chief executive officer or administrator of the government of the State.

States may surrender territory.

111. The Parliament of a State may surrender any part of the State to the Commonwealth; and upon such surrender, and the acceptance thereof by the Commonwealth, such part of the State shall become subject to the exclusive jurisdiction of the Commonwealth.

States may levy charges for inspection laws.

112. After uniform duties of customs have been imposed, a State may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State; but the net produce of all charges so levied shall be for the use of the Commonwealth; and any such inspection laws may be annulled by the Parliament of the Commonwealth.

Intoxicating liquids.

113. All fermented, distilled, or other intoxicating liquids passing into any State or remaining therein for use, consumption, sale, or storage, shall be subject to the laws of the State as if such liquids had been produced in the State.

States may not raise forces. Taxation of property of Commonwealth or State.

114. A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.

States not to coin money.

115. A State shall not coin money, nor make anything but gold and silver coin a legal tender in payment of debts.

Commonwealth not to legislate in respect of religion.

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

Rights of residents in States.

118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

Recognition of laws, &c. of States.

119. The Commonwealth shall protect every State against invasion and, on the application of the Executive Government of the State, against domestic violence.

Protection of States from invasion and violence.

120. Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision.

Custody of offenders against laws of the Commonwealth.

CHAPTER VI.

Chap. VI. New States.

NEW STATES.

121. The Parliament may admit to the Commonwealth or establish new States, and may upon such admission or establishment make or impose such terms and conditions, including the extent of representation in either House of the Parliament, as it thinks fit.

New States may be admitted or established.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Government of territories.

123. The Parliament of the Commonwealth may, with the consent of the Parliament of a State, and the approval of the majority of the electors of the State voting upon the question, increase, diminish, or otherwise alter the limits of the State, upon such terms and conditions as may be agreed on, and may, with the like consent, make provision respecting the effect and operation of any increase or diminution or alteration of territory in relation to any State affected.

Alteration of limits of States.

124. A new State may be formed by separation of territory from a State, but only with the consent of the Parliament thereof, and a new State may be formed by the union of two or more States or parts of States, but only with the consent of the Parliaments of the States affected.

Formation of new States.

CHAPTER VII.

Chap. VII. Miscellaneous.

MISCELLANEOUS.

125. The seat of Government of the Commonwealth shall be determined by the Parliament, and shall be within territory which shall have been granted to or acquired by the Commonwealth, and shall be vested in and belong to the Commonwealth, and shall be in the State of New South Wales, and be distant not less than one hundred miles from Sydney.

Seat of Government.

Such territory shall contain an area of not less than one hundred square miles, and such portion thereof as shall consist of Crown lands shall be granted to the Commonwealth without any payment therefor.

The Parliament shall sit at Melbourne until it meet at the seat of Government.

126. The Queen may authorise the Governor-General to appoint any person, or any persons jointly or severally, to be his deputy or deputies* within any part of the Commonwealth, and in that capacity to exercise during the pleasure of the Governor-General such powers and functions of the Governor-General as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Queen; but the appointment of such deputy or deputies shall not affect the exercise by the Governor-General himself of any power or function.

Power to Her Majesty to authorise Governor-General to appoint deputies.

127. ~~In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted~~.

Repealed by No. 55, 1967, s. 3.

* *See* clause VI of the Letters Patent constituting the Office of Governor-General published in Commonwealth Statutory Rules 1901–1956, Vol. V, p. 5301.

Chap. VIII. Alteration of Constitution.

CHAPTER VIII.

ALTERATION OF THE CONSTITUTION.

Mode of altering the Constitution.

128.† This Constitution shall not be altered except in the following manner:—

Paragraph altered by No. 84, 1977, s. 2.

The proposed law for the alteration thereof must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each State **and Territory** to the electors qualified to vote for the election of members of the House of Representatives.

Paragraph altered by No. 84, 1977, s. 2.

But if either House passes any such proposed law by an absolute majority, and the other House rejects of fails to pass it, or passes it with any amendment to which the first-mentioned House will not agree and if after an interval of three months the first-mentioned House in the same or the next session again passes the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects or fails to pass it or passes it with any amendment to which the first-mentioned House will not agree, the Governor-General may submit the proposed law as last proposed by the first-mentioned House, and either with or without any amendments subsequently agreed to by both Houses, to the electors in each State **and Territory** qualified to vote for the election of the House of Representatives.

When a proposed law is submitted to the electors the vote shall be taken in such manner as the Parliament prescribes. But until the qualification of electors of members of the House of Representatives becomes uniform throughout the Commonwealth, only one-half the electors voting for and against the proposed law shall be counted in any State in which adult suffrage prevails.

And if in a majority of the States a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approve the proposed law, it shall be presented to the Governor-General for the Queen's assent.

No alteration diminishing the proportionate representation of any State in either House of the Parliament, or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

Paragraph added by No. 84, 1977, s. 2.

In this section, " Territory " means any territory referred to in section one hundred and twenty two of this Constitution in respect of which there is in force a law allowing its representation in the House of Representatives.

SCHEDULE.

OATH.

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, 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 Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)

† The following laws have altered the Constitution of the Commonwealth:
Constitution Alteration (Senate Elections) 1906 (Act No. 1, 1907);
Constitution Alteration (State Debts) 1909 (Act No. 3, 1910);
Constitution Alteration (State Debts) 1928 (Act No. 1, 1929);
Constitution Alteration (Social Services) 1946 (Act No. 81, 1946);
Constitution Alteration (Aboriginals) 1967 (Act No. 55, 1967);
Constitution Alteration (Senate Casual Vacancies) 1977 (Act No. 82, 1977);
Constitution Alteration (Retirement of Judges) 1977 (Act No. 83, 1977);
Constitution Alteration (Referendums) 1977 (Act No. 84, 1977).

INDEX

Note

A subject sought may have been included in the index as a subheading under one of the broad headings 'Bills', 'Committees', 'Debate' and 'Members'. Court cases are listed together under the heading 'Court cases', and privilege cases under 'Privilege cases'.