



House of Representatives

STANDING ORDERS COMMITTEE

**REPORT
TOGETHER WITH
RECOMMENDATIONS**

15 FEBRUARY 1971

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
1971—Parliamentary Paper No. 10

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*Brought up and ordered to be printed
17 February 1971*

MEMBERS OF THE STANDING ORDERS COMMITTEE

Ex Officio:

The Speaker (Sir William Aston)—*Chairman*
The Chairman of Committees (Mr Lucock)
The Leader of the House (Mr Snedden)
The Deputy Leader of the Opposition (Mr Barnard)

Appointed:

Mr Gorton (Prime Minister)
Sir John McEwen (Minister for Trade and Industry) (resigned 1 February 1971)
Mr Bryant
Mr Drury
Mr Duthie
Mr Everingham
Mr Scholes

REPORT

1. Your Committee met on 14 October 1970 and considered certain matters relating to the *House of Representatives (Quorum of Members) Bill* 1970.

2. Members will recall that on 20 August 1970 the House endorsed, in principle, a reduction in the quorum of the House from one-third to one-fifth.

3. The *House of Representatives (Quorum of Members) Bill* to give statutory expression to this was introduced on 1 September 1970. On Friday, 4 September, the House of Representatives, in a free vote, amended the Bill as introduced by adding the proviso to clause three (see copy of Bill attached).

4. The Constitutional provisions on which the Bill relies are section 51 (XXXVI) which reads:

'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:

.....

Matters in respect of which this Constitution makes provision until the Parliament otherwise provides.'

and

section 39, which reads:

'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.'

5. Since the Bill passed the House, the Bill and the amendment have been the subject of some examination.

6. One possible interpretation of clause 3 of the Bill as it now stands is that it provides for two quorums, namely, a quorum of one-third of the whole number of members when the House is voting, by means of a division, on a question and a quorum of one-fifth of that number at other times. Whether the Constitution permits one quorum for some purposes and another quorum for other purposes is not clear.

7. In addition, the view can be taken that the proviso, in the form in which it has been worded, deals with a matter relating to the conduct of the business of the House, which is not a matter on which the *Parliament* may make laws but is a matter with respect to which the *House of Representatives* (not the Parliament) may make rules and orders under section 50 (ii) of the Constitution, which reads:

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

(i)

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

8. Finally, in relation to the wording of the proviso there is a deficiency in that it relates only to the carrying of a question and makes no provision for the negating of a question by division.

9. Your Committee first considered the question of giving legislative effect to the reduction in the quorum from one-third to one-fifth endorsed in principle by the House on 20 August 1970, and recommends that, in view of the Constitutional questions raised by the amendment and the deficiency in the wording of the amendment—

(1) The Bill introduced on 1 September 1970 be not further proceeded with in its amended form, and

(2) A new Bill, similar to that introduced on 1 September 1970, be introduced.

10. Your Committee then looked at the resulting position in relation to the decision of the House on 4 September 1970, which varied the recommendation of the Committee in its report presented to the House on 18 August 1970 that the quorum be reduced to one-fifth, by inserting a proviso in the Bill intended to require the presence of at least one-third of the whole number of Members for a division to be effective.

11. The members of the Committee, except Mr Bryant and Mr Everingham, agreed that if the division requirement of one-third is to be given effect, this should be done by amendment of the Standing Orders pursuant to section 50 (ii) of the Constitution and that appropriate amendments would be as shown in the Appendix to this report.

12. It was further agreed that the question of amendment of the Standing Orders in this way would be left to the House for decision.

W. J. ASTON,
Chairman

House of Representatives,
15 February 1971

This Bill originated in the House of Representatives:
and, having this day passed, is now ready for
presentation to the Senate for its concurrence.

A. G. TURNER,
Clerk of the House of Representatives

House of Representatives,
Canberra, 4 September 1970

A BILL
FOR
AN ACT

Relating to the Quorum of Members of the
House of Representatives.

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and
the House of Representatives of the Commonwealth of Australia,
as follows:—

1. This Act may be cited as the *House of Representatives (Quorum
of Members) Act 1970*. Short title.

2. This Act shall come into operation on the day on which it receives
the Royal Assent. Commence-
ment.

3. The presence of at least one-fifth of the whole number of mem-
bers of the House of Representatives is necessary to constitute a
meeting of the House for the exercise of its powers: Quorum.

Provided that for a division to be declared carried, one-third of
the whole number of members must be present, otherwise no decision
of the House shall be considered to have been arrived at by such
division.

APPENDIX

(New standing order)

44A. IF IT APPEARS ON THE REPORT BY THE TELLERS OF A DIVISION OF THE HOUSE THAT MORE THAN A QUORUM BUT LESS THAN ONE-THIRD OF THE WHOLE NUMBER OF MEMBERS IS PRESENT, NO DECISION OF THE HOUSE SHALL BE CONSIDERED TO HAVE BEEN ARRIVED AT BY SUCH DIVISION, THE BUSINESS UNDER CONSIDERATION AT THE TIME SHALL BE SET DOWN ON THE NOTICE PAPER FOR A LATER HOUR, AND THE HOUSE SHALL PROCEED TO THE NEXT BUSINESS.

284. If it appears, upon a division in committee, that a quorum of Members is not present, OR THAT MORE THAN A QUORUM BUT LESS THAN ONE-THIRD OF THE WHOLE NUMBER OF MEMBERS IS PRESENT, the Chairman shall leave the Chair of the committee, and shall inform the Speaker thereof, but make no further report. No decision of the Committee shall be considered to have been arrived at by such division.

(Words to be added shown in capitals)

(New standing order)

46A. WHEN THE SPEAKER IS INFORMED BY THE CHAIRMAN OF COMMITTEES UNDER STANDING ORDER 284 THAT MORE THAN A QUORUM BUT LESS THAN ONE-THIRD OF THE WHOLE NUMBER OF MEMBERS WAS PRESENT UPON A DIVISION IN COMMITTEE, THE BUSINESS UNDER CONSIDERATION AT THE TIME SHALL BE SET DOWN ON THE NOTICE PAPER FOR A LATER HOUR, AND THE HOUSE SHALL PROCEED TO THE NEXT BUSINESS.