

# *The Speaker and Officers of the House*

## 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 the most durable. The office is an ancient one with its beginnings going back to the origins of Parliament itself. Although it is held that Peter de Montfort presided over one of the first Parliaments (the 'Mad Parliament') in 1258, it is considered that 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 puts it:

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.<sup>1</sup>

Today in the House of Representatives the custom is maintained by the Speaker-elect being escorted with gentle dignity to the Chair, by his proposer and seconder.

The fascinating historical development of the Speakership has been well recorded by Laundy.<sup>2</sup> 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 modern day 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.<sup>3</sup>

. . . 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. I regard the symbolism of

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 wig and the gown as reminding all honourable members of our purposes here —freedom of speech, without fear or favour.<sup>4</sup>

At the time of the election of the first Speaker of the House of Representatives the Speakership, 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 continuing development during the 20th century has followed different lines.

### **The Speaker today**

The following statement of the House of Commons' practice succinctly states the principal functions attaching to the office of Speaker which apply equally in the House of Representatives:

The Speaker of the House of Commons is the representative of the House itself in its powers, proceedings and dignity. His functions fall into two main categories. On the one hand he 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. On the other hand he presides over the debates of the House of Commons and enforces the observance of all rules for preserving order in its proceedings.<sup>5</sup>

The Speaker is a Member of the House and upon election to office becomes its principal officer.<sup>6</sup> He is supported and assisted by the elected Chairman of Committees who acts as Speaker in his absence and relieves him in the Chair as Deputy Speaker whenever requested to do so. The Speaker appoints a number of Deputy Chairmen of Committees, any one of whom may relieve the Speaker or the Chairman of Committees and take the Chair as Deputy Speaker.

The Speaker has the constant support and advice of the principal permanent officers of the House, the Clerk of the House, the Deputy Clerk, the First Clerk Assistant, the Clerk Assistant and the Serjeant-at-Arms.

The Speaker is commonly referred to as the Presiding Officer, his counterpart in the Senate being the President. While he is Speaker he is entitled to be termed 'Honourable'. In the Commonwealth order of precedence he comes 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 precedes the President.<sup>7</sup>

In the Chamber and for ceremonial occasions the Speaker may wear the formal Speaker's dress of a black Queen's Counsel gown, full bottomed judge's wig and lace accessories. Speakers from the non-Labor parties have always worn the formal dress but Speakers from the Australian Labor Party have not worn wig or gown. On 2 March 1945, in answer to a question without notice, Labor Speaker Rosevear said that he would not wear the robes of office<sup>8</sup> (*see also* p. 239).

The role the Speaker plays by virtue of his 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

4 Speaker Snedden, H.R. Deb. (27.5.76)2598.

5 May, p. 228.

6 The Speaker, Chairman of Committees and Deputy Chairmen of Committees 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 distinc-

tion is that Ministers, and office holders such as the Leader of the Opposition, whips, etc., serve the interests of their party. *See* Ch. on 'The structure of the House'.

7 Gazette S 21 (17.2.77).

8 H.R. Deb. (2.3.45)272.

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 . . .

'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.<sup>9</sup>

It is sometimes mistakenly supposed that legal qualifications are essential in a candidate for the Speakership. The assumption is understandable in view of the judicial nature of the office, and the House of Commons has certainly demonstrated a tendency in the past to prefer a lawyer to a layman as its spokesman. Nevertheless, a firm precedent has not been established of reserving the Chair of the House of Commons for the exclusive occupancy of members of the legal profession. Of the 23 Speakers who have held office since Speaker Onslow (1728-1761), 15 have been lawyers. Unlike the House of Commons there has been no tendency to appoint lawyers as Speakers in the House of Representatives and, since Federation, only 3 Speakers have been members of the legal profession, namely, Speakers Groom, Nairn and Snedden.<sup>10</sup>

Traditionally the Speaker in the House of Representatives has been a man of lengthy parliamentary experience. He has mostly come from the backbench without ministerial or leadership experience. Speakers who had had prior ministerial experience in the House of Representatives were Speakers Watt, Groom, Cameron and Snedden. 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.<sup>11</sup> Speaker Makin became a Minister 9 years after he ceased to be Speaker in 1932. Speakers Salmon, McDonald, Bell and Scholes previously held the office of Chairman of Committees.

## 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. This important characteristic of office has been developed over the last 2 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 until he ceases to be a Member of the House. 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 only in accordance with rules which preclude an expression of opinion upon the merits of a question.<sup>12</sup>

<sup>9</sup> Laundy, pp. 26, 30.

<sup>10</sup> For a list of Speakers since 1901 see Appendix 2.

<sup>11</sup> Sir Billy M. Snedden, 'The Speaker of the Australian

House of Representatives', *The Parliamentarian* LIX, 4, 1978, pp. 205-10.

<sup>12</sup> May, p. 230.

Practice in the House of Representatives has been to change the Speaker with a change of government. The Speaker does not sever his connection with the governing party, may attend party meetings and does not, of necessity, refrain from election campaigning. As a rule, however, the Speaker does not indulge in the actual debating and law-making processes of the House (*but see* p. 209).

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.

The Speaker shows impartiality in the Chamber above all else. He should give a completely objective interpretation of standing orders and precedents, and he should give the same reprimand for the same offence whether the Member be of the Government or the Opposition.

Experience has shown that the Speaker uses his discretion in such a manner as to ensure adequate opportunities for all sections to participate in the deliberations of the House. As a rule he makes himself freely available to all Members to build goodwill and win the confidence of Members to obtain co-operation. Members are entitled to expect that, even though he is politically affiliated, the Speaker will carry out his functions impartially. Likewise a Speaker is entitled to expect support from all Members regardless of their party.

The Speaker (with the President of the Senate) 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.

In recognition of this, certain conventions are observed in the procedures of the House<sup>13</sup>:

- on entering or leaving the Chamber Members acknowledge the Chair by a token bow (S.O. 56);
- no Member may pass between the Member speaking and the Chair (S.O. 57);
- Members addressing the House do so through the Chair (S.O. 59);
- Members resume their seats immediately the Speaker stands and he is heard without interruption (S.O. 53), and
- when the House has been adjourned, no Member should leave the House before the Speaker.

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**

As stated earlier the Speaker of the House of Commons once elected is always re-elected by the House until such time as he resigns or retires. This principle, referred to as the continuity principle, derives from the establishment of the Speaker's impartiality and has not been seriously threatened since the 18th century.

When it comes to a general election, the Speaker in the United Kingdom is unable to fight on a party ticket if his neutrality is to be preserved. He therefore faces his electorate as 'Mr Speaker seeking re-election'. It has become part of the tradition that parties in the House do not normally oppose the return of Mr Speaker, although this cus-

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<sup>13</sup> See also Ch. on 'Control and conduct of debate'.

tom has been broken from time to time. It is significant that no Speaker has failed to be re-elected in the last 100 years, if he has wished to continue in office.

In both the House of Commons and the House of Representatives Mr Speaker is elected by vote of the House for the duration of the Parliament, which is to say that he must be re-elected after each general election. But the distinction between the 2 systems is that on the meeting of a new Parliament, if the previous Speaker is still in the House of Commons and available, there seems to be no doubt that he will be re-elected regardless of political majorities. This is the essence of the continuity principle.

The Australian practice of changing the Speaker with a change of government does not provide a Speaker who is both independent and seen to be independent; it provides a Speaker who is politically affiliated but is required to be impartial in the Chair.

The reasons for adopting this practice are in part historical and partly electoral and political. The comparatively small size of the House of Representatives means that any one seat may be vital in determining a governing majority in the lower House.<sup>14</sup> Put in perspective, the political reality is that a Speaker has to survive 3 elections on the way to office:

- at the hands of the people;
- at the hands of the party, and
- at the hands of the House.

Therefore the prospective Speaker needs the name of the party and its support behind him to gain preselection as a political candidate, to gain party nomination in caucus as the candidate for Speaker, and to gain majority support in the House for Speaker.

On 9 May 1901 Mr Frederick 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 2 subsequent occasions he was re-elected as Speaker.<sup>15</sup> Speaker Holder remained in office until his death on 23 July 1909. During the period of his Speakership, there were 6 changes in the Prime Ministership and 5 changes in the governing party.

At the general elections held on 31 May 1913 the Cook Liberal Government was elected to office. Speaker McDonald had been Speaker in the previous Fisher Labor Government and Prime Minister Cook invited him 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<sup>16</sup> and, when the 5th Parliament met on 9 July 1913, Mr Johnson, a candidate from the government party, was elected Speaker.<sup>17</sup> Mr McDonald returned to office following the election of 5 September 1914.<sup>18</sup>

From 1909 to 1941, with the exception of a short period, the Speaker was a member of the governing party, a change in the Government bringing a change in the Speaker. The exception was Speaker McDonald, during the period November 1916 to March 1917, who remained in office until the House was dissolved after 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 Watt who was 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 (see H.R. Deb (28.2.23) 17-23).

On 20 November 1940 Mr Nairn was elected, unopposed, as Speaker<sup>19</sup> 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

14 After the 1961 general election the Government had a floor majority of only 1.

15 VP 1901-02/8; VP 1904/6; VP 1907/4.

16 PP 2(1914-17)3.

17 VP 1913/4.

18 VP 1914-17/4-5.

19 VP 1940-43/4.

Australian Labor Party Government<sup>20</sup> but Speaker Nairn remained in office until he resigned on 21 June 1943. On 22 June 1943 Mr John Rosevear, a member of the governing Labor Party, was elected Speaker, unopposed.<sup>21</sup> Since then the Speaker has always been a member of the governing party or parties.

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<sup>22</sup>, and remained as 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.<sup>23</sup>

It has been the practice over a number of years when the governing party is returned to office following a general election to nominate as Speaker the person who held the office in the previous Parliament thus maintaining some continuity in the Speakership.<sup>24</sup> Speaker McLeay (1956-1966) holds the record term of office of 10 years.

## 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 shall cease to hold his office if he ceases to be a Member.<sup>25</sup> The procedure for electing the Speaker is laid down in detail in the standing orders.<sup>26</sup>

A prospective Speaker is proposed by a Member, who is traditionally a private Member of the government party or parties, addressing himself to the Clerk as chairman of the House<sup>27</sup> and 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, and then the Member proposed is required to inform the House whether he accepts the nomination.<sup>28</sup>

The Clerk then asks the House if there are any further proposals. If there are no further proposals, he informs the House that the time for proposals has expired. No Member may then address the House or propose any other Member. Without putting the question the Clerk immediately declares the Member so proposed and seconded to have been elected Speaker. The Speaker-elect is then conducted to the Chair by his proposer and seconder.

If more than one Member is proposed, the Clerk, after the second proposal and any subsequent proposals, asks if there are any further proposals. If there are no further proposals, the Clerk declares that the time for proposals has expired. Debate may then ensue but it must be relevant to the election of the Speaker. There is no instance of the Clerk having intervened on the ground of irrelevancy. No Member may speak for more than 5 minutes but there is no limitation on the length of the debate. At any time during the debate a Minister may move the closure motion and the question on the closure is put immediately by the Clerk. If on division of the House the numbers are equal, the question is decided in the negative.

20 VP 1940-43/195.

21 VP 1940-43/549.

22 VP 1974-75/1123-7.

23 VP 1976-77/6.

24 See Appendix 2 for changes of Speaker with changes of government and re-election of Speaker with re-election of government.

25 Constitution, s. 35.

26 S.O. 12.

27 S.O. 2(f). In 1972 the House of Commons changed its procedure to provide for the 'Father of the House' to act as chairman with all the powers of the Speaker for maintaining order, etc.

28 In 1909 and 1943 candidates were proposed but declined to accept nomination. See VP 1909/61; VP 1940-43/549.

After debate concludes, the division bells are rung for 2 minutes and the House proceeds to a ballot whereby Members write on a ballot paper the name of the candidate for whom they wish to vote. The votes are counted by the Clerks at the Table and, if there are only 2 candidates, the candidate with the greater number of votes is declared by the Clerk to have been elected.<sup>29</sup> Prior to amendment of the standing orders in 1937<sup>30</sup>, the question that 'Mr . . . do take the Chair of the House as Speaker' was put by the Clerk on each candidate separately in the order they were proposed. The ballot procedure adopted in 1937 was used for the first time in 1946.<sup>31</sup>

Standing order 12 further prescribes a ballot procedure if there are more than 2 candidates. Since 1937 there has been no instance of this. A Member, to be elected as Speaker, must have a majority of the votes of the Members present; if no candidate has such majority, the name of the Member with the smallest number of votes is excluded and a fresh ballot taken. This process continues until a candidate has the required majority. Procedures are provided to meet the situation when, by reason of an equality of votes, a ballot is inconclusive. A candidate may, between ballots, withdraw his name from the election which then proceeds as if he had not been nominated. If a withdrawal leaves only one candidate, he is immediately declared elected.

The Clerk's duties under the standing orders<sup>32</sup> 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 by using the name of the Member's electorate, for example, 'the honourable Member for . . . .

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 his opinion, is the result, but 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 his request is denied by the Member, he could only look to the House, by means of an appropriate motion, to support him.

Many 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 continued, 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.<sup>33</sup>

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.<sup>34</sup> 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

29 VP 1974-75/509; VP 1976-77/6; VP 1978-80/6.

30 VP 1937/120-22.

31 VP 1946-48/5.

32 S.O. 12.

33 VP 1909/59.

34 VP 1909/61.

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.<sup>35</sup>

In explanation the Clerk said that he was acting under the authority of standing order 6 (now S.O. 2(f)) which, prior to the election of the Speaker, enabled the Clerk to act as chairman of the House.<sup>36</sup> The important point was that the motion had not been carried and it was with hindsight unnecessary for the Clerk to have purported to give a casting vote which clearly he does not have. The debate continued and Speaker Salmon was eventually elected by 37 votes to 29.<sup>37</sup> 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'.<sup>38</sup>

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.<sup>39</sup> The motion was debated for 2 hours and most speakers acknowledged that the Clerk had been placed in an extremely difficult situation.<sup>40</sup> The motion was negatived, on division, 32 votes to 20.<sup>41</sup>

In 1934, while the motion that Mr Bell take the Chair of the House as Speaker was being debated<sup>42</sup>, 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.<sup>43</sup> Mr Gander also approached the Chair but despite interruption and interjection Mr Bell was able to express his acknowledgments and accept congratulations.<sup>44</sup>

The present standing orders provide that the closure can only be moved by a Minister<sup>45</sup>, and it has been successfully moved on several occasions.<sup>46</sup>

On 15 February 1956 a ballot being held to decide between 2 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'.<sup>47</sup>

Following his election, and being escorted to the Chair, the Speaker thanks the House for the high honour it has conferred on him.<sup>48</sup> 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 and other Members then formally congratulate the Speaker. A Minister, usually the Prime Minister, informs the House of the time at which the Governor-General will receive the

35 VP 1909/62.

36 H.R. Deb. (28.7.09)1704.

37 VP 1909/62.

38 H.R. Deb. (28.7.09)1727-8.

39 VP 1909/67.

40 H.R. Deb. (29.7.09)1808-22.

41 VP 1909/67.

42 Under present standing orders no debate can take

place if only one Member is proposed, S.O. 12(b).

43 S.O. 12(b) (S.O. 7 in 1934).

44 VP 1934-37/4-5; H.R. Deb. (23.10.34)27-8.

45 S.O. 12(f).

46 VP 1946-48/5; VP 1951-53/5; VP 1956-57/5; VP 1976-77/6.

47 H.R. Deb. (15.2.56)14.

48 H.R. Deb. (17.2.76)7-8; S.O. 12(n).



Speaker and the sitting of the House is suspended until that time when the Speaker, accompanied by other Members, proceeds to the Parliamentary Library. On his return to the House the Speaker reports to the House that he has presented himself to the Governor-General and received the Governor-General's congratulations on his election.<sup>49</sup> In the event of the Governor-General being absent from Australia or unable to attend the Parliament, the Speaker presents himself to the Administrator.<sup>50</sup>

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.<sup>51</sup> In 1946 the newly elected Speaker did not suspend the sitting but left the Chamber to present himself to the Governor-General immediately.<sup>52</sup> In 1934 Speaker Bell ruled that no business could be transacted until the Speaker had been presented to the Governor-General.<sup>53</sup>

## 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 his 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 are in essence indivisible. The Speaker acts as the House might direct him<sup>54</sup>; he is the servant not the master. Just as the House elects him it may likewise vote him out of office.<sup>55</sup>

## Constitutional

As well as providing for the election of the Speaker, the Constitution prescribes certain powers and duties exercisable by the Speaker<sup>56</sup>:

- he is responsible for the issue of a writ for the election of a new Member whenever a vacancy occurs in the House of Representatives<sup>57</sup>;
- at the commencement of a new Parliament he 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<sup>58</sup>;
- if the number of votes on a question before the House is equal, he exercises a casting vote<sup>59</sup>; and
- a Member who wishes to resign his place does so in writing addressed to the Speaker.<sup>60</sup>

49 H.R. Deb. (17.2.76)11; VP 1976-77/7; S.O. 12(p).

50 VP 1956-57/259.

51 VP 1909/62.

52 VP 1946-48/5.

53 H.R. Deb. (23.10.34)30,31.

54 VP 1974-75/1125-7. A practice originating from the famous statement of Speaker Lenthall who 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 Wilding & Laundry, p. 430, punctuation taken from the latter.)

55 Constitution, s. 35.

56 Principal discussion on these matters is found elsewhere in the text.

57 Constitution, s. 33.

58 In accordance with the Constitution, s. 42.

59 Constitution, s. 40.

60 Constitution, s. 37.

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<sup>61</sup> (*see* p. 216).

### **Traditional and ceremonial**

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. He 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 fully in office until he has received the Royal approbation. This is symbolised by the fact that he is not preceded by the Mace when leaving the House during the interval between his election and the receipt of the Royal approval. In the House of Representatives, once the Speaker is elected, he is required by standing orders<sup>62</sup>, before business is proceeded with, to present himself to the Governor-General in order to inform him that he is the choice of the House as its Speaker (*see* p. 202). Since 1904, when the 2nd Parliament met, he has not been required to seek the Governor-General's approval; his presentation is merely a courtesy. Likewise on his 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<sup>63</sup> as the Australian Constitution specifically prescribes that the powers, privileges and immunities of the House shall, until declared, be those of the House of Commons as at 1901.<sup>64</sup>

When the House first meets in a new Parliament or a new session, the Governor-General summons the House to the Senate to hear his Speech.<sup>65</sup> This summons is transmitted to the House by the Usher of the Black Rod. The Serjeant-at-Arms announces Black Rod to the Speaker who orders him to be admitted. Black Rod delivers his message and the Speaker calls on Members to accompany him to the Senate Chamber. The Speaker, preceded by the Serjeant-at-Arms (bearing the Mace which is left covered at the entrance to the Senate Chamber), accompanied by the Clerk and the Deputy Clerk, and followed by the party leaders and Members, proceeds to the Senate Chamber.<sup>66</sup> The Speaker is invited by the Governor-General to be seated at the Senate Table. 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<sup>67</sup>, 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'.

When the Address in Reply to the Governor-General's Speech<sup>68</sup> 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.<sup>69</sup> The Address in Reply is

61 Constitution, ss. 35, 36.

62 S.O. 12(p).

63 *May*, pp. 266-7.

64 Constitution, s. 49.

65 S.O. 4.

66 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.

67 S.O. 7.

68 *See* Ch. on 'The parliamentary calendar'.

69 S.O. 9.

presented to the Governor-General and, on his return to the House, the Speaker informs Members of that fact and reads the Governor-General's acknowledgment to the House.<sup>70</sup>

At the commencement of each sitting day the Serjeant-at-Arms, bearing the Mace on his right shoulder, precedes the Speaker into the Chamber and announces him to the House. As the Speaker takes the Chair, the Serjeant-at-Arms places the Mace on the Table. When the House resolves itself into committee of the whole, the Serjeant-at-Arms removes the Mace from the Table and places it in the brackets below. The Mace is again placed on the Table when the House resumes. It remains in the Chamber during the lunch and dinner adjournments and during normal suspensions of the House, and is carried out of the Chamber by the Serjeant-at-Arms only when the House adjourns. During the times when the Mace was not used (*see* p. 215), the Serjeant-at-Arms continued to precede the Speaker into the Chamber and announced him, and preceded him out of the Chamber on adjournment.

In the absence of the Speaker, the Serjeant-at-Arms, preceded by the Speaker's attendant, carries the Mace from the Speaker's suite to the Chamber 'cradled' in his left arm. The Serjeant-at-Arms enters the Chamber through the back door to the left rear of the Speaker's Chair and walks past the opposition benches to the foot of the Table. The Clerk then announces the unavoidable absence of the Speaker and the Chairman of Committees as Acting Speaker takes the Chair.<sup>71</sup> As the Acting Speaker takes the Chair, the Serjeant-at-Arms places the Mace in its brackets on the Table.<sup>72</sup>

Since early 1978 the Speaker has entered the Chamber by the front door in procession on the first day of every sitting week. The Speaker's procession leaves the Speaker's suite, passes through the Government lobbies into King's Hall and through the front door of the Chamber. The procession consists of 2 attendants, the Speaker's attendant, the Serjeant-at-Arms bearing the Mace, the Speaker, the Clerk and the Deputy Clerk. A similar procession is held each sitting day at Westminster and in the House of Commons in Canada. On other days the Speaker enters the Chamber through the back door, to the right rear of the Speaker's Chair, preceded by the Serjeant-at-Arms bearing the Mace. The Speaker on taking the Chair reads the Prayers laid down in the standing orders, thereby commencing the day's proceedings.<sup>73</sup>

## Statutory

In addition to his constitutional functions the Speaker has specific functions and duties laid down in the following Commonwealth Acts, some of the functions being exercised in an indirect or secondary manner:

*Audit Act* 1901

Treasury Regulations

*Australian Institute of Aboriginal Studies Act* 1964

*Commonwealth Electoral Act* 1918

*Commonwealth Banks Act* 1959

*Evidence Act* 1905

*National Library Act* 1960

*Parliamentary Allowances Act* 1952

*Parliamentary Papers Act* 1908

*Parliamentary Presiding Officers Act* 1965

*Parliamentary Proceedings Broadcasting Act* 1946

70 VP 1978-80/87.

71 S.O. 14.

72 This procedure was followed on 26 October 1971, 9 May 1972 and 7 September 1976.

73 S.O.s 43, 101.

*Public Service Act 1922*

Public Service (Parliamentary Officers) Regulations

*Public Works Committee Act 1969*

*Reserve Bank Act 1959.*

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.<sup>74</sup> The Speaker is responsible for sending to the court a statement of the question the House wishes to have determined and any associated papers which the House possesses relating to the question.<sup>75</sup>

Provision is made in the Commonwealth Electoral Act for the Chief Australian Electoral Officer to supply the Speaker with a copy writ for the return of a Member if it is not possible for the original writ to be returned within 7 days of the declaration of the election.<sup>76</sup>

The Commonwealth Banking Corporation Board<sup>77</sup> and the Reserve Bank Board<sup>78</sup> must each send a copy of its annual report together with a report of the Auditor-General on its financial statements to the Speaker and President to be laid before the House of Representatives and the Senate.

All courts must take judicial notice of the official signature of the Speaker on any judicial or official documents.<sup>79</sup>

For many purposes the Speaker is 'Minister' for the Department of the House of Representatives and jointly with the President of the Senate is 'Minister' for the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department. Certain Acts refer to the Minister administering the department concerned. For the purposes of the Audit Act the Speaker is considered to be the Minister administering the Department of the House of Representatives.<sup>80</sup> The regulations under this Act specify the Speaker of the House of Representatives or the President of the Senate, or both, as the approving officer for requisitions for supplies for parliamentary departments.<sup>81</sup> As far as the parliamentary departments are concerned, any reference to the Minister in the Public Service Act is read as a reference to the Speaker or President, or both.<sup>82</sup> For the purposes of employing staff in parliamentary departments the Speaker or the President, or both, exercise the power which the Public Service Board exercises over the employment of staff in executive departments. The Speaker or President, or both, may:

- make recommendations to the Governor-General on appointments and promotions of staff;
- fix periods of recreation leave granted to parliamentary officers;
- determine the classification of officers and offices;
- make recommendations to the Governor-General in respect of regulations on all matters on which the Public Service Board is authorised by the Public Service Act to make regulations, and
- recommend to the Governor-General that any regulation made under the Public Service Act by the Public Service Board shall not apply to parliamentary officers.

The authority for allowances to be paid to the Speaker and the Chairman of Committees is laid down in legislation.<sup>83</sup> The rate of allowance to be paid is determined from

<sup>74</sup> See also Ch. on 'Members'.

<sup>75</sup> *Commonwealth Electoral Act 1918*, s. 204.

<sup>76</sup> *Commonwealth Electoral Act 1918*, s. 214; see also Ch. on 'Elections and the electoral system'.

<sup>77</sup> *Commonwealth Banks Act 1959*, s. 121(3).

<sup>78</sup> *Reserve Bank Act 1959*, s. 81(3).

<sup>79</sup> *Evidence Act 1905*, s. 4(1).

<sup>80</sup> *Audit Act 1901*, s. 34(5).

<sup>81</sup> *Treasury Regulations 49(a)*.

<sup>82</sup> *Public Service Act 1922*, s. 9.

<sup>83</sup> *Parliamentary Allowances Act 1952*, s. 6(1)(2)(3); see also Ch. on 'Members'.

time to time by the Remuneration Tribunal.<sup>84</sup> The allowances payable to a Speaker or a Chairman of Committees who is re-elected at a general election of the House of Representatives are continued up to and including the day before his successor as Speaker or Chairman of Committees is chosen.<sup>85</sup>

If, in an action for publishing parliamentary papers, the Speaker or the Chairman of Committees (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.<sup>86</sup>

For the purposes of carrying on departmental administration provision is made in the Parliamentary Presiding Officers Act for a person to be deemed to be Speaker after his resignation or the dissolution of the House and before a new Speaker is chosen for the purpose of the exercise of any powers or functions required of the Presiding Officer under a law of the Commonwealth.<sup>87</sup> For the same purpose the Act also provides for the Chairman of Committees to be deemed to be Speaker if the Speaker dies or is unable to perform his duties because he is ill or absent from Australia.<sup>88</sup>

The Speaker is by statute a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings<sup>89</sup> 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 seat on the committee by writing to the Speaker.<sup>90</sup> The Speaker has been elected chairman of the committee in all Parliaments except the initial election in 1946.

The Speaker may not be appointed a member of the Parliamentary Standing Committee on Public Works.<sup>91</sup> Members of the House of Representatives appointed to the Public Works Committee may resign from the committee by writing to the Speaker.<sup>92</sup> A Member of the House of Representatives appointed to the committee must make and subscribe a declaration that he will perform the duties of a member of the committee to the best of his skill and ability. Such a declaration is made before the Speaker or another person appointed by him.<sup>93</sup>

A member of the Council of the Institute of Aboriginal Studies<sup>94</sup> or a member of the Council of the National Library of Australia<sup>95</sup> elected by the House of Representatives resigns his seat on the council by writing to the Speaker.

## Procedural

The Speaker's authority over the procedures of the House derives primarily from the traditional authority of the Speaker of the House of Commons, by way of section 49 of the Constitution. This authority has been augmented by the standing orders of the House of Representatives and by the development of an Australian tradition embodied in the rulings of past Speakers.

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* p. 209).

The duties performed by the Speaker in the Chair are probably his most important and onerous. One of his roles is to ensure that the rules of parliamentary procedure as

84 *Remuneration Tribunals Act* 1973, s. 7(1).

85 *Parliamentary Allowances Act* 1952, s. 6(5).

86 *Parliamentary Papers Act* 1908, s. 4(2); *see also* Ch. on 'Papers and documents'.

87 *Parliamentary Presiding Officers Act* 1965, ss. 3, 6.

88 *Parliamentary Presiding Officers Act* 1965, s. 5.

89 *Parliamentary Proceedings Broadcasting Act* 1946, s. 5(2); *see also* Ch. on 'Parliament and the citizen'.

90 *Parliamentary Proceedings Broadcasting Act* 1946, s. 7.

91 *Public Works Committee Act* 1969, s. 7(5).

92 *Public Works Committee Act* 1969, s. 7(9).

93 *Public Works Committee Act* 1969, s. 8.

94 *Australian Institute of Aboriginal Studies Act* 1964, s. 14(2).

95 *National Library Act* 1960, s. 15(1).

embodied in the standing orders and practice are accurately and correctly interpreted and applied. He interprets the standing orders, deals with points of order when they are raised and gives rulings when called upon to do so (*see* p. 222). He 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 him to deal with various breaches of order in the most appropriate manner. He does not vote in the House except in the event of the numbers being equal, in which case he has a casting vote (*see* p. 218). The Speaker may make statements or announcements to the House when necessary.<sup>96</sup>

It is the Speaker's duty to call the House together following an adjournment, by resolution, to date and hour to be fixed.

At the commencement of each day's sitting, the Speaker, having satisfied himself that a quorum is present, reads the Prayers set out in the standing orders. Having read Prayers, he calls for petitions, notices, questions without notice, the presentation of papers, the making of ministerial statements, and he then calls on the notices and orders of the day.

In addition to generally maintaining order in the Chamber and interpreting standing orders, the Speaker's principal powers and functions under the standing orders include<sup>97</sup>:

- nominating Deputy Chairmen of Committees (S.O. 18);
- putting the question (S.O.s 85, 165, 92(e));
- announcing the result of a division (S.O.s 203, 204);
- adjourning the House (S.O.s 41, 44, 45, 46, 48A, 308);
- reporting arrests (S.O. 311);
- admitting and ordering the withdrawal of strangers (S.O.s 312, 314);
- presenting bills to the Governor-General for assent (S.O.s 265, 269);
- signing messages from the House to the Senate (S.O. 370);
- reporting to the House messages from the Senate (S.O. 372);
- presenting Addresses to the Queen or the Governor-General (S.O.s 395, 396);
- reporting to the House the Governor-General's answer to any Address (S.O. 398);
- exercising a casting vote (S.O. 210);
- determining any question concerning seats occupied by Members in the Chamber (S.O. 33);
- naming Members for order infringements (S.O. 303);
- ruling on a point of order (S.O.s 99, 206);
- ordering Members to withdraw (S.O. 306);
- suspending the sitting (S.O. 308);
- presenting papers (S.O. 319), and
- examining witnesses before the House (S.O. 364).

These powers are augmented by a number of discretionary powers, which include<sup>98</sup>:

- providing access to records of the House (S.O. 39);
- determining, when there is a need for a quorum to be formed, a time the Chair will be taken if it is likely a quorum will be formed (S.O.s 41, 44, 45, 46);

<sup>96</sup> VP 1978-80/37.

<sup>97</sup> All of these duties are discussed in detail elsewhere in the text.

<sup>98</sup> All of these powers are discussed in detail elsewhere in the text.

- allocating the call to the Member who in his opinion first rose in his place (S.O. 61);
- determining whether words used are offensive or disorderly (S.O. 78);
- determining whether discussion is out of order on ground of anticipation (S.O. 82);
- determining if a Member's arguments are irrelevant or tediously repetitious (S.O. 85);
- 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. 86);
- determining whether a prima facie case of breach of privilege has been made out (S.O. 96);
- determining which is the most urgent and important matter of public importance, if more than one is proposed (S.O. 107);
- instructing a notice to be divided (S.O. 136);
- amending notices (S.O. 137);
- directing the wording of a question to be altered if it seems to him unbecoming or not in conformity with the standing orders (S.O. 147);
- giving an opinion as to whether notice of a question has been given in time to be printed (S.O. 148);
- allowing a supplementary question to be asked during question time (S.O. 151);
- giving his opinion as to whether the majority of voices were 'Aye' or 'No' (S.O.s 168, 192);
- disallowing any motion or amendment which is substantially the same as any question which has already been resolved in that session (S.O. 169), and
- giving permission for non-Members to inspect and copy papers presented to the House but not printed (S.O. 320).

The Speaker's power to call the House together after a period of adjournment is derived from the resolution of the House which must be agreed to prior to the adjournment of the House.<sup>99</sup> The motion may take one of the following forms:

- That the House, at its rising, adjourn until [day, date, time], unless otherwise called together by Mr Speaker or, in the event of Mr Speaker being unavailable, by the Chairman of Committees.<sup>100</sup>
- That the House, at its rising, adjourn until a date and hour to be fixed by Mr Speaker, which time of meeting shall be notified by Mr Speaker to each Member by telegram or letter.<sup>101</sup>
- That the House, at its rising, adjourn until [day, date, time], unless Mr Speaker fixes an alternative day or hour of meeting.<sup>102</sup>

Although the resolution gives the Speaker power to fix the time of the next meeting, it is the invariable practice for the Speaker not to act on his own initiative but to await a request from the Government. If the House has adjourned 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.<sup>103</sup> If the Speaker is absent from Australia when the Government requests that the House be reconvened, and the adjournment resolution has not empowered the Chairman of Committees to act on behalf of the Speaker, the Clerk informs the Speaker of the Government's request and seeks his concurrence. If there is

<sup>99</sup> See also Ch. on 'Business of the House and the sitting day'.

<sup>100</sup> VP 1980-81/388. Most commonly used for a long adjournment.

<sup>101</sup> VP 1977/433. Sometimes used for a long adjournment.

<sup>102</sup> VP 1980-81/273. Used for a short adjournment.

<sup>103</sup> Gazette S 136 (7.7.75).

not time to seek the Speaker's concurrence, the Clerk notifies all Members and subsequently informs the Speaker of the action he has taken.

Normally the House can only be adjourned by its own resolution<sup>104</sup> and the motion for the adjournment can only be moved by a Minister.<sup>105</sup> However the Speaker may adjourn the House on his own initiative if there is no quorum or no quorum can be formed<sup>106</sup>, if grave disorder arises in the House<sup>107</sup>, or under the automatic adjournment procedures.<sup>108</sup>

The Speaker may suspend the sitting:

- for the lunch and dinner break or in order to obtain a quorum;
- in the case of grave disorder<sup>109</sup>;
- after his election while he presents himself to the Governor-General<sup>110</sup>;
- 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 his calling the Parliament together<sup>111</sup>;
- during the election of Chairman of Committees if there is an equality of votes in the special ballot procedures<sup>112</sup>;
- if he has been requested to do so by the Leader of the Government because no further business is available at that time<sup>113</sup>;
- for the formal presentation of the Address in Reply to the Governor-General's Speech<sup>114</sup>;
- for special ceremonial occasions<sup>115</sup>, or
- on instruction by the House.<sup>116</sup>

### *Participation in debate*

It is unusual for a Speaker to participate in a debate in the House or in committee. 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.

On 4 June 1942 Speaker Nairn participated in debate in committee on the Australian Broadcasting Bill and moved an amendment.<sup>117</sup> On 1 October 1947 Speaker Rosevear participated in debate in committee on the 1947-48 Estimates. Before he made his speech which concerned the appointment of trade representatives to Argentina he stated:

Every one who knows the procedure of this chamber is aware that the Speaker is perfectly entitled, as the representative of his electorate, to speak in committee on every bill which comes before the chamber, should he desire to do so.<sup>118</sup>

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 honorable member, the Speaker alone excepted, in my view, to attend and put before the committee any amendment that he wishes.<sup>119</sup>

104 S.O. 49.

105 S.O. 50.

106 S.O.s 41, 44, 45, 46.

107 S.O. 308.

108 S.O. 48A.

109 S.O. 308.

110 S.O. 12(o).

111 S.O. 2(g).

112 S.O. 13(k).

113 H.R. Deb. (17.3.31) 279-80.

114 VP 1978-80/87.

115 VP 1974-75/25.

116 VP 1974-75/1127.

117 VP 1940-43/365; H.R. Deb. (4.6.42) 2125-6.

118 H.R. Deb. (1.10.47) 403.

119 H.R. Deb. (4.3.53) 563.



There have been cases when the Speaker has participated in debate in the House or in committee when the matter before the House concerned the Parliament or the Speaker's administration.<sup>120</sup> 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 honorable members.<sup>121</sup>

The Deputy Speaker also ruled that it was in order for Speaker Rosevear to address the House from the Table.<sup>122</sup> However, as indicated earlier, such action does not accord with the modern view of the Speaker's role.

When the Speaker has participated in debate in committee of the whole he has been called and addressed as the 'honourable Member for . . .', not as 'Mr Speaker'.<sup>123</sup>

Following the introduction of estimates committees in 1979, the Speaker has 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'.<sup>124</sup> Questions by Members regarding the estimates are put to the Speaker and answered by him. He is called and addressed as 'Mr Speaker' in these circumstances.

In the House of Commons the Speaker is entitled to speak in committee but no Speaker has exercised the right since 1870 and for all practical purposes such action may be regarded as obsolete.<sup>125</sup>

The Speaker frequently makes statements to the House<sup>126</sup> and may intervene in debate in special circumstances. For example, Speaker Snedden spoke from the Chair on a condolence motion following the death of a former Prime Minister, Sir Robert Menzies.<sup>127</sup>

### *Questions*

Members may direct questions without notice to the Speaker on any matter of administration for which he is responsible.<sup>128</sup>

It is of interest that Speaker Nairn directed questions on notice to Ministers during the period 1941 to 1943.<sup>129</sup> Until recently it was not the practice for questions on notice to be directed to the Speaker. In order that Members might obtain information relating to the Parliament, the practice had grown up for a question to be directed to the Leader of the House or the Prime Minister requesting that the information be obtained from the Presiding Officer(s). On 28 February 1980 the practice was changed by the Speaker as indicated in his statement:

The Prime Minister has been informed that I will furnish replies directly to the honourable members after consultation with Mr President. Where a member desires to ask a detailed question relating to the administration of the departments of the Parliament he should indicate to the Clerk that he intends to lodge a request for information to the Speaker. After questions without notice I will call him to announce so. The procedure will be that such requests

120 H.R. Deb. (10.10.05)3315 (committee); H.R. Deb. (25.10.32)1527-9 (committee); H.R. Deb. (4.11.36)1504-06 (committee); H.R. Deb. (23.9.38)147 (committee); H.R. Deb. (30.4.48)1344-6 (House); H.R. Deb. (11.11.64)2835 (House); H.R. Deb. (9.9.75)1170-72 (committee).

121 H.R. Deb. (29.3.44)2209.

122 VP 1943-44/119.

123 H.R. Deb. (14.6.45)3116,3119.

124 H.R. Est. Comm. Deb. (28.8.80)16.

125 Wilding & Laundy, p. 704.

126 H.R. Deb. (16.3.78)884.

127 H.R. Deb. (22.5.78)2339.

128 S.O. 152; H.R. Deb. (28.4.77)1340.

129 NP 48(29.10.41)173; NP 131(17.3.43)441.

will be handed, in writing, to the Clerk. If the request is in order it will be printed in *Hansard* for that day and the Speaker will provide a written reply in due course, such reply to be printed in *Hansard*. The foregoing procedure is not meant to alter the existing procedure whereby less detailed requests for information may be asked orally of Mr Speaker.<sup>130</sup>

## Administrative

### *Control over Parliament House*

The Speaker and President have always jointly exercised authority and control over physical arrangements within Parliament House. 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. I have decided to place the large room on the second floor at the disposal of the Ministerial supporters. The next room on the same floor I have allotted to honorable members of this House who are identified with the labour party. The large room on the first floor I have set aside for honorable members belonging to the Opposition . . . Honorable 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 Honorable the Prime Minister will assist me in that direction.<sup>131</sup>

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.<sup>132</sup>

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. Speaker Johnson informed 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 had consulted with the President of the Senate, who also held the view that there was no authority superior to Parliament, and that Parliament was absolute master of its own expenditure, its own procedure, and its own actions. Once the right of any outside authority to supersede the authority of Parliament itself was admitted, the status of Parliament, as the supreme authority of the country, was destroyed. 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. As Speaker, he was the custodian of the rights and privileges of Parliament, and until Parliament authorized him to do so, he would not recognise for a single moment the right of any outside tribunal to presume to interfere with any of the services of Parliament.<sup>133</sup>

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 a campaign of opposition to the Chair. He expressed his regret and made an unqualified withdrawal of the text of the telegrams he had sent to Mr Speaker and certain newspapers concerning

130 H.R. Deb. (28.2.80)499.

131 H.R. Deb. (21.5.01)76.

132 H.R. Deb. (30.4.31)1491.

133 VP 1917-19/587.

the removal of the title Parliamentary Under-Secretary from the door of his office.<sup>134</sup> 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.<sup>135</sup>

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.<sup>136</sup>

### *Staffing arrangements*

The Speaker has a decision-making role as Parliamentary Head of the Department of the House of Representatives and joint Parliamentary Head, with the President, of the Parliamentary Library, Parliamentary Reporting Staff and Joint House Department. In relation to staffing arrangements, he performs duties under the Public Service Act which, in respect of government departments, are performed by the Public Service Board. The regulations made under this Act<sup>137</sup> provide the Parliamentary Head (i.e. the Speaker) with all powers for staffing and administrative decisions necessary for the proper servicing and functioning of the House of Representatives.

### *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. He also ensures the provision of technical and administrative support to facilitate the business of the House. He does this through his role as Parliamentary Head or Joint Parliamentary Head of the parliamentary departments.

Some government departments also provide services to Members, principally electorate and travel entitlements, but within Parliament House the Presiding Officers bear the ultimate responsibility for the services provided by the parliamentary departments and for all correspondence issuing from them, all administrative actions undertaken by them, all public expenditure and, where applicable, ultimate accountability for revenue collected. In sensitive areas where a Member feels that a service has not been provided or has been performed inadequately the problem is usually resolved by the Speaker.

In addition to the services provided by the Library, Hansard and Joint House Department, a range of services is provided to Members by the Department of the House of Representatives (*see* p. 241).

### **Ex officio—committees and associations**

Besides his statutory appointment to the Joint Committee on the Broadcasting of Parliamentary Proceedings, of which he is customarily appointed chairman, the Speaker is, *ex officio*, a member of a number of other parliamentary committees.<sup>138</sup> He is a member and, in practice, always the chairman of the Standing Orders Committee<sup>139</sup> which is appointed under the standing orders at the beginning of each Parliament. He is a member of the House Committee and the Library Committee, which are also appointed under standing orders.<sup>140</sup> These 2 committees usually sit jointly with the corresponding committees of the Senate and the Speaker is normally chairman of one of

134 VP 1951-53/387,393.

135 H.R. Deb. (28.8.52)692.

136 H.R. Deb. (24.10.68)2292.

137 Public Service (Parliamentary Officers) Regulations.

138 *See also* Ch. on 'Parliamentary committees'.

139 S.O. 25.

140 S.O. 27.

these joint committees and deputy chairman of the other. In the 25th to 32nd Parliaments the Speaker has been, by resolution of the House, a member and joint chairman of the Joint Standing Committee on the New Parliament House. The Speaker and Chairman of Committees can only be chosen to serve on select committees if they consent to do so.<sup>141</sup> Speaker Cameron agreed to be a member of the Select Committee on Hansard<sup>142</sup> provided he was not a party nomination.

The Speaker is, ex officio, a member of the Historic Memorials Committee, formally established in 1911, which is responsible for commissioning or acquiring portraits or other representations of Governors-General, Prime Ministers, Presidents of the Senate, Speakers of the House of Representatives, Chief Justices of the High Court of Australia, and other distinguished Australians for inclusion in the Historic Memorials Collection. In addition, the committee may commission paintings recording special events connected with the Parliament.<sup>143</sup> The other members of the committee are the Prime Minister (Chairman), the President of the Senate, the Vice President of the Executive Council, the Leader of the Opposition in the House of Representatives, and the Leader of the Opposition in the Senate.

With the President of the Senate, the Speaker is joint president of the Commonwealth of Australia Branch of the Commonwealth Parliamentary Association (CPA). The CPA is an association of parliamentarians from the countries which make up the Commonwealth of Nations. Its aims are to promote understanding and co-operation among its members and to promote the study of and respect for parliamentary institutions throughout the Commonwealth of Nations. These objectives are pursued by means of conferences, interchange of delegations, seminars and the publication of the quarterly journal *The Parliamentarian*.<sup>144</sup>

The Speaker, with the President of the Senate, is joint president of the Australian Group of the Inter-Parliamentary Union (IPU). For some years the Speaker has been chairman of the Australian Group. The IPU is an international organisation composed of national groups established in 90 countries which are constituted in conformity with the terms of their respective states. The aims of the IPU are to promote personal contacts between members of all Parliaments and to unite them in common action to secure and maintain the full participation of their respective states in the firm establishment and development of democratic institutions and in the advancement of the work of international peace and co-operation, particularly by supporting the work of the United Nations.<sup>145</sup>

Speaker Scholes who was, prior to his election as Speaker, a member of the Australian Parliament's delegation to the previous Constitutional Convention, represented the Parliament at the Australian Constitutional Convention held in Melbourne in 1975.<sup>146</sup>

## THE MACE AND THE SPEAKER

A mace was originally a weapon of war similar to a club and was used as far back as Roman times. During the 12th century maces were used by the Serjeants-at-Arms of the King's bodyguard in both France and England. Towards the end of the 14th century Royal Serjeants-at-Arms were assigned to duties in the House of Commons. The

141 S.O. 325.

142 VP 1954-55/75; H.R. Deb (23.9.54) 1534-45.

143 *Commonwealth Government Directory*, AGPS, 1980, p. 175.

144 *Commonwealth Parliamentary Association—Aims, Organisation, Activities*, February 1977.

145 *Inter-Parliamentary Union—Aims, Structure, Activities*, Australian Group.

146 VP 1974-75/869.

powers of arrest of the Royal Serjeants came to be identified as the powers of arrest of the House of Commons.

This penal jurisdiction forms the basis of the power of enforcement of parliamentary privilege and as its exercise had depended in the first instance on the powers vested in a Royal Serjeant-at-Arms, the Mace, which was his 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.

In 1543 the House of Commons, vindicating its privilege of freedom from arrest for the first time, used the Mace as its symbol of authority to demand and obtain the release of an arrested Member. As the privileges of the House of Commons were, up until that time, dependent on the protection of the House of Lords, the Lord Chancellor offered to grant a writ for the release of George Ferrers, the arrested Member. The House of Commons refused this offer 'being of a clear opinion, that all commandments and other acts of the Neather House, were to be done and executed by their Serjeant without writ, only by shew of his mace, which was his warrant'.<sup>147</sup>

Since the end of the 17th century it has been accepted that the Mace must be brought into the Chamber before the House of Commons can be considered properly constituted.<sup>148</sup> There was no such acceptance in respect of the first Mace used by the House of Representatives (*see* p. 215).

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. In accordance with the standing orders operating at the time the Mace was placed on the Table following the election of Speaker and this was recorded in the Votes and Proceedings.<sup>149</sup> Current standing orders still require that, once the newly elected Speaker has taken the Chair, the Mace, which before lay under the Table, is laid on the Table.<sup>150</sup> This is the only mention of the Mace in the standing orders.

The Mace used from 1901 to 1951 was loaned to the House of Representatives by the Victorian Legislative Assembly which had used it from 1857 to 1866 and from 1891 to 1901. That Mace was returned to the Legislative Assembly in 1952 following the gift to the House of Representatives of a new Mace by the House of Commons.<sup>151</sup> This 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.<sup>152</sup> The Mace, by Australian request, was designed to resemble the Mace in use in the House of Commons.<sup>153</sup>

The Mace traditionally accompanies the Speaker on formal occasions, such as his presentation to the Governor-General after election, when the House goes to the Senate 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 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 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 Parliament House by the Speaker. The Serjeant-at-Arms, accompanying the Speaker, did not carry the Mace on these occasions.<sup>154</sup>

<sup>147</sup> Hatsell, vol. I, p. 54.

<sup>148</sup> Browning, *The Mace*, pp. 1-3.

<sup>149</sup> VP 1901-02/89.

<sup>150</sup> S.O. 12(n).

<sup>151</sup> See Ch. on 'Parliament House and the House of Representatives Chamber'.

<sup>152</sup> H.R. Deb. (29.11.51)3091.

<sup>153</sup> For a full description *see* Browning, *The Mace*, pp. 10-11.

<sup>154</sup> Browning, *The Mace*, p. 12.

It is normal practice for the Mace to be used when the House of Representatives is sitting. However 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 loaned by the Victorian Legislative Assembly was in use. Speaker McDonald discontinued the use of the Mace from 1911 to 1913. The use of the Mace was restored in 1913 by Speaker Johnson and discontinued again from 1914 to 1917 under Speaker McDonald. After the election of Speaker McDonald in 1910, the Mace which before lay under the Table was laid on the Table.<sup>155</sup> When he was re-elected in October 1914 the Mace was not in the Chamber.<sup>156</sup> Speaker McDonald, in answer to a question without notice, confirmed that he had authorised the removal of the Mace.<sup>157</sup> When a Member referred to the disappearance of the Mace from the Chamber, Speaker McDonald ruled that the Member 'must not refer to that matter'.<sup>158</sup> He later ruled that a Member may only refer to the removal of the Mace on a specific motion dealing with the Speaker's action.<sup>159</sup> Speaker Johnson refused to answer a question on the restoration of the Mace<sup>160</sup> and later ruled that no reference could be made to the matter.<sup>161</sup>

Following the election of Speaker Makin in 1929 the Mace which before lay under the Table was laid upon the Table.<sup>162</sup> However, the Speaker ordered the Mace to be removed during the lunch adjournment and it was not used again during his Speakership. Speaker Makin told the House the next day in reply to a question without notice:

There is nothing in the Standing Orders requiring the Mace to be on the table of the House except during the initial proceedings of a new parliament after the election of the Speaker. By my instruction, the Mace will not appear upon the table during my occupancy of the Chair. I have had the meagre records available searched to discover, if possible, the origin of the use of the Mace in Parliament, and I have not found any good reason for its appearance on the table. The Mace is a relic of barbarism. It is a symbol of power, which comes to us from a time when turbulence was met with brute force; it is associated with methods and manners that should have no place in our public or private life. Its ceremonial employment in Parliament has no significance as evidencing our loyalty to the Crown, or as testifying or expressing in any way our association with the King and Empire. The Mace is merely, as I have said, a symbol of power—in this case a symbol of the power of the Speaker of this House. But, although it symbolizes, its use in no way increases, the authority of the Chair, and I consider that I am quite capable of asserting that authority without it.<sup>163</sup>

On 27 May 1914 Speaker Johnson reported to the House that the Mace had been removed from its position by an unauthorised person during the lunch suspension on the previous Friday, 22 May. A search was made for the Mace which was later discovered by an attendant. The Mace had been hidden under one of the opposition benches and the *Argus* newspaper had named 2 Members as being involved in the incident.<sup>164</sup> A number of other irregularities had occurred during that day of sitting including the removal of papers from the Speaker's desk and the removal of keys from the Chamber doors. The following day the Member for Capricornia (Mr Higgs) told the House that 'acting in a spirit of frivolity' he had removed the Mace and apologised for having done so.<sup>165</sup> On the next day a select committee was appointed to inquire into and report on the irregular conduct which had taken place in the Chamber on 22 May.<sup>166</sup> The select committee tabled an interim report on 25 June 1914.<sup>167</sup> The 5th Parliament was dissolved on 30 July 1914 and the select committee was not reappointed in the 6th Parliament.

155 VP 1910/5.

156 VP 1914/17/4-5.

157 H.R. Deb. (5.9.11)32.

158 H.R. Deb. (12.9.11)309.

159 H.R. Deb. (9.7.12)572.

160 H.R. Deb. (13.8.13)113-14.

161 H.R. Deb. (2.9.13)772-3.

162 VP 1929-31/4.

163 H.R. Deb. (21.11.29)68-9.

164 VP 1914/55.

165 H.R. Deb. (28.5.14)1592.

166 VP 1914/65.

167 VP 1914/92 (not printed).

**VACANCY IN OFFICE OF SPEAKER**

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.<sup>168</sup>

When 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.<sup>169</sup>

If a vacancy occurs between 2 sessions, the Clerk reports the vacancy to the House when it returns from either hearing the Governor-General's Speech or after the commission authorising the Governor-General's Deputy to open Parliament has been read, as the case may be.<sup>170</sup> The House then elects a new Speaker.<sup>171</sup> In all cases, until a Speaker has been elected, the Clerk acts as chairman of the House<sup>172</sup> and conducts the election of the Speaker.

A vacancy in the office of Speaker may occur for the following reasons:<sup>173</sup>

- Speaker ceases to be a Member of the House of Representatives;
- Speaker is removed from office by a vote of the House;
- Speaker has resigned his office in writing addressed to the Governor-General (Speaker Cope), or
- death of Speaker (Speakers Holder and Cameron).

A Speaker who is resigning his seat as well as his office does so in writing to the Governor-General.<sup>174</sup>

Continuing authority for certain administrative actions of the Speaker is provided for in the Parliamentary Presiding Officers Act.<sup>175</sup> When the office of Speaker becomes vacant due to resignation, he shall, for the purposes of the exercise of any statutory powers or functions of the Speaker, be deemed to remain as Speaker 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 appointed by the House. In both cases, if the Speaker or the person deemed to be Speaker dies, or is unable through ill health to perform his statutory functions, or is absent from Australia, the Chairman of Committees is deemed to be Speaker, for the purpose of the exercise of any statutory powers or functions of the Speaker until the House chooses a new Speaker or the absence or incapacity of the elected Speaker terminates. 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.<sup>176</sup> If there is no Chairman of Committees, then the person who last held that office is deemed to continue as Chairman of Committees until a new Chairman of Committees is appointed by the House.

**ABSENCE OF SPEAKER**

The Constitution provides that before or during any absence of the Speaker, the House may choose a Member to perform his duties in his absence.<sup>177</sup> The House has, therefore, provided in its standing orders that when the House is informed by the Clerk

<sup>168</sup> Constitution, s. 35.

<sup>169</sup> S.O. 20.

<sup>170</sup> See also Ch. on 'The parliamentary calendar'.

<sup>171</sup> S.O. 21.

<sup>172</sup> S.O. 2(f).

<sup>173</sup> See Constitution, s. 35.

<sup>174</sup> Constitution, s. 35.

<sup>175</sup> *Parliamentary Presiding Officers Act* 1965.

<sup>176</sup> Constitution, ss. 33, 37.

<sup>177</sup> Constitution, s. 36.

of the absence of the Speaker, the Chairman of Committees shall take the Chair as Acting Speaker.<sup>178</sup> The Clerk normally informs the House, if the Speaker is absent through illness or parliamentary duties overseas, immediately the House meets.

Before 1963 the relevant standing order specified that, unless the House otherwise ordered, the Clerk shall inform the House of the Speaker's absence and that the Chairman of Committees as Deputy Speaker shall take the Chair from day to day to perform the duties and exercise the authority of the Speaker in relation to all proceedings of the House.<sup>179</sup>

On 10 March 1926 Chairman Bayley took the Chair after the Clerk had announced the absence of Speaker Groom. The Prime Minister then moved that the Chairman of Committees take the Chair as Deputy Speaker on each sitting day during the absence of the Speaker.<sup>180</sup> Pursuant to this resolution the Chairman of Committees accordingly took the Chair on 13 September 1928 without the Clerk informing the House of the Speaker's absence.<sup>181</sup> The Chairman of Committees was similarly authorised to take the Chair each day during the absence of the Speaker on a number of other occasions.<sup>182</sup>

In 1921 the Chairman of Committees as Deputy Speaker was appointed and authorised by the House to 'perform the duties and exercise the authority of Mr. Speaker'.<sup>183</sup> The Deputy Speaker subsequently issued a writ for a by-election in the Maranoa Division<sup>184</sup> in accordance with section 33 of the Constitution.

On 21 February 1956 the death of the Member for Cunningham was announced in the House. On 14 March 1956 the Speaker was absent due to illness and the Chairman of Committees as Deputy Speaker was appointed by the House to 'perform the duties and exercise the authority of the Speaker in relation to all proceedings of the House and to proceedings of Standing Committees and Joint Statutory Committees to which the Speaker is appointed'.<sup>185</sup> The resolution of the House had not given the Deputy Speaker authority to perform the Speaker's constitutional functions, only those in relation to proceedings of the House. Hence on 20 March 1956 the Deputy Speaker informed the House that on 27 March 1956 the Speaker would issue a writ for an election in the Division of Cunningham.<sup>186</sup>

In 1962 the Standing Orders Committee revised the relevant standing order and stated in its report:

The inclusion in the Standing Order of words providing that the Deputy Speaker shall perform the Speaker's duties, &c., 'in relation to all proceedings of the House' *imposes a restriction not permissible under the Constitution* in that it excludes duties imposed by the Constitution on the Speaker otherwise than in relation to the actual proceedings of the House, namely Section 33—issue of Writs, and Section 37—receiving Member's resignation. The authority of a Member chosen under Section 36 flows from the Section, not from the resolution by which he is chosen. The authority so conferred is one to perform *all* the duties. The House has no power to choose a person to perform *some only* of those duties.<sup>187</sup>

The Committee's recommendation was adopted by the House<sup>188</sup> and the present standing order 14, in operation since 13 August 1963, authorises the Chairman of Committees as **Acting Speaker** to perform the duties of Speaker, without restriction.

On 27 September 1978 the Acting Speaker announced he had received a commission from the Governor-General to administer the oath or affirmation of allegiance to Members. At the next sitting the Acting Speaker announced the return to a writ

178 S.O. 14.

179 S.O. 22 (temporary standing orders adopted 1901); later S.O. 13.

180 VP 1926-28/93.

181 VP 1926-28/653.

182 VP 1920-21/521; VP 1929-31/429; VP 1934-37/35; VP 1937/71.

183 VP 1920-21/521; Constitution, s. 36.

184 VP 1920-21/575.

185 VP 1956-57/56.

186 VP 1956-57/63.

187 *Standing Orders Committee Report*, HR 1 (1962-63) 12.

188 VP 1962-63/455.



issued by the Speaker for a by-election and administered the oath of allegiance to the newly elected Member.<sup>189</sup>

If both the Speaker and the Chairman of Committees 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. Again the Clerk acts as chairman of the House until a Member is elected to perform the duties of Speaker.<sup>190</sup> 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.<sup>191</sup>

In summary, a Member chosen by the House as Acting Speaker<sup>192</sup>, in accordance with section 36 of the Constitution (proceeding under standing order 14 or 15), has all the powers of the Speaker including constitutional powers and ex officio functions such as membership of committees. A Member deemed to be Speaker by virtue of the Presiding Officers Act does not have the constitutional powers extended to him.

The term Acting Speaker only attaches to the Chairman of Committees and only after formal communication to the House under standing order 14 **except** that when both the Speaker and Chairman of Committees are absent the Member elected to perform the duties of the Speaker under standing order 15 is referred to in practice as Acting Speaker.

If it is likely that the Speaker will be absent for some time, the Clerk informs the House. The House may then appoint another Member to be Acting Chairman of Committees during the Speaker's absence and while the Chairman of Committees is Acting Speaker. The Acting Chairman of Committees may then take the Chair as Deputy Speaker whenever requested to do so by the Chairman of Committees in his capacity as Acting Speaker without formal communication to the House.<sup>193</sup> There have been occasions of lengthy acting appointments during absences of the Speaker due to illness or parliamentary duties overseas.<sup>194</sup>

## 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 has a casting vote.<sup>195</sup> The Speaker, the Chairman of Committees when acting as Deputy Speaker or Acting Speaker, and a Member appointed as Acting Chairman of Committees during a continuing absence of the Speaker (S.O. 16) when occupying the Speaker's Chair can exercise a casting vote in a division in the House. Should an equality of votes arise in a division in the House with a Deputy Chairman in the Chair as Deputy Speaker, he would have no casting vote available to him. Any reasons stated by the Chair when exercising a casting vote are recorded in the Votes and Proceedings.<sup>196</sup>

The occasion has arisen in the House where there has been an equality of votes but the Speaker has not needed to exercise his casting vote. On 19 March 1969 the House divided on an opposition motion without notice for the suspension of standing orders. There was an equality of votes cast (42), but, as there was not a sufficient number of

<sup>189</sup> VP 1978-80/422-3, 433.

<sup>190</sup> S.O. 15.

<sup>191</sup> VP 1920-21/537.

<sup>192</sup> For the correct use of titles see Table 8.

<sup>193</sup> S.O. 16.

<sup>194</sup> VP 1948-49/5,289; VP 1950-51/195.

<sup>195</sup> Constitution, s. 40.

<sup>196</sup> S.O.s 210, 276.

votes for the 'Ayes' to form the absolute majority (63) required for the suspension of standing orders without notice, Speaker Aston did not exercise a casting vote as his vote would have had no effect on the result.<sup>197</sup>

The decisions of successive Speakers in the House of Commons in giving a casting vote have not always been consistent but 2 main principles, and one subsidiary principle, have emerged:

- that the Speaker should always vote for further discussion, where this is possible;
- that, where no further discussion is possible, decisions should not be taken except by a majority, and
- that a casting vote on an amendment to a bill should leave the bill in its existing form.<sup>198</sup>

There have been 18 occasions when the Speaker or Deputy Speaker has exercised his casting vote in a division in the House. These instances are outlined below.

#### *To enable a further decision of the House*

The following case is one where the Speaker gave his casting vote to avoid the responsibility of deciding a matter and to give the House an opportunity for a further decision:

- 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 negating the amendment. The subsequent question on the second reading was agreed to by a majority of 6.<sup>199</sup>

#### *To enable debate to continue*

A number of cases have occurred where a casting vote has been given in order that debate on the motion before the House could 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'.<sup>200</sup> Speaker Bell on 3 December 1935<sup>201</sup> and Deputy Speaker Lucock on 10 October 1963<sup>202</sup> took the same course.
- 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'.<sup>203</sup>

#### *To decide a matter before the House*

In the following cases the casting vote 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

197 VP 1968-69/375; H.R. Deb. (19.3.68)698.

198 May, pp. 403-04.

199 VP 1901-02/455-6.

200 VP 1914/53.

201 VP 1934-37/480.

202 VP 1962-63/580.

203 VP 1940-43/450; H.R. Deb. (11.12.42)1824.

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 Honorable 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.<sup>204</sup>

- 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 Tuesday next. An amendment was moved to omit 'Tuesday' and substitute 'Wednesday'. The numbers being equal on the amendment, Speaker Johnson voted against it.<sup>205</sup>
- 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'.<sup>206</sup>
- 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.<sup>207</sup>
- 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 was moved to insert certain words after 'That'. Upon division on the amendment the numbers were equal, and Speaker Johnson gave his casting vote with the 'Noes'.<sup>208</sup> The main question was then put and the numbers again being equal, the Speaker gave his casting vote with the 'Ayes'.<sup>209</sup> On the motion for the first reading the Speaker was again required to exercise his casting vote which he gave with the 'Ayes'<sup>210</sup>, and he took similar action in respect of the second reading on 21-23 May 1914<sup>211</sup>, and the third reading on 28 May 1914.<sup>212</sup>
- 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 tabled papers. 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.<sup>213</sup> On a similar motion on 10 May 1938 in respect of a report of the Munitions Supply Board, Speaker Bell also gave his casting vote with the 'Noes'.<sup>214</sup>
- 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 pre-

204 VP 1913/43-4.

205 VP 1913/149-50.

206 VP 1913/151.

207 VP 1914/31.

208 VP 1914/39-40.

209 VP 1914/41.

210 VP 1914/41-2.

211 VP 1914/48.

212 VP 1914/61.

213 VP 1929/17-8.

214 VP 1937-40/87.

cincts of the House is a question for the House to decide, and is not a matter for decision by the Speaker, the numbers were equal. Speaker Makin declared himself with the 'Noes'.<sup>215</sup>

- 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 that he would refer the matter to the Standing Orders Committee'.<sup>216</sup>

In any ballot for the election of Chairman of Committees, when there are only 2 candidates, with each receiving the same number of votes, the Speaker then exercises a casting vote and the Member who receives his casting vote is elected as Chairman of Committees.<sup>217</sup> There is no instance of the Speaker exercising his casting vote in these circumstances.

### **Speaker voting in committee**

A number of Speakers have voted regularly in divisions in the committee of the whole. Speakers McDonald, Johnson, Makin, Mackay, Nairn, McLeay, Cope and Scholes all exercised their right to vote in committee. Speaker Nairn, on some occasions, voted against the Government in divisions in committee.<sup>218</sup>

On 5 November 1913 Speaker Johnson voted in committee on a clause of the Postal Voting Restoration Bill. Mr McDonald, who had been Speaker in the previous Parliament, moved that Speaker Johnson's vote be disallowed. The question was negatived, on division.<sup>219</sup>

On 23 April 1931 Speaker Makin voted in committee on a clause of the Commonwealth Bank Bill.<sup>220</sup> During the adjournment debate a Member rose and asked Speaker Makin whether, holding as he did a position in which he was required to be impartial, he should vote on various measures in committee. Speaker Makin replied:

As the representative of the electoral division of Hindmarsh I have the right to avail myself of my privileges in that capacity during the committee stages of business in this chamber. Previous occupants of the office of Speaker have frequently availed themselves of that right, and I offer no apology for actively representing my constituents on all occasions that I consider desirable. While I occupy the chair as Speaker, I shall always be strictly impartial.<sup>221</sup>

During the 11th Parliament Speaker Groom did not vote in divisions in committee. On 10 September 1929 the Government was defeated 34 votes to 35 on a division in committee on an important opposition amendment to the Maritime Industries Bill. Speaker Groom did not vote to support the Nationalist Party Government.<sup>222</sup> The amendment had the effect of preventing the proclamation of the legislation until it had been submitted to the people either at a referendum or at a general election. Accordingly Prime Minister Bruce advised the Governor-General to dissolve the House.<sup>223</sup> Subsequently Speaker Groom lost Nationalist Party endorsement for his seat of Darling Downs. At the general election on 12 October 1929 both the Government and Speaker Groom were defeated.

During the 24th Parliament, in a House in which the Government had a floor majority of one, Speaker McLeay consistently voted in committee to preserve the Government's majority.<sup>224</sup>

215 VP 1929-31/593.

216 VP 1970-72/1018-19.

217 S.O. 13(j).

218 VP 1940-43/504,521,525,542.

219 VP 1913/138-40.

220 VP 1929-31/591.

221 H.R. Deb. (23.4.31)1274.

222 VP 1929/117-18.

223 VP 1929/121.

224 VP 1962-63/306-09.

**SPEAKER'S RULINGS**

The principal standing orders of the House relating to points of order and Speaker's rulings are standing orders 98, 99 and 100 which state that any Member may at any time raise a point of order which takes precedence until disposed of, that after the question of order has been stated to the Speaker, the Speaker shall give his ruling, and if any objection is taken to a ruling such objection must be taken at once, and a motion of dissent, in writing, moved and seconded, shall be proposed and debated forthwith.

The Speaker must preserve order in the Chamber to enable business to be properly conducted. 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. His statements and rulings must be sufficiently clear and authoritative for the Members to accept them.

The Speaker may also make private rulings, that is, when he is 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.

In accordance with House of Commons practice a point of order must be raised immediately and the Speaker's ruling given forthwith. It is not acceptable to raise points of order concerning proceedings earlier in the day or concerning proceedings of a previous day.

The procedure of dissenting from a ruling of the Speaker is not shared in the practice of the lower Houses of other major Commonwealth countries, namely, the United Kingdom<sup>225</sup>, Canada and India. Before the dissent provision was abolished in the Canadian House of Commons, Laundry stated:

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. Professor J.H. Aitchison, in his essay, 'The Speakership of the Canadian House of Commons', writes:

'The case for the abolition of appeals is overwhelming even in the absence of a permanent Speakership. Appeals are almost always made by Opposition Members and are almost always lost. When the ruling is a good one, an appeal adds nothing to the prestige of the Speaker; when the ruling is bad, a bad ruling is confirmed by a vote of the House . . . There has, however, been a persistent belief among Opposition Members that the appeal procedure affords them some protection. Since there is always a possibility that the Government will avail itself of it, the procedure, on the contrary, is a positive danger to Opposition Members. It has also been frequently asserted in the Canadian House that the abolition of appeals would be inconsistent with the position of the Speaker as a servant of the House and the fact that the House is master of its own procedure.

But there are no appeals in the British House where the Speaker is equally the servant of the House and the House the master of its procedure. The Speaker best serves the House if his rulings cannot be reversed, and the House best serves its own interest by controlling its procedure through the deliberate amendment of the rules when necessary, and not through the determination by majority vote of the application of the rules to particular cases'.<sup>226</sup>

<sup>225</sup> May, p. 230.

<sup>226</sup> Laundry, p. 364.

Any motion of dissent must be moved at the time the ruling was made<sup>227</sup>, and no amendment may be moved to the motion as a ruling must be either accepted without qualification or rejected.<sup>228</sup> A dissent from a Speaker's ruling can only be moved in the House and a dissent from a Chairman's ruling can only be moved in committee (*see* p. 236).<sup>229</sup> A Member cannot move dissent from a ruling which has just been supported by a vote of the House.<sup>230</sup> 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.<sup>231</sup>

Members frequently object to a ruling from the Chair and there have been several occasions when the House has agreed to a motion dissenting from the Speaker's ruling.<sup>232</sup> Any dissent from the Speaker's ruling is not necessarily interpreted as a censure of the Speaker.<sup>233</sup>

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 . . .<sup>234</sup>

However it has now become the established practice for the Chair not to participate during debate on a motion of dissent from a ruling except on procedural matters as the matter is in the hands of the House and for it to decide.

On 25 May 1950, a Member, during the adjournment debate, 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.<sup>235</sup> 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.<sup>236</sup>

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.<sup>237</sup> The Speaker ruled that it was in order for the Deputy Speaker to vote in the division.<sup>238</sup> The following table shows the number of motions of dissent from rulings moved in the 1901-1980 period, and their result:

227 VP 1950-51/27; VP 1951-53/65-6.

228 VP 1951-53/505.

229 H.R. Deb. (17.3.26)1679.

230 H.R. Deb. (30.9.54)1774.

231 H.R. Deb. (25.11.53)530; H.R. Deb. (26.11.53)553-4.

232 VP 1920-21/218,221-2; H.R. Deb. (28.6.20)3018-23; VP 1937/106-07; H.R. Deb. (10.9.37)954; VP 1951-53/595; H.R. Deb. (6.3.53)669-74; VP 1951-53/714; H.R. Deb. (8.10.53)1169-70; VP 1953-54/65; H.R. Deb. (2.12.53)769-80;

VP 1954-55/184-5; H.R. Deb. (4.5.55)362-73; VP 1954-55/201; H.R. Deb. (12.5.55)671-3.

233 H.R. Deb. (13.5.14)895-6.

234 VP 1929-31/492; H.R. Deb. (12.3.31)279.

235 H.R. Deb. (25.5.50)3279-80.

236 *See* H.R. Deb. (31.5.50)3454-62; H.R. Deb. (1.6.50)3577-87, 3653-5.

237 VP 1962-63/55.

238 H.R. Deb. (7.3.62)552.

**TABLE 6** MOTIONS OF DISSENT FROM RULINGS IN THE HOUSE  
1901-80 (a)

	<i>Moved</i>	<i>Negatived</i>	<i>Agreed to</i>	<i>Withdrawn, lapsed, etc.</i>
Speaker . . . . .	89	62	5	22
Acting Speaker . . . . .	10	8	—	2
Deputy Speaker . . . . .	31	27	1	3
Total . . . . .	130	97	6	27

(a) This table excludes those motions of dissent which were ruled out of order.

### 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 2 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.<sup>239</sup>

The most frequent determination of points of procedure between the 2 Houses has occurred in relation to requests for amendments to bills or pressed requests for amendments, where the privileges of the House have been affected. In summary, the Speaker has directed the attention of the House to the constitutional question which the message transmitting the (pressed) request involves, on occasion has given his opinion that the Senate has the rights conferred on it by section 53 of the Constitution, and the decision as to whether the House receives and entertains 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.<sup>240</sup>

In relation to the interpretation of the law, the Chair has ruled:

- a question of law should be asked of the Attorney-General, not the Speaker<sup>241</sup>;
- it is not the duty of the Speaker to give a decision on (to interpret) a question of law<sup>242</sup>, and
- a very heavy tax would be imposed upon the Speaker if, as soon as any motion or bill were introduced, he 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.<sup>243</sup>

### CRITICISM OF SPEAKER'S ACTIONS AND CONDUCT

Except in moving dissent from a ruling, the Speaker's actions can only be criticised by a substantive motion usually in the form of censure or want of confidence. It is not acceptable for the Speaker to be criticised incidentally in debate.<sup>244</sup>

A reflection on the character or actions of the Speaker inside or outside the House may be punished as a breach of privilege.<sup>245</sup>

239 VP 1907-08/384-5; H.R. Deb. (22.4.08)10 485-7.

240 See Ch. on 'Legislation'.

241 H.R. Deb. (13.6.01)1075.

242 H.R. Deb. (3.9.12)2874; H.R. Deb. (23.7.15)5340.

243 H.R. Deb. (12.11.15)7649.

244 H.R. Deb. (20.5.20)2383; H.R. Deb. (29.3.44)2203-24.

245 May, p. 152.

On 11 November 1913 the Prime Minister drew attention to a statement, reported to have been made by the Member for Ballaarat (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.<sup>246</sup> 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.<sup>247</sup>

On 15 May 1964, a journalist (Mr Frank Chamberlain) during a parliamentary report over 17 radio stations inferred 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 and the Clerk of the House that these remarks were a grave reflection on the character of the Speaker and accused him of partiality in the discharge of his duties. It was further considered that the accusations were unfounded, grossly offensive and a breach of privilege. As the House proposed to rise for the winter adjournment that day, it was agreed that a reference to the Privileges Committee would be unsatisfactory as the committee would be unable to report to the House before the Budget sittings. 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 President agreed with this proposed action. The journalist was summoned by the Speaker and admitted his mistake and the seriousness of his offence. On being informed that a breach of privilege could have also been committed by each of the broadcasting stations, the journalist requested the Speaker not to press the matter in relation to the broadcasting stations and emphasised that he alone was to blame. The journalist agreed to make amends by broadcasting a suitable retraction and apology that night, to be repeated on the following morning, following the clearance of the script with the Speaker. The matter was considered closed when the broadcasts were made in the following terms:

Parliamentary privilege is one of the great bulwarks of our democratic freedom, as I have tried to explain in these sessions many times. The other night in my eagerness to get the parliamentary picture to you quickly, I committed a breach of parliamentary privilege myself by reflecting on the rulings of Mr Speaker. This was also — I now realise — a reflection on the whole parliamentary institution, however unintentional. For this I apologise not only to the Federal parliamentarians, but to Mr Speaker, Sir John McLeay, who as I have pointed out, has one of the most difficult jobs in the parliamentary institution. Further than that, I have

246 VP 1913/151-3; H.R. Deb. (11.11.13)2982-3053.

247 H.R. Deb. (29.4.15)2729-49; VP 1914-17/181.



studied the parliamentary record closely and I find that Mr Speaker's decision to expel the two interjecting Members, was fully justified. Let me repeat—I now find that I was wrong in attributing a bad ruling to Sir John McLeay. He was fully entitled, indeed bound, to act as he did. Abusive parliamentary language is against the standing orders and order would soon disappear if Mr Speaker did not take instant action. That is why Mr Speaker has peremptory powers which traditionally are supported by the House. That is why the Prime Minister automatically moves for the suspension of the Member. I would like all listeners to know that I regret the error and the unintentional breach of privilege. Especially as I, both as a citizen and as a journalist, recognise the importance of Members being able to speak without fear or favour and on Mr Speaker's role in ensuring that these privileges are not abused. If Mr Speaker, Sir John McLeay, has suffered any personal inconvenience about my comments, I apologise to him. To parliamentarians who know of my enthusiasm for the parliamentary institution, and my fears lest its powers should be lessened, I ask that you forgive this episode. I assure you I realise that journalists as well as Members and all citizens cannot reflect on the rulings of Mr Speaker who is the custodian of the parliamentary power. My mistake, however unintentional, and in good faith, is a reminder that journalists and indeed other visitors to the Parliament, are there as strangers. In this year when so many democratic institutions are under fire, listeners will know that I am the last commentator who would want to injure Parliament, or to reflect on the Chair.

The Speaker and Deputy Speaker have been subject to the judgment of the House by substantive motion on a number of occasions as shown in the following table:

**TABLE 7 MOTIONS OF CENSURE OF OR WANT OF CONFIDENCE IN THE SPEAKER AND DEPUTY SPEAKER 1901-80**

<i>Occupant of the Chair</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
Speaker Rosevear	28.9.44	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 (28.9.44) 1676-82).	Negated 22 to 39
Speaker Rosevear	26.7.46	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 (26.7.46) 3196-203).	Negated 23 to 36
Deputy Speaker Clark	Moved 24.2.49; resolved 8.9.49.	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	Amendment agreed to; motion, as amended, agreed to 34 to 23

<i>Occupant of the Chair</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
		(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 (24.2.49) 655-61; H.R. Deb (8.9.49) 110-39, 147-61).	
Speaker Cameron	20.4.50	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. (20.4.50) 1691-702).	Negated 38 to 67
Speaker Cameron	10.5.55	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. (10.5.55) 543-62).	Negated 36 to 57
Speaker Aston	21.4.71	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. (21.4.71) 1763-81).	Negated 47 to 51
Speaker Cope	8.4.74	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 (8.4.74) 1117-26).	Negated 49 to 61

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 1973 the motion was moved but lapsed for want of a seconder.<sup>248</sup> The mover described his motion as 'something stronger than dissent . . . not as strong as a censure . . .'.<sup>249</sup>

The Speaker's authority and decisions are usually supported by the House. If the House dissents from his rulings or in other ways fails to support his decisions he is placed in a very difficult position.

Amid prolonged scenes of uproar in the House on 27 February 1975<sup>250</sup>, Speaker Cope announced his resignation after he had lost what was virtually a confidence vote in his Speakership. 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. Mr Cameron explained that Mr MacKellar, the opposition spokesman on immigration, had been asked if he wanted to look at a certain file but had declined. Another Member, Dr Forbes, said 'Mr Speaker, is the Minister entitled under the privilege of Parliament to tell a monstrous lie?' Mr Cameron asked for a withdrawal and Dr Forbes amended it to 'a monstrous untruth' when ordered to withdraw by the Speaker. Mr Cameron protested again and the Speaker suggested to Dr Forbes that he make an unqualified withdrawal but added 'If it is an untruth, say it is an untruth, without the adjective'. Dr Forbes said 'I withdraw it and substitute "an untruth"'. When Mr Cameron rose to protest again, the Speaker called him to order. 'Look I don't give a damn what you say' said Mr Cameron, 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 but Prime Minister Whitlam replied 'No'. Speaker Cope then named Mr Cameron. As no Minister rose to move for Mr Cameron's suspension, the motion was moved by Mr Sinclair, Deputy Leader of the Australian Country Party. Government Members crossed the floor to vote against the suspension, and the motion was defeated by 59 votes to 55. After announcing the result of the division, Speaker Cope rose and said 'Gentlemen, I hereby tender my resignation . . . I intend to do it by writing 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 later that day<sup>251</sup> and, following formal communication of the resignation to the House, Mr Scholes was elected Speaker.<sup>252</sup> Soon after Speaker Cope left the Chamber the Leader of the Opposition stated 'We have just witnessed a matter the like of which has never occurred in the lifetime of this Parliament. I would think that it has never occurred in the lifetime of any other Westminster parliamentary system'.<sup>253</sup>

This is the only occasion on which the Government has failed to support the Speaker after a Member has been named.

## CHAIRMAN OF COMMITTEES

### Origins and role

The first concerted development of committees in the House of Commons took place in the late 16th century and the early 17th century. The committee of the whole developed in part out of the growing view that no Members should be excluded, as they were, from the proceedings of the earlier 'select' and later larger standing committees.

248 NP 15(10.4.73)511; VP 1973-74/121.

249 H.R. Deb. (12.4.73)1396.

250 H.R. Deb. (27.2.75)824-9.

251 VP 1974-75/502-03; Constitution, s. 35.

252 VP 1974-75/508-09.

253 H.R. Deb. (27.2.75)825.

Proceedings in committee of the whole House developed in such a way that from 1610 the Speaker retired to leave the House free to the committee. The removal of the Speaker, who was at this period expected to look after the interests of the King, secured for the House a greater freedom of debate.<sup>254</sup> It then became necessary for the committee to choose a chairman to preside over its proceedings.

The committee of the whole became recognised as an efficient method of discussing matters of detail and provided the House with an instrument, which it employed in the latter half of the 17th century, to establish its control over finance.<sup>255</sup>

Laundy questions the traditional view 'that the practice whereby the Speaker leaves the Chair when the House resolves itself into a Committee of the Whole House owes its origin to the mistrust with which he was regarded as the nominee of the Court'. According to him 'it ignores the fact that the Speaker, like any other Member, had a perfect right to attend debates in Committee of the Whole House if he wished, and to speak and vote in them'. The removal of the Speaker would not have removed the danger 'of carrying tales to the King'. Alternatively the origins of committee of the whole procedure may have been due to the fact that 'their opportunities for free and unrestricted discussion were infinitely wider in committee than in the House'.<sup>256</sup>

Despite these differences of interpretation House of Representatives practice prescribes the historical distinction between House and committee. The Chairman of Committees is therefore chairman of the House when it is sitting as a committee of the whole House.<sup>257</sup> Committee proceedings are, in keeping with tradition, less formal than those in the House and the Chairman of Committees does not wear official robes of office. He sits in a chair in front of and beneath the Speaker's Chair at the Table between the Clerks, and when he takes the Chair the Mace is placed in brackets below the Table. The Chairman of Committees or his Deputies are correctly addressed as 'Mr Chairman' or 'Mr Deputy Chairman', as the case may be, but the address of 'Mr [Millar]' is also an accepted form.

Prior to 1963 there was provision in the standing orders for Committees of Supply, and Ways and Means, which comprised all Members, and the Chairman of Committees was appointed to take the Chair in all these committees of the whole.<sup>258</sup> Following the abolition of the Supply and Ways and Means Committees the Chairman of Committees remained chairman of the committee of the whole House only. With the advent of legislation committees and estimates committees the Chairman has taken on a new role in chairing these committees or providing for them to be chaired by any of the Deputy Chairmen.<sup>259</sup>

The main purpose of the committee of the whole is to deal with the detailed consideration of bills. In addition, a committee of the whole may consider other matters referred to it by the House such as detailed consideration of proposed alterations to the standing orders<sup>260</sup> or expenditure from the Advance to the Minister for Finance.<sup>261</sup>

## **Election of Chairman**

At the beginning of each Parliament or whenever the office becomes vacant, the House appoints a Member to be Chairman of Committees to take the Chair of all committees of the whole.<sup>262</sup>

254 Lord Campion, *An introduction to the procedure of the House of Commons*, 3rd edn, Macmillan, London, 1958, pp. 27-9; and see Gordon Reid, *The Politics of Financial Control*, Hutchinson, London, 1966, pp. 45-52 for discussion of the origin of the committee of the whole.

255 Campion, pp. 28-9.

256 Laundy, pp. 201, 202.

257 S.O. 273.

258 S.O. 12 (standing orders adopted by House 1950).

259 See Ch. on 'Legislation'.

260 VP 1940-43/545.

261 VP 1957-58/203; VP 1978-80/360.

262 S.O. 13. For a list of Chairmen of Committees since 1901 see Appendix 3.

The election of the Chairman of Committees takes place after the Speaker has been elected in a new Parliament. The procedure is similar to that for the election of Speaker except that the Speaker presides, not the Clerk. A motion proposing that a Member be appointed Chairman of Committees is moved and seconded. The Speaker then asks for further motions and, if there are none, the Speaker, without debate, declares the Member to have been appointed Chairman of Committees.

If there is more than one motion for the appointment, there may be debate which must be relevant to the election. During this debate no Member may speak for more than 5 minutes and at any time a Minister may move the closure motion. When only 2 motions for the appointment of Chairman of Committees are moved, the bells are rung for 2 minutes, a ballot is held, and the Member with the greater number of votes is elected. If there is an equality of votes the Speaker has a casting vote.

If there are more than 2 motions, the Member with the greatest number of votes is elected, provided he has a majority of the votes of the Members present. If no Member has a majority, the name of the Member with the smallest number of votes is excluded and balloting continues to take place in this way until one Member has a majority. If, after a ballot in which the names of more than 2 Members are submitted, there is an equality of votes, making it impossible to determine which name shall be excluded, then the Speaker shall give a casting vote to determine who shall **not** be excluded.

The standing orders detail further steps which may be taken if there is an equality of votes for more than 2 Members, and there is provision for the sitting to be suspended for 30 minutes if the balloting is inconclusive. If at any time between ballots a Member withdraws his name, the procedure continues as if a motion for his appointment as Chairman of Committees had not been moved. Where such a withdrawal leaves only one Member, then he shall be declared to have been appointed Chairman of Committees.<sup>263</sup>

There has been no occasion when there have been more than 2 candidates for the office of Chairman of Committees.

The office of Chairman of Committees is usually filled by the nominee of the government party or parties. In recent years in a case of a Liberal-National Country Party coalition Government, the practice has been for the National Country Party to nominate the Government's candidate for Chairman of Committees and for the Liberal Party to nominate the candidate for Speaker.

In the early years after federation, when party lines were not clearly drawn, the incumbent of the 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.<sup>264</sup> In divisions in the House in the period from 1941 to 1943, Chairman Prowse frequently voted against the Government<sup>265</sup> and immediately following his resignation he voted in support of a motion of no confidence in the Government.<sup>266</sup>

### **Chairman as Acting or Deputy Speaker**

When the House is informed by the Clerk of the absence of the Speaker, the Chairman of Committees takes the Chair as Acting Speaker<sup>267</sup> (*see* p. 217). The Chairman of Committees may take the Chair of the House as Deputy Speaker during any sitting of the House whenever he is requested to do so by the Speaker.<sup>268</sup>

263 S.O. 13.

264 VP 1940-43/549.

265 VP 1940-43/308,313,349,473,478.

266 VP 1940-43/551.

267 S.O. 14.

268 S.O. 17.

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.<sup>269</sup>

While in the Chair, the Chairman of Committees, as Acting or 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.<sup>270</sup> It is now the practice for the Chairman of Committees as Deputy Speaker to sign messages to the Senate whenever the Speaker is unavailable.

If the Chairman of Committees is absent, the Speaker may ask any one of the Deputy Chairmen to take the Chair as Deputy Speaker.<sup>271</sup> Deputy Speaker is the correct address to be used when either the Chairman of Committees himself or any of the Deputy Chairmen of Committees is relieving the Speaker in the Chair (*see* p. 233). In considering this matter in 1972 the Standing Orders Committee agreed with the view of the Standing Orders Committee in 1966 that the dual title of Chairman of Committees and Deputy Speaker might be used in a **general way** rather than in a **formal** manner. The 1966 decision was:

As the Chairman of Committees is required, on occasions, to take the Chair as Deputy Speaker, it was agreed that, without prejudice to the references in the Standing Orders to 'Chairman of Committees' and 'Deputy Speaker' and to the duties and responsibilities of those two offices, it would be appropriate for the Chairman to be known, in general terms, as 'Chairman of Committees and Deputy Speaker'.<sup>272</sup>

The committee, in considering the matter in 1972, had in mind the following points:

- that the Constitution does not refer to the Deputy Speaker;
- that standing order 13 provides for the appointment of a Chairman of Committees 'to take the Chair of all committees of the whole';
- that the standing orders as a whole declare the duties and functions of the Chairman of Committees in committee of the whole House, as distinct from proceedings in the House;
- that the Chairman of Committees acts as Deputy Speaker only at specific and limited times when relieving the Speaker in the Chair in the Chamber. On leaving the Speaker's Chair, his substantive position is that of Chairman of Committees (S.O. 17), and
- that on the occasions of the unavoidable absence of the Speaker, the Chairman becomes 'Acting Speaker', not Deputy Speaker (S.O. 14).<sup>273</sup>

If the House is informed by the Clerk of the likelihood of the continued absence of the Speaker, the House may appoint a Member to be Acting Chairman of Committees while the Chairman of Committees is occupying the Chair as Acting Speaker.<sup>274</sup> For this position the House would normally choose one of the Deputy Chairmen.<sup>275</sup> The Acting Chairman of Committees has all the powers and functions of the Chairman of Committees during his appointment. The House has also appointed a Member to be Acting Chairman of Committees during the continued absence of the Chairman of Committees.<sup>276</sup>

269 S.O.s 17, 19.

270 S. Deb. (24.9.06) 5165.

271 S.O. 19.

272 *Standing Orders Committee Report*, PP 289(1964-66).

273 *Standing Orders Committee Report*, PP 20(1972) 14.

274 S.O. 16.

275 VP 1948-49/5.289; VP 1950-51/195.

276 VP 1951-53/367.

There is often confusion as to the correct way of referring to occupants of the Chair. The following table indicates the relationship between the standing orders and the Constitution regarding occupancy of the Chair:

**TABLE 8 OCCUPANTS OF THE SPEAKER'S CHAIR—RELATIONSHIP BETWEEN STANDING ORDERS 14-19 AND THE CONSTITUTION**

<i>Absence or proposed absence</i>	<i>Constitutional and standing order provisions</i>	<i>Person eligible</i>	<i>Title of occupant of Speaker's Chair</i>
Speaker	Constitution, s. 36: House may choose a Member. S.O. 14: Chairman of Committees shall perform duties.	Chairman of Committees	Acting Speaker
Speaker and Chairman of Committees	Constitution, s. 36: House may choose a Member. S.O. 15: Members present elect one of their number.	Any Member	Acting Speaker
Speaker—continued absence of: Chairman of Committees as Acting Speaker	S.O. 16: House may appoint Member to be Acting Chairman of Committees.	Any Member	Deputy Speaker
Speaker—relief of	S.O. 17: Chairman of Committees shall take chair whenever requested by Speaker.	Chairman of Committees	Deputy Speaker
	S.O. 18: Speaker shall nominate not less than 4 Members to act as Deputy Chairmen of Committees.	Any Member	
Speaker and Deputy Speaker (Chairman of Committees)—relief of	S.O. 19: Chairman of Committees, when acting as Deputy Speaker, or Speaker, in absence of Chairman of Committees, may call on one of the Deputy Chairmen to take Chair.	Any of the Deputy Chairmen of Committees	Deputy Speaker

### Deputy Chairmen of Committees

At the commencement of every Parliament the Speaker nominates not less than 4 Members, any one of whom shall act as Deputy Chairman of Committees when requested to do so by the Chairman of Committees. At any time during the Parliament the Speaker may nominate additional Members or revoke the nomination of any Member.<sup>277</sup> The Speaker nominates the Deputy Chairmen by warrant which he tables in the House early in a new Parliament.

The role of a Deputy Chairman is three fold:

- to relieve the Chairman of Committees, at his request, during proceedings in the committee of the whole<sup>278</sup>;

<sup>277</sup> S.O. 18.

<sup>278</sup> S.O. 18.

- to take the Chair as Deputy Speaker when requested to do so by the Chairman of Committees when acting as Deputy Speaker, or, in the absence of the Chairman of Committees, at the request of the Speaker<sup>279</sup>, and
- to act as chairman of any legislation or estimates committee constituted by the House, when so appointed by the Chairman of Committees.<sup>280</sup>

In practice, a Deputy Chairman is called to the Speaker's Chair only for relief purposes and then only when, in the opinion of the Speaker or the Chairman of Committees, this can be done without prejudice to the authority of the Chair and the maintenance of order in the House. If disorder does arise when a Deputy Chairman is presiding, the Speaker or Chairman should resume the Chair.

In 1907, 1923 and 1969 the first sessions of the Parliaments were of short duration and Deputy Chairmen of Committees were not nominated until the second session.<sup>281</sup> In 1948 the Speaker was absent when the second session of the Parliament opened and, nominations at that time being required every session, the Deputy Speaker nominated the Temporary Chairmen of Committees.<sup>282</sup> On his return from overseas the Speaker renominated the same Members and one additional Member as Temporary Chairmen of Committees.<sup>283</sup>

On a number of occasions neither the Chairman of Committees nor any of the Deputy Chairmen have been in the Chamber when the House wished to resolve itself into the committee of the whole. In 1915 the Deputy Speaker asked the House 'is it the pleasure of the House that the honorable member for Capricornia do take the chair as Temporary Chairman'. The House agreed.<sup>284</sup>

On 29 May 1969 the Speaker reported a message from the Senate returning a bill with amendments. It was ordered that the amendments be taken into consideration in committee forthwith. After waiting some time for the arrival of the Chairman of Committees or a Deputy Chairman, the Speaker suggested that, if the House were agreeable the Member for Moreton (Mr Killen) would take the Chair in the committee of the whole. There being no objection, Mr Killen took the Chair and, after the amendments were dealt with, reported the resolution to the House.<sup>285</sup>

On 12 June 1970 during consideration of the Stevedoring Industry Bill 1970 the House resolved itself into a committee of the whole. As the Chairman of Committees or a Deputy Chairman was not readily available, the Chair in committee was taken by the Member for Lang (Mr Stewart). The honourable Member was relieved by the Chairman of Committees some minutes later and he put the question on an amendment which had been moved.

The number of Deputy Chairmen nominated by the Speaker varies. In the 18th Parliament, 13 Temporary Chairmen were nominated and in the 19th Parliament only 6. In the 32nd Parliament 8 Deputy Chairmen were nominated.<sup>286</sup>

It is the practice for the Speaker to appoint some opposition and some government Members to be Deputy Chairmen of Committees. In 1951 Speaker Cameron nominated 3 government and 3 opposition Members as Temporary Chairmen. The 3 opposition Members declined nomination.<sup>287</sup> The Speaker did not vary the warrant nominating them, and all 6 names were shown on the Notice Paper although the opposition

279 S.O. 19.

280 See Supplement to Standing Orders for sessional orders adopted by the House which provide for the appointment of such committees.

281 VP 1970-72/13.

282 VP 1948-49/9. Prior to 1966 the Deputy Chairmen of Committees were called Temporary Chairmen of Committees.

283 VP 1948-49/170.

284 H.R. Deb. (8.7.15)4723.

285 VP 1968-69/480-2.

286 VP 1980-81/18.

287 VP 1951-53/29.



Members did not take the Chair. The names of the opposition nominees were omitted from the first Notice Paper following the announcement that they would decline to serve but were inserted in the subsequent Notice Papers on the Speaker's instructions.<sup>288</sup>

In 1954 after nominating government and opposition Members as Temporary Chairmen of Committees, Speaker Cameron told the Deputy Leader of the Opposition that he was not obliged to ask the Opposition about who he intended to nominate, and did not intend to do so.<sup>289</sup>

In 1956 Speaker Cameron did not nominate any opposition Members as Deputy Chairmen of Committees. In reply to a question without notice the Speaker said that he understood that Members of the Opposition did not intend acting as Temporary Chairmen unless they were able to select their own Members. In view of this he had selected only Members who were prepared to act. The Speaker stated 'the right to select the Temporary Chairmen is entirely the prerogative of Mr. Speaker and nobody else'.<sup>290</sup>

Speaker Cameron died on 9 August 1956 and Speaker McLeay was elected on 29 August 1956, it then being necessary to issue a new warrant.<sup>291</sup> Speaker McLeay's first warrant nominated only government Members as Temporary Chairmen.<sup>292</sup> However after the Leader of the Opposition had discussed the matter with him, Speaker McLeay later nominated 4 opposition Members as Temporary Chairmen.<sup>293</sup>

In 1962 no opposition Members were nominated as Temporary Chairmen of Committees<sup>294</sup>, due to the fact that the margin in numbers between government and opposition Members was only one, and the Opposition preferred not to have any of its Members act as Temporary Chairmen.

Recent practice has been for the Clerk, on behalf of the Speaker, to approach both the government and opposition parties and request a list of nominees for the positions of Deputy Chairmen.

It is usual for the Speaker to nominate Members who are not in the Ministry or the opposition executive. A Deputy Chairman who becomes a Minister is normally removed from the list of Deputy Chairmen without any announcement being made to the House.<sup>295</sup> However, in 1958, Speaker McLeay nominated a member of the opposition executive (Mr Webb) as a Temporary Chairman.<sup>296</sup>

## **Powers and duties of Chairman**

The Chairman in committee has similar power to regulate the conduct of business, and authority to preserve order, as the Speaker has in the House.<sup>297</sup>

On the occurrence of disorder the powers of the Chairman in committee are less than those of the Speaker in the House. The Chairman may not preside over the suspension of a Member from the committee but, having named a Member for disorderly conduct, must report the circumstances to the House where the Speaker will preside over proceedings to suspend the Member from the service of the House.<sup>298</sup> On the occurrence of grossly disorderly conduct in committee, the Chairman may order the Member responsible to leave the Chamber and then name the Member.<sup>299</sup> The matter is then reported to the House which deals with it. If any sudden disorder arises in

288 NP 6(26.6.51)13; NP 7(27.6.51)18.

289 H.R. Deb. (10.8.54)96.

290 H.R. Deb. (28.2.56)258.

291 See also VP 1974-75/512 for warrant by new Speaker Scholes.

292 VP 1956-57/263.

293 VP 1956-57/281.

294 VP 1962-63/17.

295 Mr White, 8 March 1933.

296 VP 1958/13.

297 S.O.s 52, 280.

298 S.O.s 303-305.

299 S.O. 306.

committee, the Speaker may resume the Chair.<sup>300</sup> When a quorum is not present for a division or is not obtained following a quorum call the Chairman reports the fact to the Speaker.

In other respects, the Chairman's functions in committee are basically the same as those of the Speaker. He calls Members to speak, proposes and puts questions and declares the decision, enforces the rules of debate, rules on points of order, conducts divisions and ensures that the provisions of the standing orders in their application to the committee of the whole are applied. At the end of committee proceedings, he makes a (verbal) report of the result of the committee consideration to the Speaker in the House.<sup>301</sup> The House may not take notice of any proceedings of a committee except upon receiving the Chairman's report.<sup>302</sup>

The Chairman of Committees is, *ex officio*, a member of the Standing Orders Committee.<sup>303</sup> Apart from this committee he is not required to serve on any other committee without his consent.<sup>304</sup>

### **Casting vote**

The Chairman of Committees, when in the Chair, has a casting vote only and any reasons stated by him in exercising his casting vote are entered in the Votes and Proceedings.<sup>305</sup> A Deputy Chairman of Committees, appointed in accordance with standing order 18, also has a casting vote. Thus in committee any occupant of the Chair has a casting vote.

In exercising his casting vote the Chairman is guided by the same principles as the Speaker in the House (*see* p. 218). A casting vote has been given in committee on 34 occasions but rarely has any reason been given.<sup>306</sup> With respect to votes on amendments, proposed new clauses, and existing clauses, the use of the casting vote has been marked by the consistency of the Chair in voting to leave the bill in its existing form as shown by the following examples:

- that the clause be agreed to; Chairman voted with the 'Ayes'<sup>307</sup>;
- that the words proposed to be omitted stand; Chairman voted with the 'Ayes'<sup>308</sup>;
- that the sum proposed to be reduced be so reduced; Chairman voted with the 'Noes'<sup>309</sup>;
- that the word proposed to be inserted be so inserted; Chairman voted with the 'Noes'<sup>310</sup>;
- that the new clause proposed to be added be so added; Chairman voted with the 'Noes'<sup>311</sup>, and
- that the amendment be agreed to; Chairman voted with the 'Noes'.<sup>312</sup>

### **Rulings, dissent, censure**

Just as the Speaker rules on points of order and interprets standing orders in the House, so does the Chairman in committee.

300 S.O. 282.

301 *See also* Ch. on 'Legislation' for legislation committee and estimates committee procedures.

302 S.O. 232; H.R. Deb. (16.3.44) 1418-19.

303 S.O. 25.

304 S.O. 325.

305 S.O. 276.

306 For reasons *see* VP 1901-02/734; VP 1907-08/600; VP 1909/272; VP 1917-19/378.

307 VP 1914/50; VP 1917-19/378.

308 VP 1923-24/349; VP 1929/45.

309 VP 1914/83-4.

310 VP 1914/50; VP 1940-43/95.

311 VP 1914/51(2), 52(2); VP 1962-63/308.

312 VP 1920-21/628.

A motion of dissent from any ruling by the Chairman must be submitted in writing and moved immediately following the ruling. Unlike the procedure in the House, the motion of dissent does not require a seconder and is decided immediately without debate.<sup>313</sup>

Motions of dissent from rulings of the Chairman have often been moved<sup>314</sup>, but only once agreed to.<sup>315</sup> The following table shows the number of motions of dissent from rulings moved in the 1901-1980 period, and their result.

**TABLE 9** MOTIONS OF DISSENT FROM RULINGS IN COMMITTEE 1901-80 (a)

	<i>Moved</i>	<i>Negatived</i>	<i>Agreed to</i>	<i>Withdrawn, lapsed, etc.</i>
Chairman of Committees . . . .	60	54	1	5
Deputy (or Temporary) Chairman of Committees . . . . .	26	21	—	5
Total . . . . .	86	75	1	10

(a) This table excludes those motions of dissent which were ruled out of order.

A motion of dissent from a ruling cannot be moved if a motion of dissent from a similar ruling has just been voted upon by the committee.<sup>316</sup> Dissent from a ruling of the Chairman must be decided in committee; the Speaker does not rule on proceedings in committee.<sup>317</sup>

The actions of the Chairman of Committees can only be discussed on a substantive motion moved pursuant to notice, usually in the form of a censure or want of confidence motion.<sup>318</sup> In 1935 the conduct of Chairman Prowse was the subject of censure, once as a matter of privilege<sup>319</sup> and once as a motion of censure moved pursuant to notice.<sup>320</sup> In both cases the motion was negatived. In 1945 a want of confidence motion was moved, pursuant to notice, against Chairman Riordan. The motion was negatived.<sup>321</sup>

## Resignation

If the Chairman of Committees wishes to resign his office, he may do so by personally announcing his retirement to the House, or by notifying the Speaker, in writing, who will make an announcement to the House.<sup>322</sup>

On 22 June 1943 Chairman Prowse resigned on the same day as Speaker Nairn. On the following day the House elected Speaker Rosevear who, on returning from his presentation to the Governor-General, read the letter of resignation. The Prime Minister then moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'. The motion was agreed to and Chairman Riordan was elected unopposed.<sup>323</sup> A similar motion was moved by the Acting Prime Minister and agreed to on 8 March 1961 after a letter of resignation from Chairman Bowden was read to the House by the Speaker. Mr Lucock was immediately elected as Chairman of Committees.<sup>324</sup>

313 S.O.s 100, 281.

314 VP 1934-37/21, 194, 682; VP 1940-43/341; VP 1974-75/371-2.

315 VP 1962-63/307-08.

316 VP 1934-37/682.

317 H.R. Deb. (16.3.44) 1417.

318 H.R. Deb. (25.10.77) 2351.

319 VP 1934-37/351, 355.

320 VP 1934-37/368.

321 VP 1945-46/249-50.

322 *May*, p. 235.

323 VP 1940-43/549-50.

324 VP 1961/9.

Following the resignation of Speaker Cope on 27 February 1975 the House elected Speaker Scholes who was at that time Chairman of Committees. The office of Chairman having fallen vacant, the House later that day elected Chairman Berinson.<sup>325</sup> On 14 July 1975 Chairman Berinson resigned his 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.<sup>326</sup> 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.<sup>327</sup>

## PRINCIPAL PERMANENT OFFICERS 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 procedure. Since 1901 there have been 10 Clerks of the House of Representatives.<sup>328</sup>

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 term 'Clerk' simply meant a person who could read and write. Since many Members could 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 adopt a more professional outlook. The first of this new generation, John Seymour, began to record the proceedings of the House in an unofficial journal. At first it was mainly a record of motions and bills, but 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.<sup>329</sup>

The first Clerk of the House of Representatives was Sir George Jenkins who, in an acting capacity only, served for less than 2 months before resuming his position as Clerk of the Parliaments of Victoria. He was succeeded by Charles Gaven Duffy who remained as Clerk until 1917 when he became Clerk of the Senate.

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, 2 months later on 28 September, only 27 days after his appointment and 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 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.<sup>330</sup>

325 VP 1974-75/508-11.

326 VP 1974-75/821.

327 *Parliamentary Presiding Officers Act* 1965.

328 See Appendix 5.

329 S.O.s 38, 39.

330 VP 1926-28/354.

At 8.12 p.m. Clerk McGregor's death was announced by the Speaker and as a mark of respect the House immediately adjourned.<sup>331</sup>

In 1937 Frank Clifton Green was appointed Clerk and served for a record period of 18 years.

Without exception, an officer 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.

In 1976, Clerk N. J. Parkes, son of a previous Clerk, who had given 42 years service to the Parliament, was succeeded by Clerk Pettifer who had served the House for 37 years at that stage. In common with officers of the Public Service the Clerk cannot serve beyond the age of 65 years.

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<sup>332</sup> 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 2 distinct and separate Houses. In some bicameral Parliaments either the Clerk of the Upper House or the senior Clerk of the 2 Houses carries, in addition to his own title, that of Clerk of the Parliaments.

The historical distinction between Parliament and Government is of particular importance to the office of Clerk of the House. The Clerk and his officers are, above all, servants of the House and must exhibit at all times complete impartiality in dealing with all sections of the House. Distinctively, as permanent officers of the House, their role transcends the contemporary and the temporary. Marsden describes the important distinction which characterises the peculiar and traditional role of the parliamentary officer in these terms:

The staff which serve the Commons within the Palace of Westminster . . . 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.<sup>333</sup>

These principles apply in Australia although in practice the Clerk of the House of Representatives and his officers are appointed by the Governor-General on the recommendation of the Speaker.<sup>334</sup> While in effect they are employed under the Public Service Act, the Clerk and his officers come under the control of the Speaker of the House of Representatives not the Public Service Board<sup>335</sup> in order that they may carry out their

331 VP 1926-28/359.

332 See J 1908/2. 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.

333 Philip Marsden, *The Officers of the Commons 1363-1978*, 2nd ed, HMSO, London, 1979, p. 15.

334 *Public Service Act* 1922, ss. 54, 9.

335 *Public Service Act* 1922, s. 9.

duties as independent officers of the Parliament free from Executive control. Nevertheless an Executive Council Minute appointing or promoting a parliamentary officer must be formally endorsed by a Minister before the Governor-General signs it. The Clerk's appointment is not subject to the approval of the House although the House is always advised of the appointment by the Speaker.

While the House is in session 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 bob-wig and black gown, white evening bow tie with a stiff evening collar and barrister's bands. The wig and gown have always been worn by Clerks at the Table except for 2 periods, between 1911-1913 and 1914-1917, 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 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 Permanent Head he administers the Department of the House of Representatives under the Speaker in the same way as the permanent head of an executive department administers his Department under a Minister. However, the exercise of this responsibility is qualitatively different to the exercise of the normal administrative functions of a permanent head because the administrative decisions he makes are frequently subject to the scrutiny of all Members of the House.

The Clerk administers a Department of more than 150 staff members and is responsible for providing the best possible service to the Speaker and the House including the Prime Minister, Ministers, party leaders, 'shadow' Ministers and private Members. The management powers of the Clerk cover the usual range of departmental functions including appointments, dismissals, attendance, hours of duty, overtime, leave, salaries, transport and the creation, classification and abolition of offices.

Apart from his administrative responsibilities, the Clerk is responsible for procedural matters both inside and outside the Chamber.<sup>336</sup> In this capacity he has numerous responsibilities laid down in the standing orders which include the recording of the Votes and Proceedings of the House (official record), the safe keeping of all records and papers of the House, the printing and distribution of bills and the Notice Papers, signing all Addresses agreed to by the House, votes of thanks and orders of the House.

The Clerk also performs important functions in the legislative process. As each bill is passed by the House before it is sent or returned to the Senate he 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 Royal Assent.

When the House proceeds to elect a new Speaker the Clerk assumes the role of chairman of the House calling on the proposer and seconder and putting such questions as are necessary until the Speaker's Chair is filled (*see p. 199*).

The Clerk and his staff must also assist the smooth running of the Chamber by the provision of attendant services, documentation and advice. To do this adequately the Clerk must have extensive knowledge and experience in the interpretation of the

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<sup>336</sup> The Clerk's role in these matters is discussed in detail throughout the text.

standing orders, in parliamentary practice and precedent, and in the requirements of the Constitution insofar as they affect the role of the House and its relationship with the Senate. He is also required to be well informed on the practice of the United Kingdom House of Commons from which much of House of Representatives practice is derived.<sup>337</sup>

The Clerk's advice is offered to the Chair, to Governments, Oppositions, individual Members of the House, the Committee of Privileges, the Standing Orders Committee and other committees. While sitting at the Table he must always keep an ear to the debate as he may be called upon to give immediate advice to the Chair and others in relation to a procedural matter suddenly arising.

Each day before the House meets the Clerk needs to examine the business for the day's sitting, consider any difficulties which may arise and, prior to the meeting of the House, brief the Speaker on any unusual aspects of the day's business. The Clerk and his officers also maintain a close relationship with executive departments and provide advice or guidance in relation to proposed, current or past House business affecting departments.

## **The Department of the Clerk**

The Department of the Clerk has an important role in the parliamentary and government process. Once a bill (or motion) is introduced into the House it is in the possession of the House, not the government, and may not be withdrawn without the permission of the House. Officers of the House bear the responsibility for the presentation and recording of business as it progresses and finally for the enactment of legislative proposals originating in the House. The House's officers are also the custodians of the records of the House which form an important part of the archives of the nation, and co-ordinate, with the Senate officers, the publication of parliamentary documents. The Department has another responsibility, less tangible but not less important: That is, to preserve the philosophy of Parliament in the modern state and preserve the continuing development of the efficiency and methods of operation of the House for the purpose of securing more efficient government.

### *Deputy Clerk*

The Deputy Clerk is the second most senior officer of the House of Representatives. In the absence of the Clerk the Deputy Clerk performs his duties.<sup>338</sup> During any vacancy in the office of Clerk, the Deputy Clerk exercises all his powers and performs all his functions and duties.<sup>339</sup> The Clerk and Deputy Clerk are relieved when necessary in their Chamber duties by the First Clerk Assistant, the Clerk Assistant and, if necessary, by a Senior Parliamentary Officer.

### *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 with 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 his functions today. Over the centuries the Serjeant-at-Arms as bearer of the Mace (*see* p. 213) became identified with protecting the privileges of the Commons, the Speaker being the guardian, the Serjeant-at-Arms the enforcer.

<sup>337</sup> Constitution, s. 49; S.O. 1.

<sup>338</sup> S.O. 23.

<sup>339</sup> S.O. 24.

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 his right shoulder, the Serjeant-at-Arms precedes the Speaker into the Chamber and announces him to Members. Either the Serjeant-at-Arms or his Deputy are in attendance in the Chamber at all times. His many duties include the recording of Members' attendance and delivering messages to the Senate. On the Speaker's instruction, he escorts suspended Members from the Chamber.<sup>340</sup> He 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. He may take into custody any stranger who misconducts himself in the gallery or House.<sup>341</sup> With the Usher of the Black Rod, and under the direction of the Presiding Officers, he has a responsibility for the maintenance of order throughout Parliament House. In this task he works in co-operation with Parliament's security officers and a large group of House of Representatives attendants over which he exercises an administrative supervision.

On ceremonial occasions the Serjeant-at-Arms wears the traditional Court dress, knee breeches, buckled shoes, lace jabot and cuffs, gloves, and sword and carries a cocked hat.

### *Offices of the Department*

The main function of the Department of the House of Representatives is to provide the administrative machinery for the efficient conduct of the business of the House and its committees. For organisational purposes the Department is divided into 4 main offices directly serving the Chamber and Members, namely, the Table Office, the Procedure Office, the Serjeant-at-Arms Office and the Committee Office. Other offices provide administrative and support services.

In summary, the principal functions of the Department include:

- Chamber and office functions in respect of bills, amendments, tariff proposals, Crown proposals for expenditure and recommendations for appropriations, grievance and general business procedures of the House, opening of new Parliament and session, swearing-in of Members, and arrangements for parliamentary proceedings generally, including ceremonial and parliamentary broadcasting;
- provision of advice to the Speaker, Chairman of Committees, Ministers and individual Members on parliamentary practice and procedure;
- servicing of committees of the House and joint committees falling within the Department's secretariat responsibilities;
- preparation of the daily Notice Paper, program of business, and the official record of proceedings of the House (Votes and Proceedings);
- maintenance of House records, indexing of Speaker's rulings, revision of standing orders;
- editing and recording of questions on notice, receipt and distribution of answers;
- servicing of Members' requirements, for example, payment of allowances, travel arrangements, secretarial services in Canberra;
- administration of accommodation and office services in House areas of the Parliament building;
- documentation, research and development of parliamentary practices and procedures, and
- inter-parliamentary relations, including liaison, secretariat and administrative arrangements for parliamentary delegations and conferences.

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<sup>340</sup> S.O. 306.

<sup>341</sup> S.O. 310.