

Procedure Committee: Establishment and composition

... it is highly desirable that a house of parliament should reserve unto itself the right to consider its own procedures ...

Scholes (1981), 421

Preparing the ground

- 4.1 The proposal to create a procedure committee emerged about thirty years ago from an inquiry of the Joint Committee on the Parliamentary Committee System. That committee was first established by resolutions of the two Houses in 1974. It presented an interim report on 15 October 1975.¹ The report covered not only the role of investigative and scrutiny committees in the functioning of parliament but also that of the humbler domestic committees, like the standing orders committees in the Senate and the House of Representatives.
- 4.2 At that stage, there was no intention to establish a procedure committee in its own right. Rather, the objective was to augment the terms of reference of the standing orders committees in both Houses:

It is recommended that the standing orders committees of the two Houses be given specific terms of reference to continually review and report on desirable changes in practices and procedures of the Parliament. It is also recommended that such newly structured

¹ VP 1974-75/976.

standing orders committees not contain a preponderance of office holders, party leaders, etc., and that from time to time they make recommendations directly to the Presiding Officers on matters of practice and interpretation which need not have the ratification of the plenum.²

The report attracted little attention in the House not least because of other distractions. On 11 November 1975, less than a month after the report had been presented, the 29th Parliament was dissolved in memorable circumstances and a change of government followed.

- 4.3 The joint committee was revived in the 30th Parliament with a deadline to report by 26 May 1976. It did so, building on much of the work undertaken in the preceding Parliament. Among its recommendations for a comprehensive restructuring of the entire arrangement of parliamentary committees—including the abolition of the Public Accounts Committee and the Public Works Committee—was a different platform for procedural reform from that proposed in the interim report:

Recommendation 19

249 It is recommended that the standing orders of the Senate and the House of Representatives be amended to provide for the appointment of a Committee on Procedure in each House; that the committees be of no more than 7 members; that no office holders other than the Presiding Officer and his deputy be eligible for appointment; and that the terms of reference of the committees be as follows:

To maintain a continuing surveillance of the practices and procedures of the Senate (House) with a view to making recommendations for their improvement or changes and for the development of new procedures; such recommendations being made normally by report to the Senate (House) but, on certain occasions, being made directly to the Presiding Officer when the recommendations relate to the exercise of existing powers.³

- 4.4 Like the recommendations in the interim report, those in the final report attracted little immediate interest on the floor of the House. A motion to take note of the report was not called on for debate and eventually lapsed at the end of the first session of the 30th Parliament. While the proposals concerning estimates and legislation committees were later implemented

² JCPCS (1975), 53.

³ JCPCS (1976), 71.

in one form or another,⁴ the impetus for establishing mechanisms for procedural reform fell into temporary abeyance.

- 4.5 Nevertheless the cause had at least two champions: speaking to a motion to adopt sessional orders early in the second session of the 30th Parliament, two early chairmen of the joint committee,^{5,6} called on the Leader of the House to bring on the report's recommendations for the House's consideration.⁷
- 4.6 Speaker Snedden told the House in 1979⁸ that it was 'appropriate that the Clerk should prepare, for the consideration of the House, comprehensive discussion papers on parliamentary reform' to determine a reform agenda and establish an 'appropriate method to undertake long term reviews and to bring forward proposals to the House'.
- 4.7 There was very little other promotion of procedural reform during the 31st Parliament. However, in the next Parliament, the 32nd and the last before another change of government, the pace began to quicken.
- 4.8 In 1981 Messrs Scholes and Jenkins—the joint committee chairmen referred to above—took more direct action. Having given notice at the very first sitting of the 32nd Parliament,⁹ the former moved a general business¹⁰ motion to appoint a standing committee:

... to maintain a continuing surveillance of the practices and procedures of the House of Representatives with a view to making recommendations which would enhance the role of the House and its operational efficiency.¹¹

⁴ DHR (1978), 3–4; DHR (1979), 4–6; and see para 3.26.

⁵ The Hon. G. G. D. Scholes, Member for Corio 1967–93, Speaker of the House of Representatives 1975, Chairman of the Joint Committee on the Parliamentary Committee System 1974–75 (until elected Speaker); *later* Minister for Defence 1983–84 and Minister for Territories 1984–87.

⁶ The Hon. Dr H. A. Jenkins, Member for Scullin 1969–85, member of the Joint Committee on the Parliamentary Committee System 1974–6 and chairman for most of 1975; *later* Speaker of the House of Representatives 1983–85.

⁷ HR Deb (10.3.1977) 99–109.

⁸ (While presenting the first annual report of the Department of the House of Representatives) HR Deb (5.4.1979) 1590–1.

⁹ HR Deb (25.11.1980) 25.

¹⁰ The term used for private Members' business until 1988.

¹¹ VP 1980-81-82-83/413.

The latter seconded the motion. Both speakers stressed that the procedure committee they envisaged would complement the Standing Orders Committee and would neither compete against nor replace it.¹²

- 4.9 Two Government backbenchers spoke in general opposition to the motion alluding, among other things, to the establishment of a procedure committee being already on the Standing Orders Committee's agenda, the 'mental constipation' caused by the existing busyness of committees and the probability that other mechanisms would be more effective. In summing up, the mover observed that 'the Standing Orders Committee is a cumbersome committee and its personnel are almost totally unable to deal with any sort of discussion other than in an extremely cursory manner'. The question was negated on the voices.¹³

- 4.10 A sense of frustration was evident in a notice of motion lodged by the Leader of the Opposition, like that of Mr Scholes, at the very first sitting of the 32nd Parliament on 25 November 1980.¹⁴ This called for the establishment of a joint committee to look at nearly every conceivable aspect of the operation of the Australian Parliament, including its 'proceedings and usage'. During Question Time on 17 September 1981 Mr Hayden referred to his notice and remarked that:

So many of the procedures in this House belong to a much earlier age, perhaps measured in centuries distant from the present time. They are irrelevant in many important respects to the things we have to consider and the way in which our society wishes to proceed. There is, as Laurie Oakes very correctly observed, at least in this respect, a great burden of frustration upon the shoulders of so many intelligent and able members of Parliament who wish to be diligent. The present procedures stand in the way of what could be many instances of valuable productive work. The proposal I have put forward, which is quite comprehensive, is that a joint committee of the Parliament should exhaustively explore the way in which the Parliament functions.¹⁵

- 4.11 During a statement to the House on 20 April 1982,¹⁶ Speaker Snedden referred to a detailed schedule of 'action on various reform proposals over the last several years'. The schedule—which was incorporated in

¹² HR Deb (19.8.1981) 420–8.

¹³ VP 1980-81-82-83 / 413.

¹⁴ HR Deb (25.11.1980) 26.

¹⁵ HR Deb (17.9.1981) 1472.

¹⁶ (While presenting the fourth annual report of the Department of the House of Representatives) HR Deb (20.4.1982) 1514–27.

Hansard—included a potted history of attempts to establish a procedure committee and noted that: ‘The subject of the appointment of a committee on procedure is scheduled for discussion at the next meeting of the Standing Orders Committee’.

- 4.12 The Standing Orders Committee seems not to have met again during the 32nd Parliament.
- 4.13 A change of government preceded the opening of the 33rd Parliament on 21 April 1983. Two allusions during the course of the opening day may have been read as signs that the Procedure Committee’s hour to be born had come at last. In congratulating the new Speaker, Dr Jenkins, the new Prime Minister, Mr Hawke, referred to the former’s service as Chairman of the Joint Committee on the Parliamentary Committee System.¹⁷ In addition, the Governor-General’s speech contained a commitment to parliamentary, legal and constitutional reform including an undertaking—and echo of the joint committee’s vision—that:

The Parliamentary Committee system of the national Parliament will be strengthened to give Members of Parliament a more effective role and participation in the great affairs of this nation.¹⁸

Foundation

- 4.14 In 1948 the Parliament passed legislation to increase the size of the Senate thereby increasing the number of seats in the House of Representatives from 75 to 123.¹⁹ In 1983 a similar measure saw the House enlarged a second time, in this instance from 125 to 148.²⁰ In accepting his re-election to the Speakership on the opening day of the 34th Parliament, Dr Jenkins revisited the need for procedural reform:

We have an enlarged House. The shift to the new Parliament House is imminent. I believe that we need to look at the procedures of the House. I take the point that, when looking at these procedures, a bipartisan approach must be taken so that we are assured that not only Government but also Opposition members are able to participate freely in the discussion that goes

¹⁷ HR Deb (21.4.1983) 7.

¹⁸ HR Deb (21.4.1983) 17.

¹⁹ See para 3.16.

²⁰ The *Representation Act 1983* increased the number of Senators from 10 to 12 for each of the original States.

on. While I have a liking for some tradition and ceremonial, I believe that if procedures become archaic and need modernising to allow honourable members on both sides of the House to participate more fully we should do something about it.²¹

- 4.15 On this occasion, however, there was no signal in the Governor-General's speech of plans to enhance the operation of Parliament or its committees.²² Nevertheless, action was not long in coming. During the second sitting of the new Parliament, the Leader of the House, Mr Young,²³ gave notice of motion to implement a number of sessional orders relating to the conduct of business.²⁴ In moving the motion at the next sitting, the Leader of the House foreshadowed the appointment, two days later, of the first Procedure Committee and went on to remark that:

Hopefully, the procedures committee will not see itself as a committee which must report back here in two or three years' time. However, there are some rather urgent matters which can be placed before it immediately and upon which the Government feels it could report to us expeditiously.²⁵

- 4.16 On 26 February 1985, the Leader of the House lodged notices of motion to appoint a number of committees, including a standing committee 'to inquire into and report upon the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures'.²⁶ The notice was called on at the next sitting.
- 4.17 The Leader of the House did not speak to his motion when he moved it. Both Opposition Members who did speak, though opposing aspects of the new sessional orders adopted at the earlier sitting, supported the establishment of the committee and the question was carried on the voices. At approximately 5.40 p.m. on 27 February 1985, the Procedure Committee had arrived.²⁷

²¹ HR Deb (21.2.1985) 7.

²² HR Deb (21.2.1985) 10–5.

²³ The Hon. M. J. Young AO, Member for Port Adelaide 1974–88, Special Minister of State 1983 and 1984–87, Vice-President of the Executive Council 1983 and 1987–88, Minister: for Immigration and Ethnic Affairs 1987, for Immigration, Local Government and Ethnic Affairs 1987–88 and assisting the Prime Minister for Multicultural Affairs 1987–88; Leader of the House 1983 and 1984–88.

²⁴ HR Deb (22.2.1985) 90–2.

²⁵ HR Deb (25.2.1985) 124–5.

²⁶ HR Deb (26.2.1985) 240.

²⁷ HR Deb (27.2.1985) 310–3; VP 1985–86–87/56–7.

- 4.18 Immediately before the adjournment debate for that sitting, the House agreed to a suspension of standing order 25 (Standing Orders Committee) for the remainder of the session.²⁸ No Member spoke to mourn its passing.

Entrenchment

By sessional order

- 4.19 The first formation of the committee expired with the dissolution of the 34th Parliament on 5 June 1987. Early in the 35th Parliament,²⁹ the House agreed to a sessional order in similar terms to the resolution of 27 February 1985 by which a Standing Committee on Procedure would be appointed at the commencement of each Parliament.³⁰ The House revived the sessional order in the 36th Parliament:³¹ the only notable change in the terms of the sessional order agreed on 8 May 1990 were at paragraph (b) which allowed for nomination for membership by an Independent Member.³²
- 4.20 On both ‘revivals’, the adoption of the sessional order was accompanied by the suspension of standing order 25 (Standing Orders Committee).

By standing order

- 4.21 There was probably never any doubt about the eventual acceptance of the Procedure Committee as a fixture. However, the committee itself, in its *Conduct of committees* report presented late in the 35th Parliament,³³ proposed that ‘the Standing Orders Committee be abolished and replaced

²⁸ VP 1985–86–87 / 69.

²⁹ The 35th Parliament opened on 14 September 1987. On 24 September the House agreed to adopt sessional order 28C—VP 1987-88-89-90 / 84–5.

³⁰ Of itself, the provision in sessional order 28C(a) that ‘A Standing Committee on Procedure shall be appointed at the commencement of each Parliament’ may seem redundant given that the sessional order would expire before the commencement of the next Parliament. However, it can be taken as signifying an intention of impending permanency, that is its eventual entrenchment as a standing order.

³¹ VP 1990–91–92–93 / 13–4.

³² In Mr E. C. Mack, who served in the 36th and 37th Parliaments before retiring, the House had its first elected Independent Member since Mr S. J. Benson in the 26th Parliament (1966 to 1969).

³³ VP 1987–88–89–90 / 1677.

with the Procedure Committee'.³⁴ This had to wait until the next Parliament.

- 4.22 There was a suggestion of action in late 1989. The Leader of the House, the Hon. K. C. Beazley, lodged a notice of motion on 30 November 1989 which sought to give effect to various amendments to the standing orders including the omission of standing order 25 and the appointment of a Standing Committee on Standing Orders and Procedure.³⁵ The notice was still listed on the Notice Paper when the House was dissolved on 19 February 1990.
- 4.23 It was a little curious, then, that the intention to make the committee permanent was not expressed at the start of the next Parliament. As noted above, sessional order 28C was revived on 8 May 1990 and two years were to pass before there were further developments. Sessional order 28C became standing order 28C on 15 October 1992. This ascension was concealed among many other sessional orders similarly made permanent and little note was made in debate of the committee's new status.³⁶
- 4.24 Standing order 28C endured from 1992 in the 36th Parliament to late 1998 in the 39th Parliament. The standing orders governing committees were overhauled following the committee's report *Ten years on* which reviewed the House's committee system.³⁷ As a consequence, standing order 28C was omitted on 3 December 1998 and in its place standing order 330 became the authority for appointing the committee.
- 4.25 Standing order 330 was recast as standing order 221 in the 2004 revision of the standing orders. These came into effect at the opening of the 41st Parliament on 16 November 2004.³⁸

Composition

- 4.26 As has been noted elsewhere, one of the systemic problems identified as contributing to the ineffectualness of the Standing Orders Committee was the top-heavy nature of its membership: ex officio appointees were too

³⁴ *Conduct of committees*, 4.

³⁵ HR Deb (30.11.1989) 3339.

³⁶ With the honourable exception of the Chairman of the Procedure Committee, Mr Scholes; discussed later at para 6.68.

³⁷ Presented to the House on 1 June 1998; VP 1996–97–98/3062.

³⁸ Discussed later at para 6.199.

busy with their other responsibilities to devote much time to committee activities.

- 4.27 From the outset, the Procedure Committee was a committee of backbench Members. The Joint Committee on the Parliamentary Committee System had stipulated in its recommendation ‘that no office holders other than the Presiding Officer and his deputy be eligible for appointment’.³⁹ This prohibition was never implemented—in the original resolution of appointment, sessional order 28C, standing order 28C, standing order 330 or standing order 221—and in any event it would be difficult to apply.⁴⁰ In practice its intention has been followed, more or less. Moreover, no Speaker or Deputy Speaker has been a member although members of the Speaker’s panel have.
- 4.28 Until the arrival of standing order 330 in December 1998, the committee membership stood at eight. In the first two formations of the committee the prescribed allocation was five Government Members and three Opposition Members. The latter were recategorised as non-Government Members when, as has been noted above, an Independent Member was elected to the House.
- 4.29 In December 1998 the size of the committee was reduced to seven members, four Government and three non-Government.

Conclusion

- 4.30 In this chapter we have examined the various mechanisms and formulas used to constitute the committee, first by resolution of the House, then by sessional order and finally by standing order. It has been a journey of increasing confidence in the committee and a cautious approach by the House toward procedural reform. However through most of that journey the committee’s ‘mission statement’⁴¹ remained essentially the same: ‘to inquire into and report upon the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures’.

³⁹ See para 4.3.

⁴⁰ The term ‘office holder’ is not well defined and seems to have meant different things at different times. It is not, for example, among the definitions in standing order 3.

⁴¹ Expressed in the resolution of appointment and subsequent sessional and standing orders until 2004—in standing order 221 of the 2004 revision, however, this has been simplified and broadened to ‘the practices and procedures of the House and its committees’.

- 4.31 In the next chapter we will consider the role of the committee above and beyond that expressed in its mission statement.