



PARLIAMENT of AUSTRALIA
HOUSE of REPRESENTATIVES

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Dr Andrew Southcott
Chair
House of Representatives Standing Committee on Procedure
Parliament House

Dear Dr Southcott

INQUIRY INTO PROCEDURES FOR COUNTING AND REPORTING THE VOTE IN A DIVISION

Thank you for your letter of 8 February 2016 in which you invited me to provide a submission to the Procedure Committee's inquiry into procedures for counting and reporting the vote in a division in the House of Representatives.

I note the inquiry's terms of reference and will focus particularly on:

- current arrangements,
- the benefits or otherwise that electronic voting might offer to the House, and
- other possible efficiencies in counting and reporting the vote.

At this stage I do not propose to canvass in detail the technology nor the possible costs: these matters are more within the responsibilities of my colleague, the Secretary of the Department of Parliamentary Services.

The Committee will be well aware of relevant reviews by its predecessor committees and the extensive evidence submitted to those reviews.¹ In the report of its 2013 inquiry the Committee outlined the history of previous inquiries² and *House of Representatives Practice* canvasses the history of proposals for change in division procedure, including electronic voting.³ The previous Clerk, Mr Bernard Wright, provided a background paper to the Committee's inquiry, shortly before the end of the 43rd Parliament in 2013, and outlined the major issues surrounding electronic voting. In this submission I have drawn particularly on that most recent paper and added my views on the current context.

Current arrangements for divisions—procedure and context

Procedure

So that discussions of possible changes and improvements may be considered readily I will first outline current procedures in the House of Representatives.⁴ All questions are determined by a majority: on the voices, by a division, or by ballot. When debate on a motion is complete or has been interrupted, the Chair puts the question on the motion.⁵ The Chair then states whether he or she

¹ House Standing Committee on Procedure, *Conduct of divisions*, November 1996; *Review of the conduct of divisions*, August 2003; *Learning from other parliaments: Study Program 2006*, August 2006, and *Electronic voting in the House of Representatives*, 2013

² House Standing Committee on Procedure, *Electronic voting in the House of Representatives*, 2013, pp 2-6

³ Wright BC and Fowler P, eds, *House of Representatives Practice*, 6 ed., 2012, (HRP), pp 285-6

⁴ Relevant standing orders are extracted at Attachment A to this submission. See also HRP pp 274-86

⁵ 'The question is: That... Those of that opinion say "Aye", of the contrary "No"

considers the majority of voices was for the 'Ayes' or 'Noes'. If more than one Member challenges this call, the question is decided by a formal vote of the House: a division.⁶

When a division has been called for and accepted by the Chair, the Clerk causes electronic division bells to ring, and the four-minute sand glass on the Table is turned.⁷ After the sand has run through the glass, the Chair directs the doors to be locked, and the bells are stopped. The Chair repeats the question for decision and appoints two tellers (usually Whips) for the 'Ayes' and two for the 'Noes'. The tellers record the name of each Member voting by marking off names against printed division lists, and count the total number voting. As a cross-check, the Clerk and Deputy Clerk conduct a head count. When the count is agreed, the 'Ayes' and 'Noes' tellers sign their respective lists and these are handed to the Chair who immediately announces the result of the division: the numbers and whether the question is therefore resolved in the affirmative or negative.⁸ The division lists are taken to the Table Office, checked, and the numbers entered in a division database to enable publication of the division record.

Whether a Member has voted 'Aye' or 'No' to a question is clear immediately to those who view proceedings in the Chamber or galleries, or on television or online on the APH site. Further, full division results are published online in the draft *Live Minutes*, usually within five to ten minutes of the result being announced in the Chamber (depending on legibility of the lists and time needed for checking). Results are subsequently included in the *Votes and Proceedings* and *Hansard*. Occasionally minor corrections are made (following discussion between the relevant Whip and House staff) if a name has been recorded incorrectly.⁹

After an initial four-minute division has been completed, if a division is called for within three minutes, it is characterised as a successive division. In these cases the Chair appoints tellers immediately, the bells are rung for one minute, and the one-minute sand glass turned. Votes in successive divisions are recorded as being the same as for the preceding division unless Members report a change of voting intention to the tellers, or if they did not vote in the previous division.¹⁰

For completeness I note three additional arrangements for divisions: the House's resolution of 2008 to enable a Member who is nursing an infant at the time of a division to give her vote by proxy to the relevant Chief Whip; the unofficial pairing arrangements organised by party Whips to enable a Member on one side to be absent for a vote when a Member from the other side is to be absent, or when there is agreement that a Member will abstain from voting;¹¹ and the arrangement where there are four or fewer Members on one side in a division for the Speaker to declare the decision of the House immediately without completing the count.^{11a}

House of Representatives Practice discusses historical changes in the time taken to record divisions, noting that in the 37th Parliament, the count, not including time for ringing the bells, was about five or six minutes. The time increased to approximately eight minutes in the 38th Parliament.¹² Current timings are discussed further at p. 6 of this submission and detailed statistics for 2015 are collected at Attachment B. For present purposes it is sufficient to note that in 2015, 119 divisions were held. If the time for bells is included, these accounted for 2 per cent of the House's time and 1.3 percent if time

⁶ Standing orders 125 and 126, *Standing Orders of the House of Representatives* as at 26 March 2015; HRP, p. 274

⁷ Four minutes is the minimum time considered necessary to enable Members to come from the most distant parts of Parliament House to the Chamber

⁸ HRP, pp 276-9, standing orders 129-30

⁹ HRP, p. 281

¹⁰ HRP, p. 280, standing order 131

¹¹ HRP, pp 282-3

^{11a} HRP, p. 277, standing order 127

¹² HRP, p. 285; and *Work of the Session*, available at www.aph.gov.au/WOTS, records the numbers of divisions

for bells is excluded. The count for four-minute divisions averaged 6:34 minutes and 2:24 minutes for successive divisions—if the bells are excluded.¹³

Context

The context of divisions and the potential impact of electronic voting has been expressed clearly. The Committee of the 43rd Parliament remarked, ‘There is already in divisions a public aspect: not only are decisions by members visible but, by their nature, the decision-making processes engage the audience—the Australian public—in the immediacy of the democratic process.’¹⁴ The Committee went on to refer to a comment on the possible impact of electronic voting on this form of decision-making by the House that is so overt, both individually and collectively:

Divisions are an important facet of the parliamentary day—a time when the policy divide is most evident. There is a certain theatrical aspect to the ringing of the bells and the summoning of Members to the chamber. The drama is heightened when there is the possibility of Members crossing the floor, or, when free votes are held, the way in which individual Members vote is the object of considerable scrutiny. Concern has been expressed that this would be lost in moving to electronic voting.¹⁵

While the standing orders and work of the House are geared to the traditional method of voting, in many other respects, the work of the Chamber and its participants is assisted by the use of modern technology. The Chair and Members are assisted by electronic communication devices in the Chamber, some fixed, and some mobile. These include screens displaying the question before the House and the use of tablets and other wireless devices by all or almost all Members.

Electronic voting—benefits or otherwise to the work of the House and the conduct of divisions

Electronic voting in other parliaments

Electronic voting is not new. As the Committee will be aware, it is available in a number of parliaments and in some cases has been used for decades.¹⁶ Arrangements usually enable Members to vote from their seats or at vote stations assigned to particular seats or party groupings in the Chamber. In the United States House of Representatives, with 435 Members, votes may be cast electronically at vote stations in the Chamber, using an encrypted vote card to identify the Member.¹⁷ The first electronic vote in that House occurred in 1973. The vote took 15 minutes, compared to the average of 30 to 45 minutes for similar votes previously.¹⁸ In the European Parliament, with 751 MEPs, Members are sometimes required to vote on hundreds of amendments. An electronic vote is used there if the result of a show of hands is not clear.¹⁹

¹³ In 2016, to 23 March, 37 divisions were held; in 2014, 178 divisions were held (see *Statistical Digest* 22 February–3 March 2016 and *Work of the Session*, Spring sittings 24 August–4 December 2014)

¹⁴ House Standing Committee on Procedure, *Electronic voting in the House of Representatives*, 2013, p.18

¹⁵ Wright BC, ‘Background paper on electronic voting in the House of Representatives Chamber’, April 2013, (Wright BC, ‘Background paper on electronic voting’), p. 5

¹⁶ For example, the Scottish Parliament, Welsh Assembly, and parliaments of Belgium, Denmark, Finland, Ireland, Israel, Italy, Latvia, Poland, Portugal, Sweden, and Switzerland

¹⁷ John Sullivan, *How our laws are made*, 2007, p.33, accessed at <https://www.gpo.gov/fdsys/pkg/CDOC-110hdoc49/pdf/CDOC-110hdoc49.pdf> on 10 March 2016

¹⁸ The system was expected to save 90 hours per year, United States House of Representatives, ‘First Electronic Vote’, at <http://history.house.gov/HistoricalHighlight/Detail/37169?ret=True> accessed on 10 March 2016

¹⁹ European Parliament, *About Parliament*, accessed on 10 March 2016 at <http://www.europarl.europa.eu/aboutparliament/en/20150201PVL00011/How-Plenary-works>

Practical issues and benefits or otherwise of electronic voting

As far back as 1970 the Joint Select Committee on the Proposed New and Permanent Parliament House considered that, while electronic voting was not necessary then, the Chambers should have the necessary conduits and ducts to enable easy installation in the future.²⁰ Some provision for future installation of electronic voting was made when Parliament House was being designed and built,²¹ and the potential advantages and disadvantages discussed at length in a number of inquiries, including those of predecessor Procedure Committees. Yet no decision on the use of electronic voting in divisions has been made.²² Among the current Committee's considerations may be whether the conduct of the work of the House has been hindered to any substantial degree by the absence of electronic voting, and whether the House's circumstances are reasonably equivalent to the parliaments that rely on electronic voting.

Practical elements of an electronic voting system have been canvassed many times. Likely characteristics were identified some time ago and would involve:

- identifying each Member, possibly by use of personal identification cards or tokens or PINs
- voting from the Chamber, not remotely
- using the traditional 'sides': 'ayes' to the right of the Chair and 'noes' to the left, with display panels recording how a Member has voted regardless of where he or she sits
- installing two display panels in the Chamber, with a diagrammatic layout showing the allocated seat of each Member and
- providing panels to display the question before the House (available already) and the tallies of votes recorded for and against.²³

If electronic voting were available from a display on Members' desks, as opposed to voting stations around the Chamber, additional arrangements would be needed for Members on the front benches. Any system would need to allow for a vote to be 'opened' (for a time sufficient to enable a Member to enter a vote and, if necessary, to correct it), and then closed so the results could be tallied. That is, voting and counting could be expected to be fast but not instantaneous.

Other questions for consideration by the Committee are whether Members might be able to enter their vote while the bells are ringing, whether Members would need to stay while the results are tallied and declared (potentially saving time for individual Members), and whether there might be confusion for Members who have been engaged on other business and are not aware of how their party is voting when they enter the Chamber to enter their vote on the question being decided. Consideration would also need to be given to how Members who enter the Chamber without a necessary card or token could vote.²⁴

A highly significant issue has been noted previously and is worth repeating: 'the integrity of the votes must be paramount'.²⁵ Any electronic voting system would need to be completely reliable in terms of its functioning, authentication of the vote, and immunity from external interference. While reliability in terms of functioning and authentication of the Member voting has likely improved over the years, it may be that the prospect of external interference with voting systems is now a greater challenge than previously.

²⁰ Report on the Proposed New and Permanent Parliament House for the Parliament of the Commonwealth of Australia, March 1970, p. 30

²¹ Joint Standing Committee on the New Parliament House, *Planning for the Senate and House of Representatives Chambers in the New Parliament House*, 1985, at p. 3; cited by Wright BC, 'Background paper on electronic voting', p. 1. See also HRP, p. 286

²² See HRP, p. 286

²³ Wright BC, 'Background paper on electronic voting', p. 3, referring to the report of then Speaker Martin in 1995. The report is also discussed in the 1996 Procedure Committee report, *The Conduct of Divisions*

²⁴ Wright BC, 'Background paper on electronic voting', pp 3-4

²⁵ Wright BC, 'Background paper on electronic voting', p. 3

In its 2013 report on electronic voting the Committee commented on design integrity in a heritage building and the issues referred to by the then Clerk and Secretary of the Department of Parliamentary Services in ensuring that the design and heritage aspects of the Chamber are maintained, particularly with respect to fixed devices. The Committee noted then that the changing nature of technology might circumvent some of these concerns.²⁶ If the House decides that electronic voting should be introduced, the Department of Parliamentary Services would be responsible for the installation and maintenance of the technology and infrastructure and the Speaker and Members and Department of the House of Representatives would each need to be consulted about the design and operation of the system. The Department of the House of Representatives would also need to liaise with the Speaker and Members and Department of Parliamentary Services throughout any design and installation project.

Issues and possible disadvantages associated traditionally with the use of electronic voting include:

- the loss of visibility in the way that Members vote. While electronic voting would show results on Chamber screens, each Member's decision would not have the current symbolism and engagement provided by choosing to sit on the right or left of the Speaker's chair²⁷
- the loss of a 'cooling off' period that the time taken for physical divisions provides. The Committee in 2013 noted that the pauses provided by divisions might sometimes be necessary, depending on the dynamic of the House²⁸
- the loss of opportunities for discussions with colleagues, especially Ministers, during divisions. Members often comment on the opportunities they use during the minutes they are seated together in divisions to raise matters with colleagues and Ministers who might otherwise be difficult to contact²⁹ and
- the possibility that the number of divisions will increase if electronic voting is available. In some cases divisions have increased, then decreased. The opinion has also been expressed that an increase in divisions would not diminish the overall benefits from electronic voting.³⁰

Cost and the associated funding required have always been major issues when electronic voting has been considered. As noted previously, I will not consider the possible costs in detail at this stage although if the House clearly supported the prospect of electronic voting the Department of the House of Representatives would certainly investigate this in detail. In 2013 the predecessor Procedure Committee noted the varying estimates, beginning with approximately \$2 million in 1993, although current information was not available.³¹

While the Department of Parliamentary Services would be expected to take responsibility for the infrastructure costs of any system, the Department of the House of Representatives might be required to meet the costs of ongoing licences and maintenance and this would come from its operating budget. Without knowing what might be involved it is not possible to estimate this particular cost. In addition, a major change in procedure such as electronic voting might also require the preparation of additional activities and information so that Members, staff, and observers of the work of the House would be able to understand and respond to the mechanics of the change. This would likely be relatively inexpensive and would come from the Department's operating budget.

The major benefits of electronic voting would seem to be in the time saved by the House. Because the time for ringing the bells cannot be reduced, the potential efficiency is seen to be in reductions in the time for appointing tellers³² and recording, counting,³³ and publishing the vote. If Members registered

²⁶ *Electronic Voting in the House of Representatives*, pp 23-4

²⁷ *Electronic Voting in the House of Representatives*, p. 18

²⁸ *Electronic Voting in the House of Representatives*, p. 20

²⁹ *Electronic Voting in the House of Representatives*, p. 21

³⁰ *Electronic Voting in the House of Representatives*, pp 21-2

³¹ *Electronic Voting in the House of Representatives*, pp 22-3

³² If Members registered a vote from their seats, tellers would not be necessary

their votes electronically, the manual count would be avoided and, presumably, the time taken for entry into a division database and checking before publication would be likewise avoided or at least reduced. This would mean the occasional delays in publication of division lists that occur now could be avoided. A possible advantage that has been identified in the past—the information that would be provided to Members and the public by the electronic display of the question before the House—has already occurred with the introduction of mobile screens into the Chamber.

In 2015, during 75 sittings of the House, 119 divisions were conducted, taking over 14 hours, or 2 per cent of House time, and over six hours for corresponding suspensions of the Federation Chamber. If the time taken for bells is removed (taking out more than five hours in 2015), divisions accounted for 1.3 per cent of House time.³⁴ In 2012 it was calculated that divisions took up 3.92 per cent of House time (possibly reflecting the challenges presented by the close numbers during minority government). In 2002 the time taken for divisions was 3.7 per cent.³⁵

It appears that, overall, there have been significant improvements in the time taken for divisions and some possible explanations may be useful for the Committee. The amendment to standing order 131(a) on 19 March 2014 to characterise a successive division as one that is called ‘no more than three minutes following a division’, rather than a division that is called after a division and ‘there is no intervening debate’, as had been the case, has likely reduced division times. It has resulted in more divisions being treated as successive (and so requiring the bells to be rung for one minute rather than for four minutes).³⁶ From March 2014 to December 2015, there were 131 successive divisions and 48 (or 36.6 per cent) of these had had some intervening debate after the first division. It may also be that the relatively recent addition of screens in the Chamber to display the question before the House has made a difference.

In the circumstances, the benefits expected to flow from the introduction of electronic voting appear relatively modest and would need to be considered in light of the cost of installation and maintenance, in particular, as well as the other issues noted at pp 4-5 above.

Other possible efficiencies

The previous Committee’s attention was drawn to the possibility of the use of tablets by tellers, with the tellers selecting names from a prepopulated list and the result tallied concurrently. The result could be sent to the Speaker’s and Clerks’ laptops and to the Table Office for recording in the *LiveMinutes*. It was not clear whether the time for the count would be improved but it was expected that publication of results might be quicker.³⁷

The Committee may be aware of recent developments in the United Kingdom House of Commons involving the use of tablets in counting—although not by the tellers.³⁸ Since 7 March 2016 the House of Commons has used tablet devices to record the names of Members voting in all divisions. This followed their use by House of Commons Clerks from October 2015 to record the names of Members voting in divisions under the English votes for English laws procedures. The tablets have custom software and are used by Division Clerks while tellers continue to count Members manually as they leave division lobbies and report the final tally in the Chamber when the division is complete.

³³ In 2015, the total time for counting divisions (excluding bells) was 9:28 hours; see Attachment B. See Wright BC, ‘Background paper on electronic voting’, pp 2-3 for a discussion of the time taken for counting in previous parliaments

³⁴ See Attachment B for more complete statistics on divisions in 2015

³⁵ Wright BC, ‘Background paper on electronic voting’, p. 2

³⁶ On 19 March 2014, standing order 131 (b) was changed to simply require the tellers to ‘take’ each Member’s vote as being the same, rather than ‘record each Member’s vote as being the same’

³⁷ Wright BC, ‘Background paper on electronic voting’, p. 5

³⁸ House of Commons Library, ‘Electronic recording of divisions’, *Briefing Paper* 7504, 12 February 2016, accessed at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7504> on 9 March 2016

The background to the use of tablets suggests the focus has been more on the speedier publication of results of divisions (that previously took two to three hours) although efficiencies are also expected in terms of timing and accuracy.³⁹

The use of tablets in divisions could be introduced here.

Conclusion

It is important that the House has a process for voting that suits its culture, procedures, and business environment. The implementation of electronic voting would be a significant symbolic demonstration that the House is modernising and is prepared to adopt further technological change. However, a major change such as a move to electronic voting is something that needs to be considered with care and this Committee's report will provide a valuable resource for the House. I note the endorsement by the Procedure Committee in 2013 of the need for a debate in the House that would enable all Members to express their view before the House reaches an in-principle position.⁴⁰

I hope this assists the Committee in its deliberations and, of course, I would be pleased to discuss any of these matters in more detail with the Committee if it wishes.

Yours sincerely,



DAVID ELDER
Clerk of the House

17 March 2016

³⁹ House of Commons, *Parliamentary business News*, 7 March 2016, accessed at <http://www.parliament.uk/business/news/2016/march/house-of-commons-extends-electronic-recording-of-votes-to-all-divisions/> on 9 March 2016. The House of Commons has 650 Members

⁴⁰ *Electronic Voting in the House of Representatives*, p. 26, citing the report *Review of the conduct of divisions*, p.8

ATTACHMENT A

Relevant standing orders of the House of Representatives⁴¹

125 Question determined by the majority of voices

The Speaker shall put the question by stating its terms to the House and asking Members in favour of the question to say 'Aye' and those against 'No', and the question shall be resolved by the majority of Members calling either 'Aye' or 'No'. The Speaker shall then state whether the 'Ayes' or the 'Noes' have it. If the Speaker's opinion is challenged by more than one Member, the question must be decided by division of the House.

126 When division may be taken

A division of the House may take place only after more than one Member challenges the Speaker's opinion about whether a question was resolved for the 'Ayes' or the 'Noes' and calls for a division. If only one Member calls for a division, that Member may tell the Speaker he or she wishes his or her dissent to be recorded, and the dissent must be recorded in the Votes and Proceedings and in Hansard.

127 Four or fewer Members on a side

If, after the doors are locked, there are four or fewer Members on one side in a division, the Speaker shall declare the decision of the House immediately, without completing the count. The names of the Members who are in the minority shall be recorded in the Votes and Proceedings.

128 Members calling for division

Members calling for a division must not leave the area of Members' seats and they must vote with those Members who, in the Speaker's opinion, were in the minority when the Members called 'Aye' or 'No'.

129 Procedures for a division

(a) If the House is to divide, the Clerk must ring the division bells for four minutes and the doors must remain open (*see standing order 131* in relation to successive divisions). A Member may leave the area of Members' seats unless he or she called for the division.

(b) After four minutes have elapsed the doors shall be locked and no Member may enter or leave the Chamber until after the division.

(c) Upon the doors being locked, the Speaker shall:

(i) state the question to the House;

(ii) direct the Members voting 'Aye' to move to the right side of the Chair, and the Members voting 'No' to move to the left; and

(iii) appoint tellers for each side.

(d) No Member may move from his or her place from the commencement of the count until the result of that division is announced.

130 Procedures for counting and reporting the vote

(a) The respective tellers shall:

(i) record the name of each Member voting;

(ii) count the total number of Members voting;

(iii) sign their records; and

(iv) present their records to the Speaker.

(b) The Speaker shall then declare the result of the division to the House.

131 Successive divisions

(a) If a division is called no more than three minutes following a division, the Speaker shall appoint tellers immediately and the bells shall be rung for one minute.

⁴¹ As at 26 March 2015; available online at www.aph.gov.au/StandingOrders

(b) If there is a successive division, Members who wish to vote in the same way as in the previous division must remain seated until the result of the division is announced. The tellers shall take each Member's vote as being the same as it was in the previous division unless a Member reports to them. A Member must report to the tellers if he or she:

- (i) wishes to vote differently to his or her vote in the previous division; or
- (ii) voted in the previous division and does not wish to vote in the current division; or
- (iii) did not vote in the previous division and wishes to vote in the current division.

(c) The vote shall be counted as in *standing order 130* if:

- (i) in the Speaker's opinion most Members wish to vote differently to their votes in the previous division; or
- (ii) any confusion or error occurs in the count by the tellers.

ATTACHMENT B

2015—divisions in the House of Representatives⁴²

| | |
|--|------------|
| Total Number of divisions | 119 |
| Number of sittings | 75 |
| Average divisions per sitting | 1.59 |
| Total time spent on divisions (h:m:s) | 14:51:00 |
| Average time per division (h:m:s) | 0:07:29 |
| Total time spent bells ringing (h:m:s) | 5:23:00 |

Time spent counting (excluding time for bells) (h:m:s)

| Type of division | No. | Counting | Average |
|-------------------------|------------|-----------------|----------------|
| 1 Minute | 51 | 2:02:00 | 0:02:24 |
| 4 Minute | 68 | 7:26:00 | 0:06:34 |
| Total | 119 | 9:28:00 | 0:04:46 |

Proportion of House time spent on divisions (h:m:s)

| | |
|---|-------------|
| House hours of sitting (excluding suspensions) | 736:27:00 |
| Total time spent on divisions (including bells) | 14:51:00 |
| Total time spent on divisions (excluding bells) | 9:28:00 |
| Proportion of House time spent on divisions: | |
| Including bells | 2.0% |
| Excluding bells | 1.3% |

Note: Figures exclude ten divisions with four or fewer Members on one side

Suspensions of Federation Chamber for divisions 6 hrs 47 mins

⁴² Prepared by the Chamber Research Office, Department of the House of Representatives, February 2016