

The role of the House of Representatives

It has already been noted that the national legislature is bicameral. The structure of the 2 Houses is completely federal, with the House of Representatives embodying the national aspect and the Senate the State aspect of the federal duality.¹

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.²

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. Therefore, it is not only the national Chamber but also the democratic Chamber. Its operation and tendency is in the direction of unification and consolidation of the people into one integrated whole, irrespective of State boundaries, State rights or State interests.³ 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, almost as a matter of course, took the Westminster model of responsible government (influenced by the colonial experience) 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, the 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.⁴ That party or coalition of parties which commands a majority in the Lower House is entitled to form the Government. From this group emerges the Prime Minister and the major portion of the Ministry, usually about 80 per cent. As a result, 92 per cent of legislation on average originates in the House of Representatives which 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 it falls almost entirely to one part of the legislature—the Ministry. However there are checks and balances and sometimes obstruction in the legislative process because of the bicameral nature of the legislature which has particular importance when, from time to time, the Senate has a different party majority to that of the House.

The Ministry is responsible for making and defending government decisions and legislation. There are few important decisions made by the Parliament which are not first made by the Government. But government decisions are subject to parliamentary scrutiny which is essential in the concept of responsible government. The efficiency and

¹ *Quick and Garran*, p. 339.

² *Quick and Garran*, p. 414.

³ *Quick and Garran*, p. 337.

⁴ See also Ch. on 'The structure of the House'.

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 election of only half the Senators 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.⁵

The financial power of Parliament is traditionally 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 to the effect:

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.⁶

These principles are reflected in a modified way in the Australian Constitution (*see* p. 33).

Parliament is not a governing or policy **making** body. That is the responsibility of the Executive Government. The role of the Houses is to monitor the Executive, that is, the Ministry and its supporting Administration. It is the duty of the House to consider legislation put before it, to debate its merits or deficiencies, and to propose and make such amendments as it considers necessary. It also has a responsibility to scrutinise financial proposals and to examine expenditure, and to discuss and criticise government policy and its implementation.

The role of the House of Representatives has changed due to the pressures of a changing world, and due in part to these pressures the needs of the Ministry now dominate the time presently available to the House. On the other hand responsible government requires that proposed laws and many other processes of government be brought into public view through the medium of the House where administration and policies may be subject to public debate and where the pressures of public opinion may be brought to bear on the Government through the collective membership. In the main this is the modern-day role of the House.

Most of the functions referred to above have similar application to the Senate, but it was never intended by the framers of the Constitution that the Senate should be the government, or policy, House.

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

⁵ Sir Ivor Jennings, *Parliament*, 2nd edn, Cambridge University Press, 1957, p. 398.

⁶ *May*, p. 796; CJ (1667-87) 235, 509.

arising within it has evolved through centuries of parliamentary history and is made clear in the provisions of the Constitution.

The complete autonomy of each House is recognised in regard to:

- its own procedure;
- questions of privilege, and
- control of finance, staffing, accommodation and services which is vested in the Presiding Officer of each House.⁷

This principle of independence characterises the formal nature of inter-House communication. Communication between the Houses may be by message⁸, by conference⁹, or by committees conferring with each other.¹⁰ The 2 Houses may also agree to appoint a joint committee operating as a single body and composed of Members of each House.¹¹

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 2 Houses have failed to reach agreement.¹²

The standing orders of both the House and the Senate contain particular provisions with respect to the attendance of Members and officers 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 immediately authorise the Member to attend, if he thinks fit. If a similar request is received in respect of an officer, the House may, if it thinks fit, instruct the officer to attend.¹³ In practice, there have been instances of Members and officers appearing as witnesses before Senate committees, in a voluntary capacity, without the formality of a message being sent to the House.

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.¹⁴ In like manner the House of Representatives estimates committees do not examine the proposed appropriations for the needs of the Senate.

As a further expression of the independence of the Houses it has been a traditional practice of each House until recently 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.¹⁵

The standing orders prescribe however that no Member may:

- use offensive words against either House of the Parliament or any Member thereof¹⁶, or
- allude to any debate or proceedings (excluding a ministerial statement) of the current session in the Senate or to any measure pending therein, unless the allusion is relevant to the matter under discussion in the House.¹⁷

7 See also Chs on 'Parliament House and the House of Representatives Chamber' and 'The Speaker and Officers of the House'.

8 S.O.s 369-372.

9 S.O.s 373-384.

10 S.O.s 350-353; and see Ch. on 'Parliamentary committees'.

11 S.O.s 385-389; and see Ch. on 'Parliamentary committees'.

12 Constitution, s. 57; joint standing orders II & III; and see Ch. on 'Disagreements between the Houses'. A

joint sitting may also take place pursuant to the *Senate (Representation of Territories) Act 1973*.

13 S.O.s 359, 360; Senate S.O.s 387, 388; and see Ch. on 'Parliamentary committees'.

14 Following introduction of Senate estimates committees in 1970.

15 VP 1970-72/252-3; PP 114(1970)2-3.

16 S.O. 75; and see Ch. on 'Control and conduct of debate'.

17 S.O. 72; and see Ch. on 'Control and conduct of debate'.

FUNDAMENTAL DISTINCTIONS BETWEEN THE FUNCTIONS OF THE TWO HOUSES

The Constitution was framed to express the traditional right of the Lower House, the representative House, to initiate financial matters¹⁸, and to limit the power of the Senate to amend certain financial bills received from the House of Representatives. In all other respects the Constitution gives to the Senate equal power with the House of Representatives in respect of all proposed laws.

Financial initiative of the Crown

What is called the 'financial initiative of the Crown', 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. This principle is firmly expressed in the constitutional provisions which prevent the origination in the Senate of bills appropriating revenue or moneys, and bills imposing taxation, and which limit the power of the Senate to amend these bills.

The principle of the financial initiative, which is dealt with at length in *May*, may be paraphrased as follows:

- The Executive Government is charged with the management of revenue and with payments for the public service.
- 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 demands money, the House grants it, but the House does not vote money unless required by the Government, and does not impose taxes unless needed for the public service as declared by Ministers of the Crown.¹⁹

The financial initiative in regard to appropriation is expressed in, and given effect by, the following constitutional provision:

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.²⁰

As section 53 of the Constitution states that proposed laws appropriating revenue or moneys shall not originate in the Senate, the 'House' referred to in this section is, for all practical purposes, the House of Representatives.

The standing orders extend this provision:

No proposal for the appropriation of any public moneys shall be made unless the purpose of the appropriation has in the same session been recommended to the House by message of the Governor-General, but a bill, except an Appropriation or Supply Bill, which requires the Governor-General's recommendation may be brought in by a Minister and proceeded with before the message is announced. No amendment of such proposal shall be moved which would increase, or extend the objects and purposes or alter the destination of, the appropriation so recommended unless a further message is received.²¹

This standing order applies to bills which:

- contain words which appropriate the Consolidated Revenue Fund or the Loan Fund to the extent necessary to meet expenditure under the bill;

¹⁸ For a detailed discussion see Ch. on 'Legislation'.

¹⁹ *May*, pp. 695-710.

²⁰ Constitution, s. 56.

²¹ S.O. 292.

- 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 or the Loan Fund under existing words of appropriation in:
 - the Principal Act to be amended, or
 - a related Act, or
- appropriate money from the Consolidated Revenue Fund for expenditure for the year.

Financial powers of the two Houses

The effect of the financial powers of the respective Houses expressed in the Constitution is that bills appropriating revenue or moneys or imposing taxation must originate in the House. The Senate may not amend in any way bills imposing taxation or bills appropriating revenue or moneys for the ordinary annual services of the Government, and may not amend other bills appropriating revenue or money in such a way as would increase the proposed appropriation. However the Senate may request the House to make such amendments as the Senate itself is unable to make, and the House may, if it thinks fit, then make the amendment.²²

The question of whether a request may be pressed is not one of strict law on which the courts will pronounce. It is a matter of constitutional propriety between the Houses themselves. If the House refuses to accede to a request, the Senate can, of course, as a matter of law, refuse to pass the bill.²³

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 and Supply Bills, shall deal only with such appropriation.

The Constitution further requires in section 55 that bills imposing taxation shall deal only with the imposition of taxation and furthermore with only one subject of taxation.

The financial initiative in regard to taxation is also expressed in, and given effect by, the standing orders:

A proposal for the imposition, or for the increase, or alleviation, of a tax or duty, or for the alteration of the incidence of such a charge, shall not be made except by a Minister. No Member, other than a Minister, may move an amendment to increase, or extend the incidence of, the charge defined in that proposal unless the charge so increased or the incidence of the charge so extended shall not exceed that already existing by virtue of any Act of the Parliament.²⁴

The importance of sections 54 and 55 of the Constitution is that they protect the Senate's right to amend non-financial measures. As the Senate is forbidden to amend a main Appropriation Bill or main Supply Bill or bills imposing taxation, these 2 sections together were inserted in the Constitution to prevent the House embodying in such a bill provisions irrelevant and foreign to its main purpose (known as 'tacking'), a course which would prejudice the right of the Senate to amend such provisions.

With the exception of those financial or money bills which must originate in the House of Representatives, bills may be initiated in either House but, subject to section 57 of the Constitution, the bills must be passed by both Houses in complete agreement before they can be presented to the Governor-General for the Royal Assent.

The financial distinction between the Houses has been highlighted in practice over the years. The simple rule is that the Senate is not expected to consider a financial proposal, in the terms of section 53 of the Constitution, until it has been passed by the

²² Constitution, s. 53.

²⁴ S.O. 293.

²³ See Ch. on 'Legislation'.

House and communicated to the Senate by message. Changes in Senate procedure occurred in 1961 when it decided to consider the estimates (which form part of the main Appropriation Bills) before the main Appropriation Bills had been received from the House of Representatives. An extension of this procedure occurred in 1970 when the Senate appointed estimates committees for the examination of the particulars of proposed expenditure contained in the main Appropriation Bills.

The foregoing action of the Senate in 1961 was subject to some criticism²⁵ not because it was illegal but because it constituted an evasion of the spirit of the Constitution and the standing orders. The establishment of estimates committees, although clearly within the competence of the Senate, has been regarded by some as incompatible with the constitutional and traditional parliamentary powers and position of the popularly elected House of Representatives.²⁶

FUNCTIONS OF THE HOUSE

The principal functions of the House, and the way in which they are expressed and carried out, are summarised under the following headings.²⁷

The Government—Making and unmaking

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

Within this framework resides the power to 'unmake' the 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 enacted, it is necessary that members of the government 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.

The 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 is 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.

The Government has been defeated on the floor of the House of Representatives on 8 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).²⁸ On 11 November 1975 immediately following the dismissal of the Whitlam Government, the newly appointed caretaker Fraser Government was defeated on a motion of no confidence in Prime Minister Fraser but within the next hour and a half both Houses were dissolved and the resolution of the House could not be acted on.²⁹

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.

25 S. Deb. (26.9.61) 641-55.

26 *Odgers*, pp. 420-3.

27 Detailed discussion of the procedural forms mentioned can be found elsewhere in the text.

28 See also Chs on 'The structure of the House' and 'Motions'.

29 See also Ch. on 'Disagreements between the Houses'.

The initiation of legislation³⁰

During the period 1970-80, 92 per cent of the annual average of 201 bills introduced into the Parliament originated in the House of Representatives. During the same period 53 per cent of the time of the House was spent on the consideration of bills. These figures indicate the continuing dilemma in parliamentary programming of providing sufficient time for the Government's legislative program while providing time for debate on the many major issues which arise during the course of a year and, at the same time, satisfying the rights of minority groups and individual Members to be heard.³¹ The operations of legislation and estimates committees, which enable bills to be considered in detail in a forum other than the House, unquestionably result in a more efficient use of time.

The right to govern carries with it the right to legislate. Private Members of the Government are generally consulted on legislative proposals both in the party room and through the system of party committees. The result of these consultations may determine the extent to which the Government is willing to proceed on a policy issue or a course of executive action. In addition, the Opposition plays its role in suggesting changes to existing and proposed legislation. Some suggestions may be accepted by the Government immediately or taken up at a later date.

Consideration of financial proposals

In recent years 55 per cent of legislation has involved the appropriation of moneys or has related to taxation, including tariff duties. The Budget debate, which is the second reading debate on the main Appropriation Bill, is almost unlimited in scope. Matters of government policy and administration may be debated during the committee of the whole stage of the main Appropriation Bill provided they are relevant to the proposed expenditure immediately before the committee. The principle of the financial initiative of the Crown vests in the Government the right to initiate or move to increase appropriations and taxes but this does not deprive the House of its right to make amendments which will reduce a proposed appropriation or tax or to reject the proposal. Amendments to certain of these 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. It has naturally followed that 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 traditionally referred to as the Treasury bench.

Examination of public accounts

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 accounts has to some extent been delegated to smaller committees³² which have the means and time available for closer and more detailed scrutiny.

³⁰ See also Ch. on 'Legislation'.

³¹ See particularly Ch. on 'Business of the House and the sitting day' and Appendixes 28 and 30.

³² See Ch. on 'Parliamentary committees'.

The Public Accounts Committee, a joint statutory committee³³, is required to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report made by the Auditor-General. Inquiries undertaken by the committee result in general reports each year based on matters brought to notice in the Auditor-General's annual reports transmitted to the Parliament, particular reports arising from specific references and criticisms made in the Auditor-General's reports, annual reviews of expenditure from the Advance to the Minister for Finance and the Consolidated Revenue Fund, reports relating to general examinations of the financial administration of departments and statutory authorities, or particular aspects of their activities, and reports on the form and the content of the financial statements and related documents presented to the Parliament.

The Public Works Committee, also a joint statutory committee, considers whether proposed public works referred to it for investigation should be approved, taking into account, *inter alia*, the financial aspects.

The House of Representatives Standing Committee on Expenditure is required, *inter alia*, to consider any papers on public expenditure presented to the House and such of the estimates as it sees fit to examine.

Estimates committees have been established to examine, more closely than is possible in the committee of the whole, the proposed expenditures contained in the main Appropriation Bill for each year.

Seeking information on and clarification of government policy

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

The aim of parliamentary questioning and inquiry is to seek information, and to bring the Government to account for its actions, and to bring into public view errors or failings or areas of incompetence or maladministration. It is not possible for the House to oversee every area of government policy and executive action. But the House stands ready as an essential safeguard and a corrective means over excessive, corrupt or extravagant use of executive power.

Surveillance, appraisal and criticism of government administration

Debate takes place on substantive motions moved in relation to particular subjects, on matters of public importance, and on motions to take note of papers which are most commonly moved in relation to ministerial statements dealing with government policy or matters of ministerial responsibility. Limited opportunities are available for private Members to initiate motions which may seek to express an opinion of the House on questions of administration.³⁴

Debates may also take place on motions to take note of annual reports of government departments and statutory authorities and other reports which may be accompanied by a ministerial statement. Some of the major policy debates which occur in the course of a year, such as on defence, foreign affairs and the economy, take place on motions of this kind.

³³ The report of the Joint Committee on the Parliamentary Committee System of 26 May 1976 recommended that the roles of the Public Works and Public Accounts Committees be conjoined in a Standing

Committee on Public Administration established by the House of Representatives, PP 128 (1976).

³⁴ And see Ch. on 'Private Members' business'.

From time to time the Opposition may move a specific motion expressing want of confidence or censure of the Government. If such a motion were carried, the Government would be expected to resign. The period 1971-80 marked a dramatic increase in the incidence of such motions when 17 were moved compared with 7 during 1961-70 and 2 during 1951-60. This increase can be partly explained by the growth in government business during the period with the result that the Opposition has had fewer opportunities to be critical of the Government on major issues in a way which would admit a distinct vote of the House. There would also appear to be less importance placed on such motions compared with earlier years when, perhaps because of their infrequency, they were accorded a good deal of parliamentary and public importance. A specific motion of want of confidence or censure of a particular Minister or Ministers may also be moved by the Opposition. Twenty-two such motions were moved in the 1971-80 period, 13 of them involving the Prime Minister. 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 vote against the Prime Minister, depending on circumstances, would be expected to have serious consequences for the Government.³⁵

Ventilating of grievances

The raising by private Members of particular matters affecting the rights and liberties of individuals, although limited in opportunity and in time, is an important democratic function of the House. Opportunities for raising these matters occur during the fortnightly grievance debate, debate on the motion for the adjournment of the House towards the end of the day's sitting and during debate 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.³⁶

Receiving petitions

Petitions from citizens requesting action by the House are lodged by Members with the Clerk of the House who announces a summary of their content to the House. The subject matter of a petition is then referred to the appropriate Minister for information. Over recent years increasing use has been made of this form of public expression.

Examination of delegated legislation

Ordinances, 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 unless the House determines otherwise. The Senate Standing Committee on Regulations and Ordinances plays a major role in overseeing delegated legislation.

³⁵ *And see* Ch. on 'Motions'.

³⁶ 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'.

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 now constitutes an important function of a modern Parliament.

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 dominance of the Government in the House. 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 how they are applied have an important effect on the relationship between the Government and the House. The House needs to ensure that its role as law maker, scrutineer of the Government, guarantor of civil liberties and the forum of national debate is maintained and strengthened. Parliamentary reform, generated by a greater determination of the individual Member to increase the House's effectiveness, could be the first steps in rejuvenating what one academic writer termed 'a weak and weakening institution'.³⁷

³⁷ See, e.g., G.S. Reid, 'The Changing Political Framework', *Quadrant*, Jan-Feb 1980, p. 5.