

## *Routine of business and the sitting day*

This chapter outlines the proceedings on a normal sitting day, from Prayers to adjournment, under the ordinary routine of business provided for in standing order 101. It also details the many interventions which can occur under specific standing orders and by way of tactical moves by the Opposition. The chapter also encompasses the division procedures and quorum provisions which often play a significant part in the daily routine of the House.

### SITTING DAY

#### Definition

A **sitting** of the House is the period from the meeting of the House until the time it adjourns by its own resolution or pursuant to standing orders. A sitting commences when the Speaker takes the Chair. If there is no quorum present at that time and the Speaker is compelled to adjourn the House in accordance with standing order 41, a sitting of the House has taken place in the terms of the definition. The only occasion of such a sitting was on 19 September 1913.<sup>1</sup>

The term **sitting day** is not defined by the standing orders, although reference is made to 'the next sitting day' in a number of standing orders.<sup>2</sup> However, a sitting day is generally defined as a day on which the House commences a sitting following an adjournment, and continues until a motion for its adjournment is carried. Thus a sitting day may continue for one or more calendar days. The term has special legal significance because the Acts Interpretation Act and other Acts contain specific requirements in respect of the tabling of regulations, ordinances, and so on, within a specified number of sitting days of them being made. These Acts also state the number of sitting days within which:

- a notice of motion must be given for the purpose of disallowing a regulation, and so on, and
- such a notice of motion must be disposed of by the House.<sup>3</sup>

Many statutes also require a Minister to table a report within a certain number of sitting days of its receipt.<sup>4</sup>

Where two sittings of the House occur on one day 'this could only be regarded as one sitting day; there would be two sittings but one could hardly say that there were two sitting days'.<sup>5</sup>

Where a sitting commences, for example, on a Thursday and extends for a period beyond midnight (possibly only for a short period) and a new sitting does not commence on the Friday, the simple fact of continuation beyond midnight would not constitute an additional sitting day.

<sup>1</sup> VP 1913/63.

<sup>2</sup> S.O.s 15,41,44,45,46,48A and 190. The next sitting day is as laid down in S.O. 40 or as determined by resolution of the House.

<sup>3</sup> For full details see Ch. on 'Legislation'.

<sup>4</sup> See Ch. on 'Papers and documents'.

<sup>5</sup> Advice of Attorney-General's Department, dated 24 April 1970.

Where one sitting continues over more than two or more full days, for example, the sitting that commenced on Wednesday, 6 December 1933 and continued on the Thursday and Friday without adjournment, there would be only one sitting day. Thus, a sitting day means a day on which the House meets to begin a sitting and not any day on which the House sits.

It is important to note in this context that as a Notice Paper is only issued for each new sitting and as a notice of motion only becomes effective when it appears on the Notice Paper, a notice of motion to disallow a regulation, for example, which is given on the first day of a three day sitting, would not be effective until the next Notice Paper is issued three days hence.

### **Two sittings commencing on the one day**

On two occasions the House has commenced and concluded two sittings within the one day. The first occasion was on 11 April 1935 when leave was refused at the first sitting to allow a motion to be moved to grant leave of absence to all Members. Notice of such a motion was then given and following the alteration of the day of next meeting the House was adjourned until 5 p.m. A new Notice Paper was issued and, at the next sitting, the motion was moved, pursuant to notice.<sup>6</sup> This motion can now be moved without notice.

On 2 August 1942 the House met at 3 p.m. and agreed to a motion of condolence in respect of the death of the Duke of Kent. Following the alteration of the day of next meeting, the House adjourned as a mark of respect until 7.30 p.m.<sup>7</sup> Current practice in such circumstances would be for the House to adjourn until the next sitting day or for the sitting to be suspended until a stated time.

There have been occasions when the House has adjourned after a lengthy sitting, only to meet again shortly afterwards but in a new sitting day. For example, the House met at 11.50 a.m. on Monday, 24 May 1965, and the sitting continued until 4.32 a.m. on Wednesday, 26 May. The next sitting commenced at 5 a.m. that day. The purpose of the new sitting was to enable new business to be taken.<sup>8</sup>

### **Length of sittings**

The shortest sitting of the House was on 14 March 1928 when the House adjourned one minute after it met to enable Members to attend functions in honour of the eminent aviator, Captain Hinkler.<sup>9</sup>

The longest sitting of the House was from 11 a.m. on Friday, 18 January 1918 until 6.22 p.m. on Friday, 25 January 1918, a period of 175 hours 22 minutes. This period, however, included a suspension of the sitting from 3.09 a.m. on 19 January until 3 p.m. on 25 January.<sup>10</sup> In a sitting of the House that lasted from 2.30 p.m. on Thursday, 16 November 1905 until 12.05 p.m. on Monday, 20 November 1905 (the sitting was suspended over the Sunday) the House sat for a continuous period of 57 hours 30 minutes prior to the suspension at midnight on the Saturday.<sup>11</sup>

On the occasion of one lengthy sitting Hansard staff were discharged during the adjournment debate and Members forwarded precis of their remarks for inclusion in Hansard.<sup>12</sup>

6 VP 1934-37/253-7; NP 38(11.4.35); H.R. Deb. (11.4.35)1270-1.

7 VP 1940-43/377,379.

8 VP 1964-66/325-39; NP 91(26.5.65); *see also* VP 1937/49-55; H.R. Deb. (28-29.6.37)637; H.R. Deb. (29.6.37)674; NP 7(29.6.37).

9 VP 1926-28/509; H.R. Deb. (14.3.28)3791.

10 VP 1917-19/169-72.

11 VP 1905/167-70.

12 H.R. Deb. (6-8.12.33)5898.

## **Secret sitting and meetings**

During war time the House has conducted a portion of a sitting in secret and has also held secret meetings and joint secret meetings with the Senate. These meetings are not regarded as sittings of the House. For the joint meetings a regulation under the National Security Act was gazetted setting out the conditions of secrecy of any such meetings convened by a specific resolution agreed to by both Houses.<sup>13</sup>

While the estimates for the Department of Defence were being discussed in the Committee of Supply on the morning of 13 December 1940, notice was taken of the presence of strangers who were then ordered to withdraw. The estimates were then discussed in secret and the recording of debates suspended from 12.32 a.m. until 3.30 a.m.<sup>14</sup> On two occasions in 1941 strangers were ordered to withdraw and the sitting suspended so that the House could meet in secret.<sup>15</sup> On such occasions Senators present were not regarded as strangers.

Joint secret meetings were held with the Senate on 20 February, 3 and 4 September and 8 October 1942. The meetings were held in the House of Representatives Chamber, the first during the suspension of a sitting, the others following the adjournment of the House.<sup>16</sup> Certain departmental officers were permitted to be present and the Serjeant-at-Arms remained in the Chamber. During World War I a secret meeting took place informally in the Senate Club Room where Members and Senators were asked to attend by the Prime Minister.

## **Suspension of sittings**

A sitting is suspended by the Speaker (or Chairman) leaving the Chair, usually after a direct or indirect declaration of the will of the House (or committee). A suspension of a sitting can occur pursuant to standing orders, pursuant to a resolution of the House, or in accordance with accepted practice. In recent years approximately 16 per cent of the total sitting time of the House has been taken up with suspensions of sitting, most of that time being for meal breaks.

### *Pursuant to standing orders*

The standing orders make provision for the suspension of a sitting in the following circumstances.

#### **ELECTION OF SPEAKER AND CHAIRMAN OF COMMITTEES**

If a ballot or special ballot for the election of Speaker is inconclusive because of an equality of votes and the equality continues, the sitting is suspended for 30 minutes.<sup>17</sup> This has never occurred. Once the Speaker has taken the Chair on being elected and has been congratulated, the Prime Minister informs the House of the time that the Governor-General will receive the Speaker and the sitting is suspended until that time.<sup>18</sup> The sitting was not formally suspended following the election of Speaker Rosevear in 1946 as the Governor-General received the new Speaker immediately.<sup>19</sup>

13 National Security (Supplementary) Regulations, SR 78 of 1942.

14 VP 1940-43/72; H.R. Deb. (12-13.12.40)1054.

15 VP 1940-43/123,166.

16 VP 1940-43/275,393,441. The meeting of 4 September 1942 was a continuation of that of 3 September.

17 S.O. 12(f).

18 S.O. 12(o); VP 1978-80/6; and see Ch. on 'The parliamentary calendar'.

19 VP 1946-48/5.

If, during a special ballot for the appointment of the Chairman of Committees, there is a continued equality of votes for more than two Members and the special ballot is inconclusive, the sitting is suspended for 30 minutes unless a name is withdrawn.<sup>20</sup>

#### MEETING OF A NEW PARLIAMENT

After the Speaker has presented himself or herself to the Governor-General and reported that fact to the House, the standing orders provide that a Minister shall then inform the House of the time that the Governor-General will give the 'Opening Speech' and the House **may** then suspend its sitting until that time.<sup>21</sup> The contemporary practice of the House is that there is no suspension of the sitting at this point, as Members are summoned to hear the 'Opening Speech' shortly after the presentation.

#### GRAVE DISORDER

In the case of grave disorder arising in the House, the Speaker may adjourn the House without question put, or suspend the sitting until a time to be named.<sup>22</sup> Sittings have been suspended in these circumstances for a period as short as 15 minutes<sup>23</sup>, until the next day<sup>24</sup>, and until the ringing of the bells.<sup>25</sup> On one occasion the Mace, normally left in the Chamber during the suspension of a sitting, was removed by the Serjeant-at-Arms at the direction of the Speaker.<sup>26</sup> On two occasions sittings have been suspended for short periods following grave disorder in the galleries.<sup>27</sup>

#### WANT OF QUORUM

Standing orders 44, 45 and 46 provide that, if it has been established that a quorum of Members is not present but the Speaker is satisfied that there is likely to be quorum within a reasonable time, the Speaker shall announce that the Chair will be taken at a stated time. The sitting is then suspended until the Speaker resumes the Chair. This had happened on five occasions up to the end of 1988.<sup>28</sup>

#### CONFERENCE WITH SENATE

The standing orders of both the House and the Senate provide for the holding of conferences between the two Houses. The standing orders provide that, during any conference with the Senate, the business of the House shall be suspended.<sup>29</sup> However, on the two occasions when conferences have been held the relevant standing order was suspended and the House continued to meet while the conference was taking place.<sup>30</sup>

#### *Pursuant to resolution of the House*

The House has agreed to a motion, moved pursuant to notice, to suspend the next day's sitting for a stated period.<sup>31</sup>

The sessional orders relating to the meeting of legislation committees adopted in 1978 required that, unless otherwise ordered, legislation committees would meet during a suspension of the sitting of the House arranged for that purpose.<sup>32</sup> The

20 S.O. 13(k)(2).

21 S.O. 2(g); and see Ch. on 'The parliamentary calendar'.

22 S.O. 308.

23 VP 1917-19/453.

24 VP 1954-55/184.

25 VP 1970-72/76.

26 H.R. Deb. (3.5.55)362; VP 1954-55/184.

27 VP 1970-72/209,691-2.

28 VP 1980-83/1102; VP 1983-84/671; VP 1985-87/699; VP 1987-89/296, 880.

29 S.O. 376.

30 See Ch. on 'Disagreements between the Houses'.

31 VP 1909/135.

32 VP 1978-80/323.

only occasion that a sitting was suspended for this purpose was on 27 September 1978. On all other occasions the committees were authorised to meet during the sittings of the House.

### *Practice of the House*

The current practice is that, in cases not provided for by resolution of the House or by the standing orders, sittings are suspended only with the concurrence of the House. The only exceptions have been when the Chair has suspended a sitting for the duration of power failures or because of a fault in the House monitoring system.<sup>33</sup>

On three occasions the action of the Chair in suspending a sitting, without ascertaining the wish of Members, has been questioned. On two of these occasions, a motion critical of the Chair's action was rejected by the House. In 1912, the Chair acknowledged responsibility for curtailing the normal luncheon suspension by 15 minutes. A motion that the action of the Chair was a breach of the privileges of Members was negatived.<sup>34</sup> In 1917, the action of the Speaker in suspending a sitting without calling on business on the Notice Paper and without ascertaining the wish of the House was questioned. The Speaker replied that it was usual for the Speaker to suspend the sitting of the House temporarily at any time when requested to do so by the Minister in charge of business. He also stated that the Speaker might leave the Chair at any time and this was often done without any vote of the House.<sup>35</sup> On 17 December 1930 the Speaker, at the suggestion of the Acting Prime Minister, suspended the sitting at 3.38 p.m. The Leader of the Opposition objected. On the resumption of the sitting the Speaker referred to doubts that had been expressed as to his authority to suspend the sitting and ruled that, in vacating the Chair when the House had no business before it and was awaiting a message from the Senate, he had followed the practice of every previous Speaker. The ruling was subject to a motion of dissent which was later debated and negatived.<sup>36</sup>

### MEAL BREAKS

It has been common practice of the House to suspend a sitting for lunch and dinner. In recent years the times for such suspensions have been from 12.45 p.m. to 2 p.m. for lunch and 6.30 p.m. to 8 p.m. for dinner, although since 1984 the House has continued to sit through lunch time on Thursdays. The time currently occupied by meal breaks as a percentage of the total sitting time approximates 16 per cent. In view of this apparent waste of time, it has been suggested that, as a regular practice, the House should sit continuously from the time of meeting to the adjournment so as to increase the actual sitting time of the House. Ideally any such arrangement would need some understanding between the parties that divisions and quorums would not be called at times when Members were taking meal breaks.

A sitting may be suspended for a meal break slightly earlier than the customary hour if, for example, a Member would not have time to develop a speech or if the House is between items of business. On one such occasion in 1909 the Speaker informed the House that:

The usual course has been for the Chair to ascertain the convenience of honourable members . . . it would be well, at all times, to see that the House is in favour of the course being taken. I wish to assure honourable members that at no time should I desire to take on myself greater responsibilities than those I already carry.<sup>37</sup>

33 VP 1976-77/598; H.R. Deb. (17.2.77)245; VP 1985-87/1258; H.R. Deb. (22.10.86) 2538, 2561; H.R. Deb. (25.3.85) 849.

34 VP 1912/227; H.R. Deb. (13.11.12)5500-8.

35 H.R. Deb. (12.7.17)133-4.

36 VP 1929-31/477,492; H.R. Deb. (17.12.30)1639-40; H.R. Deb. (17.3.31)276-81.

37 H.R. Deb. (30.11.09)6562.

On another occasion, the Speaker announced that, with the concurrence of the House, he would suspend for dinner early, but an objection was raised. The Speaker then called upon the Clerk to read the next order of the day and the sitting was suspended for dinner at the usual hour.<sup>38</sup>

The suspension for a meal is often a little after the customary hour if, for example, a Member's speaking time is about to conclude or if a division is in progress.<sup>39</sup>

Suspensions for meals have been extended with the concurrence of the House. An extension of the dinner suspension having been suggested in 1907, the Speaker stated 'I can only act in this matter by desire of the House, which must be practically unanimous'.<sup>40</sup> During a period of long sittings the Speaker, with the consent of Members, has lengthened meal suspensions to give relief to Hansard reporters.<sup>41</sup> On 21 May 1914 a Member raised, as a matter of privilege, the fact that before the Speaker had left the Chair at 1 p.m. he had announced that the House would resume at 2.15 p.m. and that word was later sent that the sitting would resume at 2.30 p.m. The Speaker replied that he had inadvertently announced the sitting would be resumed at 2.15 p.m. and had subsequently been reminded that the custom during all day sittings was to meet after lunch at 2.30 p.m. For the convenience of Members he had instructed officers to inform Members accordingly.<sup>42</sup>

On 17 March 1932 the Speaker announced that, as the usual hour for the dinner suspension had arrived, he had no option but to leave the Chair unless the House decided otherwise. The Prime Minister stated that as it was possible there would not be a quorum at 8 p.m. it might be better to continue the sitting. The sitting continued, the Speaker having ascertained that it was the wish of the House to do so.<sup>43</sup>

#### OTHER OCCASIONS

Sittings of the House have been suspended on other occasions for a variety of reasons. On two occasions the House has suspended its sitting over Sunday<sup>44</sup> and on another a sitting was suspended for almost a week as that was the wish of the House.<sup>45</sup> Sittings are often suspended to allow Members to attend functions. These suspensions are not necessarily recorded in the Votes and Proceedings.<sup>46</sup>

It is the regular practice of the House to suspend the sitting to allow Members to attend a garden party on the opening day of a Parliament<sup>47</sup>, and to enable Members to accompany the Speaker to present the Address in Reply to the Governor-General.<sup>48</sup> It is also the practice that, if the House does not adjourn following a motion of condolence on the death of a sitting Member or a Minister, the sitting is suspended until the time the House would normally meet after the next meal break.<sup>49</sup>

The Speaker has also suspended a sitting for the following reasons:

- because of power failures in Parliament House<sup>50</sup>;
- because of a fault in the House monitoring system<sup>51</sup>;
- to avoid the possibility of the House not being able to meet next day through lack of a quorum<sup>52</sup>;

38 VP 1932-34/559; H.R. Deb. (8.3.33)55-7.

39 H.R. Deb. (28.3.73)809; H.R. Deb. (11.9.80)1181.

40 H.R. Deb. (4.7.07)113.

41 H.R. Deb. (20.9.10)3383.

42 H.R. Deb. (21.5.14)1244.

43 H.R. Deb. (17.3.32)1286.

44 VP 1905/168; H.R. Deb. (16.11.05)5425; VP 1925/97; H.R. Deb. (28-29.8.25)1964.

45 VP 1917-19/171; H.R. Deb. (18.1.18)3295.

46 *But see* VP 1973-74/458.

47 VP 1978-80/9.

48 VP 1978-80/87.

49 VP 1977/235; VP 1980-83/78.

50 VP 1976-77/598; H.R. Deb. (17.2.77)245; VP 1985-87/1258; H.R. Deb. (22.10.86) 2538, 2561.

51 H.R. Deb. (25.3.85) 849.

52 VP 1914-17/417; H.R. Deb. (12.11.15)7661.

- as a mark of respect to a deceased Senator<sup>53</sup>;
- because of the illness of a Member in the House<sup>54</sup>;
- because the House was awaiting a message from the Senate<sup>55</sup>;
- to enable Members to consider statements made by persons judged to be guilty of a breach of privilege<sup>56</sup>;
- to enable the House to hold secret meetings<sup>57</sup>;
- to enable secret meetings to be held jointly with the Senate<sup>58</sup>;
- to allow Ministers to attend a meeting of the Australian Advisory War Council<sup>59</sup>;
- to allow Members to watch or listen to the running of the Melbourne Cup<sup>60</sup>;
- to allow Members to attend such ceremonies as Remembrance Day<sup>61</sup>;
- because of the unveiling of a monument by the Duke of Edinburgh<sup>62</sup>;
- because of the swearing in of a Governor-General<sup>63</sup>, and
- because of the inauguration of a wireless telephone service between Australia and Great Britain.<sup>64</sup>

During all-night sittings of the House the sitting has been suspended for supper<sup>65</sup> and at breakfast time.<sup>66</sup> Sittings have also been suspended from the early hours of the morning until a later hour that morning<sup>67</sup> or until the afternoon.<sup>68</sup>

On 11 November 1975, the House having agreed to a motion expressing its want of confidence in the Prime Minister (Mr Fraser) and requesting the Speaker to forthwith advise the Governor-General to call the Member for Werriwa (Mr Whitlam) to form a Government, the Speaker suspended the sitting at 3.15 p.m. The sitting did not resume as both Houses were dissolved by the Governor-General.<sup>69</sup>

## MEETING OF THE HOUSE

The standing orders<sup>70</sup>, often amended by sessional order, fix the times at which the House shall meet for the despatch of business, unless otherwise ordered. The arrangements adopted with effect from September 1987 provided that, in a two week sitting cycle, the House would meet as follows:

- in the first sitting week, on—
  - Tuesday, at 2 p.m.
  - Wednesday, at 10 a.m.
  - Thursday, at 10 a.m.
- in the second sitting week, on—
  - Monday, at 2 p.m.
  - Tuesday, at 2 p.m.
  - Wednesday, at 10 a.m.
  - Thursday, at 10 a.m.

It is not uncommon for the days and hours of meeting to be changed by the House, especially towards the end of sitting periods. At the rising of the House at the conclusion of each sitting, the Chair states the day and hour of the next meeting.

53 VP 1976-77/391.

54 H.R. Deb. (8.6.55)1513.

55 VP 1968-69/317; VP 1987-89/1011.

56 VP 1954-55/269; H.R. Deb. (10.6.55)1627.

57 VP 1940-43/123.

58 VP 1940-43/275.

59 VP 1940-43/41; H.R. Deb. (5.12.40)476-7.

60 H.R. Deb. (6.11.73)2808.

61 VP 1926-28/407.

62 VP 1973-74/52.

63 VP 1974-75/25-6.

64 VP 1929-31/144.

65 H.R. Deb. (11-12.2.43)615.

66 H.R. Deb. (16.11.05)5386.

67 VP 1937-40/128.

68 VP 1956-57/359.

69 VP 1974-75/1125-7.

70 S.O. 40; and see Ch. on 'The parliamentary calendar'.

**Preliminaries to meeting**

Except for the first sitting day of a session a Notice Paper setting out the order of business to be followed is prepared under the authority of the Clerk of the House and issued prior to each sitting of the House.<sup>71</sup> The order of government business as it appears on the Notice Paper is determined by the Leader of the House on the evening prior to each issue of the Notice Paper, and the Table Office is informed accordingly.

The Department of the House of Representatives also issues a Daily Program under the authority of the Clerk of the House. The program is compiled by the Table Office in collaboration with the Leader of the House, the Manager of Opposition Business, Ministers, whips and other Members who have business to bring forward. While the Notice Paper lists all outstanding business before the House, including questions on notice, the Daily Program shows only those items of business, including new business, which the House is expected to deal with on that particular day.<sup>72</sup>

Unlike the Notice Paper the Daily Program is not a formal document and it does not fix the order of business or limit the scope of business. It serves as a useful guide to Ministers and Members in planning their day's work in relation to the business of the House (*see* p. 287 for a copy of the Daily Program issued on 29 August 1988).

**Meetings at hour other than pursuant to adjournment**

When a delay in the next meeting is foreseen, the House alters the hour of meeting by resolution.<sup>73</sup> However, the House has sometimes met at a time other than that specified pursuant to adjournment, for the following reasons:

- to enable the presentation of an Address to the Prince of Wales<sup>74</sup>;
- to enable Members to attend a reception for a visiting dignitary<sup>75</sup>;
- because of the running of the Melbourne Cup<sup>76</sup>;
- because Members have been delayed by fog closing Canberra Airport<sup>77</sup>;
- because of a malfunction of the bells which are customarily rung for five minutes before the time scheduled for the House to meet<sup>78</sup>, and
- because Members have been delayed by a Commonwealth Parliamentary Association meeting.<sup>79</sup>

A number of delays in the meeting of the House which have not been authorised by resolution of the House have attracted the criticism of individual Members. On Melbourne Cup day 1950, a Member questioned the Deputy Speaker as to why the House had not met at the appointed time (it had met 45 minutes late), and was critical of the procedure by which an informal arrangement was made between the Government and the Opposition to defer the meeting and of the sense of values demonstrated by such an arrangement. The Prime Minister and the Leader of the Opposition confirmed that there was such an agreement and accepted responsibility for the arrangement. The Leader of the Opposition stated that he had never known the Speaker to refuse a request from a Prime Minister to defer the ringing of the bells for some reason deemed to be sufficient. The Deputy Speaker had been

71 For a full description of the Notice Paper *see* Ch. on 'Papers and documents'.

72 The Daily Program was first produced in 1950 and is also commonly known as the 'Blue Program' because of its distinctive colour.

73 VP 1976-77/44; H.R. Deb. (21.10.76)2094-5.

74 VP 1920-21/186-7.

75 VP 1977/321; H.R. Deb. (12.10.77)1887.

76 VP 1987/169.

77 VP 1964-66/323-5; H.R. Deb. (24.5.63)1893.

78 VP 1958/12-13.

79 VP 1956-57/322-3.



consulted and had met the wishes of the Government but was of the opinion 'that it would have been far better had the House decided last Thursday to alter the hour of meeting to-day'.<sup>80</sup>

On the morning of 24 May 1965, Canberra Airport was closed owing to fog which prevented a significant number of Members from reaching the House by the specified time of meeting. The House met 80 minutes late, and the Speaker was asked on what authority the House had not been called together at the appointed time. The Speaker replied that 'The arrangement was made on the basis of common sense, in accordance with practice, and to meet the convenience of honourable members'.<sup>81</sup>

On 12 October 1977 the Acting Speaker was asked under whose authority the meeting of the House had been deferred for 40 minutes. He was also asked if he would have the courtesy to inform Members and the public of the position if a similar situation arose in the future. The Acting Speaker replied that certain circumstances arose in relation to a matter which, in his opinion, was important not only to Parliament but also to Australia. In these circumstances the ringing of the bells was delayed.<sup>82</sup> The occasion was a parliamentary luncheon for a visiting dignitary.

The House has, by means of a special adjournment resolution, given the Speaker or, if the Speaker is unavailable, the Chairman of Committees, discretionary power to fix an alternative day or hour of meeting.<sup>83</sup> In accordance with this power, but at the request of the Government, the Speaker has delayed meetings of the House to accommodate a parliamentary luncheon for a visiting dignitary<sup>84</sup> and to enable Members to watch or listen to the running of the Melbourne Cup.<sup>85</sup> In the first instance letters advising Members of the change were despatched a week prior to the meeting. On the second occasion the Government requested, only a few hours prior to the set time, that the meeting be delayed. The Speaker, having received the agreement of the Leader of the Opposition to the alteration, despatched letters to Members at Parliament House informing them of the later meeting time.

On another occasion, the House having adjourned until a date and hour to be fixed by the Speaker and Members having been informed of the date and hour, the Speaker, at the request of the Prime Minister, delayed the hour of meeting to facilitate a farewell program for the Duke and Duchess of Kent and informed Members accordingly by telegram. A notice of the change was published in the *Gazette*.<sup>86</sup>

### **Meeting when House has not adjourned the previous sitting**

On the evening of 16 August 1923, the Government having been twice defeated on the motion 'That the House do now adjourn', the Leader of the Opposition moved 'That Mr Speaker do now leave the Chair'. During the division on that question the Speaker, in reply to a question as to when he would resume the Chair if he left it, replied that he would resume at 11 a.m. the next day. The motion was agreed to and the Speaker left the Chair.<sup>87</sup> The House met at 11 a.m. the next day, and a Notice Paper had been issued. After Prayers the Leader of the Opposition contended that the proceedings were irregular as the House had not adjourned the previous evening and the sitting should have resumed from where it had left off.

80 H.R. Deb. (7.11.50)1965,2016-20.

81 H.R. Deb. (24.5.65)1893.

82 H.R. Deb. (12.10.77)1887.

83 VP 1978-80/732.

84 VP 1978-80/746-7.

85 VP 1978-80/499,511.

86 *Gazette* 69(7.8.69)4789.

87 VP 1923-24/156-7; H.R. Deb. (16.8.23)2938-40.

The Speaker ruled that, it being the day fixed by sessional order for the meeting of the House, he had taken the Chair according to the terms of the standing order which provided that 'The Chair shall be taken by the Speaker at the time appointed on every day fixed for the meeting of the House'.

## PRAYERS

Upon taking the Chair each day, and a quorum of Members being present (*see* p. 302), the Speaker reads the following Prayers:

Almighty God, we humbly beseech Thee to vouchsafe Thy blessing upon this Parliament. Direct and prosper our deliberations to the advancement of Thy glory, and the true welfare of the people of Australia.

Our Father, which art in Heaven: Hallowed be Thy Name. Thy Kingdom come. Thy will be done in earth, as it is in Heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive them that trespass against us. And lead us not into temptation; but deliver us from evil: For Thine is the kingdom, and the power, and the glory, for ever and ever. Amen.<sup>88</sup>

The Prayers have not been read at the second sitting on a day when two sittings have been held<sup>89</sup> or when the Chair has been resumed on another day following a suspension of a sitting.<sup>90</sup>

On 7 June 1901 the House agreed to a motion 'That the Standing Orders should provide that, upon Mr Speaker taking the Chair, he shall read a prayer' which was subsequently acted upon. An amendment providing for the appointment of a chaplain for the purpose was withdrawn, as it was agreed that the Speaker was the most appropriate person to read Prayers in the House.<sup>91</sup> The standing order was amended in 1918 when the initial Prayer or preface was amended and an additional Prayer was added before the Lord's Prayer for the duration of the war.<sup>92</sup>

In its report of 21 March 1972 the Standing Orders Committee considered a submission from a Member which suggested a different form of Prayer with which to open each day's proceedings and that Prayers once a week would suffice. The committee agreed that there should be no change either in the frequency of offering Prayers or in their content.<sup>93</sup>

## ROUTINE OF BUSINESS

Following the meeting of the House and the reading of Prayers the House proceeds each day to its ordinary routine of business as set down in standing order 101, as amended from time to time by sessional orders.<sup>94</sup> The Daily Program lists the items of business in accordance with standing order 101 together with any other matters that are expected to arise (*see* p. 287). Any expected variations from the order of business as shown on the Notice Paper are listed in sequence, together with any procedural motions necessary to enable these variations to be made.

88 S.O. 43. At the direction of Speaker Makin the Votes and Proceedings entry was altered from 'read Prayers' to 'offered Prayers' in 1930, VP 1929-31/109, but reverted to the former style at the direction of Speaker Mackay in 1932, VP 1932-34/11.

89 VP 1934-37/257; VP 1940-43/379.

90 VP 1905/169; H.R. Deb. (16.11.05)5425; *but see* case of 17 August 1923 when Speaker Watt read Prayers even though the House had not adjourned the previous evening, VP 1923-24/159; H.R. Deb. (17.8.23)2964-5.

91 VP 1901-02/41,59; H.R. Deb. (7.6.01)815-21.

92 VP 1917-19/241.

93 *Standing Orders Committee Report*, PP 20(1972)13.

94 If the House meets for some special purpose the ordinary routine of business may not be commenced. *See* VP 1920-21/187; H.R. Deb. (27.5.20)2452.

## Daily Program

HOUSE OF REPRESENTATIVES

This program of proposed business is issued for the general guidance of Members. It is not a formal document and the business listed is subject to change.

Monday - 29 August 1988  
2 p.m.

### Prayers

Mr Hawke (Prime Minister) to announce ministerial arrangements.

Speaker to call on -

Questions without notice

Presentation of papers - Ministers

Ministerial statements, by leave

Speaker to report a message from the Governor-General notifying assent to the Referendum (Machinery Provisions) Amendment Bill (No. 2).

DISCUSSION OF MATTER OF PUBLIC IMPORTANCE - Mr Sinclair (Leader of the National Party of Australia) -

The threat to our federal system and in particular to smaller States by the "simultaneous elections" first proposition in Saturday's referendum.

Requires support of 8 members.

### Government Business

#### ORDERS OF THE DAY

No. 1 - House of Representatives (Quorum) Bill - Resumption of debate on second reading; second reading; committee; adoption of report; third reading, by leave.

No. 2 - Appropriation Bill (No. 1) 1988-89 - Second reading - Budget debate - Resumption of debate.

Debate adjourned.

#### ADJOURNMENT

(A.R. BROWNING)  
Clerk of the House of Representatives

## Ordinary routine

Under sessional orders effective from March 1988, the House proceeds with business in the following order after Prayers<sup>95</sup>:

### Monday and Tuesday

- questions without notice;
- presentation of papers;
- ministerial statements, by leave;
- matter of public importance, and
- notices and orders of the day.

### Wednesday

- notices and orders of the day;
- questions without notice (at 2 p.m.);
- presentation of papers;
- ministerial statements, by leave;
- matter of public importance, and
- notices and orders of the day.

### Thursday

- presentation of petitions;
- presentation and consideration of reports from parliamentary committees and delegations;
- private Members' business (commencing no later than 11 a.m., debate concluding no later than 12.30 p.m.);
- grievance debate;
- Members' statements (at approximately 1.45 p.m.);
- questions without notice (at 2 p.m.);
- presentation of papers;
- ministerial statements, by leave;
- matter of public importance, and
- notices and orders of the day.

## Questions without notice

At 2 p.m., under the arrangements effective from February 1984, the Speaker calls for questions without notice. The length of time the House devotes to question time is controlled by the Government.<sup>96</sup> The Prime Minister or the senior Minister present determines the time for questions to conclude by asking that further questions be placed on the Notice Paper<sup>97</sup>, even if a Member is in the process of asking a question.<sup>98</sup> It has become the established practice for the Government to allow at least 45 minutes each day for questions without notice.<sup>99</sup> After question time has concluded, a Minister may wish:

- to provide information which has come to hand in relation to a question asked earlier<sup>100</sup>;
- to provide additional information in respect of an answer given earlier, or
- to correct an answer given earlier.

It is within the province of the Chair to grant indulgence for this to be done.

Questions without notice, having been called on by the Chair, may not be proceeded with if the Prime Minister immediately asks that they be placed on

95 S.O. 101, as amended by sessional order, VP 1987-89/299.

96 H.R. Deb. (28.10.54)2410.

97 VP 1973-74/69.

98 H.R. Deb. (4.5.60)1333.

99 H.R. Deb. (13.3.73)465-6.

100 H.R. Deb. (31.5.73)2938-9.

notice. This may happen on certain occasions when the time of the House has been taken up by another matter, for example, when debate on a want of confidence or censure motion has been given precedence.<sup>101</sup>

### *Presentation of papers*

The presentation of papers follows question time. Papers may be presented by Ministers, pursuant to the provisions of statute or at their discretion (previously recorded as having been presented 'by command of His Excellency the Governor-General' although since 1983 the distinction between 'command' and 'statute' papers has not been recorded in the Votes and Proceedings), by order of the House, or by the Speaker.<sup>102</sup> New arrangements were introduced in 1988<sup>103</sup> the principal features of which were that:

- by 12 noon each sitting day a schedule of papers to be presented would be made available to the Manager of Opposition Business and circulated to all Members in the Chamber;
- following questions without notice a Minister will present the papers as listed on the schedule;
- papers so listed are recorded in the Votes and Proceedings and Hansard, and
- if a schedule has not been circulated, if a statement is to be made, or if a motion is to be moved, the papers in question must be presented individually.

There may be other business arising out of the presentation of a paper, such as a motion authorising its publication or a motion to take note of and/or to print the paper. Papers, including committee reports, may also be presented at any time when other business is not before the House<sup>104</sup> (see Chapter on 'Papers and documents').

### *Ministerial statements, by leave*

By leave of the House, Ministers may make statements concerning government policy or other matters for which they have ministerial responsibility. Ministerial statements are usually made at this stage of a day's proceedings. An opposition spokesman is usually granted leave to make a statement on the same matter or a motion may be moved 'That the House take note of the paper' on which debate may take place.<sup>105</sup> On occasions leave has not been sought by the Government<sup>106</sup> or has been refused by the Opposition<sup>107</sup> and standing orders have been suspended to enable a statement to be made.

### *Matter of public importance*

If a proposed matter of public importance has been submitted to the Speaker and determined to be in order, the Speaker announces the matter proposed to the House. If it is supported by eight Members, discussion ensues.<sup>108</sup> The discussion may be terminated at any stage by the House agreeing to the motion, moved by any Member, 'That the business of the day be called on'. The time for discussion is limited to two hours,<sup>109</sup> but the time taken is usually much less, by agreement between the parties.

101 H.R. Deb. (29.10.75)2593.

102 S.O.s 316-19.

103 VP 1987-89/302-3.

104 S.O. 102.

105 VP 1978-80/1298.

106 VP 1978-80/40.

107 VP 1978-80/372.

108 S.O. 107.

109 S.O. 91.

*Notices and orders of the day*

Most of the time of the House is taken up with these items of business. Under the arrangements first effective in 1984, 'government' notices and orders of the day usually take up the whole of the morning, when the House sits in the morning (apart from Thursdays—see p. 292), and continue after any discussion of a matter of public importance. When the House first meets in the afternoon they commence immediately after the matter of public importance. After the Speaker calls on the business of the day, the Clerk announces the first notice or order of the day. As each notice is called on the Minister either moves the motion for which notice has been given or presents the bill for which notice of presentation has been given. An order of the day is a bill or other matter which the House has previously ordered to be taken into consideration at a future time.<sup>110</sup>

Notices and orders of the day have precedence of each other according to the order in which the Government has determined that they should be placed on the Notice Paper.<sup>111</sup> As each item is disposed of the Clerk calls on the next item in the order in which it appears on the Notice Paper. Other business may be interspersed between items on the Notice Paper when, for example, appropriation and supply bills, and bills and proposals dealing with taxation, are introduced. These bills and proposals may be brought in by a Minister **without notice**.<sup>112</sup> Although they do not appear on the Notice Paper, they would normally be included in the Daily Program at a point which reflects the wishes of the Government.

Upon an order of the day being read by the Clerk the Speaker calls upon the Member who previously moved the adjournment of the debate or the Member who was speaking when the debate was previously interrupted and who is thus entitled to pre-audience. In most cases debate continues on an item of business until it is finally disposed of by the House, but on some occasions a debate, particularly a lengthy debate, may be interrupted and adjourned to enable other business to be dealt with.

## DETERMINATION OF PRECEDENCE

Government business takes precedence over all other business except for those times when, under standing or sessional orders, general or private Members' business and other non-government business has precedence. In recent years approximately 60 per cent of the time of the House has been taken up by government business.

Ministers may arrange the order of their notices and orders of the day on the Notice Paper as they think fit.<sup>113</sup> General or private Members' business consists of notices given by private Members or orders of the day for the resumption of debate on motions moved by private Members.

## POSTPONEMENT OF NOTICES AND ORDERS OF THE DAY

The day for moving a notice of motion or a notice of intention to present a bill<sup>114</sup> may be changed or the notice postponed:

- by the Member who gave notice moving a motion without notice fixing a future time for moving the motion prior to it being called on<sup>115</sup>;
- by the Member who gave notice changing the day proposed for moving the motion to a day subsequent to that first named by notifying the Clerk in writing; the Clerk then reports the change of day to the House at the first convenient opportunity<sup>116</sup>;

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110 S.O. 188.

111 S.O.s 105,155,189,211(e).

112 S.O. 291.

113 S.O. 105.

114 S.O. 211(e).

115 S.O. 155.

116 S.O. 138.

- by the Member who gave the notice fixing a future time for moving the motion when the notice is called on<sup>117</sup>, or
- if a Member is absent when his or her notice of motion is called on, by another Member, **at the Member's request**, fixing a future time for moving the motion.<sup>118</sup>

The practice of the House is that one Minister may act for another and, accordingly, a Minister may move the postponement of a notice given by another Minister.

An order of the day may be postponed on motion without notice moved by the Member in charge of the order or, in the Member's absence, by another Member **at the Member's request**.<sup>119</sup> The Member in charge is the Member who moved the motion or presented the bill. As with a notice the practice of the House is that one Minister may act for another Minister in moving for the postponement of an order of the day. The motion should be moved before the order is called on.<sup>120</sup>

A private Member cannot move to vary the order of government business<sup>121</sup>, nor can he or she move an amendment to a postponement motion which would have the effect of varying the order of government business.<sup>122</sup> An amendment to a postponement motion expressing a want of confidence in the Prime Minister has been moved.<sup>123</sup>

A Minister may not move for the postponement of any item of general or private Members' business. The House has, by arrangement, agreed to a government motion to postpone general business until after certain government business.<sup>124</sup> It was not uncommon, under the arrangements in force until 1988, for the Government to move that government business take precedence of general business until the main Appropriation Bills had passed all stages in the House.<sup>125</sup> Standing orders have been suspended on the motion of a Minister to enable a particular general business item to be called on during time when government business would normally be considered.<sup>126</sup>

Postponement of an order of the day may be until a later hour of the day, until the next sitting or until a specified day. Consideration of an order of the day has been postponed until certain bills, which were themselves orders of the day, had become law.<sup>127</sup>

#### MEMBER ABSENT OR FAILING TO RISE WHEN NOTICE CALLED ON

If a Member is not in his or her place when a notice the Member has given is called on, it is withdrawn from the Notice Paper unless another Member, at the Member's request, thereupon fixes a future time for moving the motion.<sup>128</sup> If a Member fails to rise and move the motion when the notice of motion is called on, it is withdrawn from the Notice Paper unless the Member thereupon fixes (by orally informing the House) a future time for moving the motion.<sup>129</sup>

#### DISCHARGE OF ORDERS OF THE DAY

An order of the day remains in the possession of the House and remains on the Notice Paper until the House disposes of it or a motion for its discharge is agreed

117 S.O. 159; VP 1974-75/790.

118 S.O. 158; VP 1956-57/89; H.R. Deb. (19.4.56)1479; VP 1974-75/959; H.R. Deb. (9.10.75)1932.

119 S.O. 189.

120 H.R. Deb. (22.7.20)2951.

121 VP 1968-69/297.

122 VP 1951-53/285.

123 VP 1970-72/609.

124 VP 1922/79; H.R. Deb. (17.8.22)1459.

125 VP 1978-80/365.

126 VP 1978-80/133.

127 VP 1907-08/381; NP 114(22.4.08)541.

128 S.O. 158. Withdrawal of notice, VP 1974-75/790; Member fixes future time, VP 1974-75/959.

129 S.O. 159. Withdrawal of notice, VP 1970-72/298; Member fixes future time, VP 1974-75/790.

to. On an order of the day being read, it may, on motion without notice moved by the Member in charge of it, be discharged.<sup>130</sup> In the case of government orders of the day a motion for discharge may be moved by any Minister.<sup>131</sup> In 1972 Speaker Aston ruled privately that a motion to discharge an order of the day must be moved immediately the order is read and there can be no debate on the order of the day after the order is read and a motion moved for its discharge. Orders of the day may also be discharged by motion moved pursuant to notice<sup>132</sup> or by leave.<sup>133</sup> Under sessional order 104B applying from March 1988, private Members' notices and orders of the day not called on within eight sitting weeks are automatically dropped from the Notice Paper.

#### NOTICES AND ORDERS OF THE DAY NOT CALLED ON

At the adjournment of the House each day any notices or orders of the day which have not been called on are set down on the Notice Paper for the next sitting day after any notices or orders of the day set down for that day.<sup>134</sup> These provisions operate subject to standing order 105 which provides that Ministers may arrange the order of their notices and orders of the day on the Notice Paper as they think fit. Since March 1988, sessional order 104A has given a similar power to the Selection Committee in respect of private Members' notices and orders of the day (*see* Chapter on 'Private Members' business').

#### Routine of business on sitting Thursdays

Under arrangements first effective from March 1988, on each sitting Thursday non-government business has priority from 10 a.m., the sequence after Prayers being:

- presentation of petitions;
- presentation and consideration of reports from parliamentary committees and delegations;
- private Members' business (commencing no later than 11 a.m., debate concluding no later than 12.30 p.m.);
- grievance debate;
- Members' statements (at approximately 1.45 p.m.).

Following questions without notice at 2 p.m. the sequence of business is the same as other sitting days.<sup>135</sup>

Under previous arrangements, after the Address-in-Reply had been adopted, the routine of business was varied to enable general business and grievance debate, alternately, to have precedence on sitting Thursdays. It was not uncommon for actions to be taken to modify the standard arrangements, for example, the suspension of standing orders to enable the time for grievance debate to be extended<sup>136</sup>, or agreement to motions for government business to have precedence of general business until the main Appropriation Bills had passed all stages in the House<sup>137</sup> or that government business take precedence on a particular Thursday.<sup>138</sup>

The arrangements for the presentation of petitions are described in detail in the Chapter on 'Parliament and the citizen'; for the presentation and consideration of reports from committees and delegations, private Members' business, grievance debate and Members' statements in the Chapter on 'Private Members' business'.

130 S.O. 191; e.g. VP 1976-77/524.

131 VP 1978-80/1497-8.

132 VP 1978-80/605-7.

133 VP 1978-80/983.

134 S.O.s 156,190.

135 VP 1985-87/299-301.

136 VP 1978-80/278.

137 VP 1978-80/365.

138 VP 1978-80/1261.



## **Matters accorded precedence**

The ordinary routine of business may be superseded by matters which are accorded precedence by practice or pursuant to the standing orders, or by other matters which may intervene or interrupt proceedings.

### *Censure or want of confidence motions and amendments*

A motion of which notice has been given or an amendment which expresses a censure of or want of confidence in the Government **takes precedence of all other business** until disposed of by the House, if it is accepted by a Minister as a censure or want of confidence motion or amendment under standing order 110.<sup>139</sup>

This form of motion has been accepted immediately after the notice has been given openly (when notices could be given openly)<sup>140</sup> or immediately after the notice has been reported to the House by the Clerk.<sup>141</sup> In these circumstances it is necessary to suspend standing orders to enable the motion to be moved forthwith. A want of confidence amendment has been similarly accepted immediately it has been moved.<sup>142</sup> If it is not accepted by a Minister for the purposes of standing order 110, a notice of a want of confidence motion does not attract any precedence and is placed on the Notice Paper under private Members' business. The notice may be granted precedence on a later day when accepted by a Minister.<sup>143</sup>

For many years it was the practice of the House to adjourn until the next sitting following notice of a want of confidence motion. This practice has not been followed since 1947.<sup>144</sup>

The House has considered other business before a censure or want of confidence motion or amendment has been finally disposed of. In 1949 standing orders were suspended to enable a censure motion to take precedence of all other business until disposed of. The censure motion was then debated and adjourned to the next sitting. Prior to the resumption of the debate on the next sitting day, several items of business were dealt with including petitions, questions without notice, statements by leave, and the introduction of bills.<sup>145</sup> However, if it is the wish of the House to proceed with some of the normal routine of business, such as questions without notice, petitions and so on, as in the above circumstances, it would be preferable to suspend standing orders to enable this to be done. This course was followed in 1961<sup>146</sup>, although the Speaker questioned whether other business should intervene during a want of confidence debate.<sup>147</sup>

An amendment censuring the Government<sup>148</sup> and motions censuring or expressing want of confidence in the Government<sup>149</sup> have been granted precedence following suspension of the standing orders rather than acceptance under standing order 110.

Standing orders have been suspended to allow a motion of censure of a Minister, which does not attract any precedence, to be moved forthwith<sup>150</sup> and to be moved forthwith and to take precedence.<sup>151</sup>

<sup>139</sup> For a full description of standing order 110 see Ch. on 'Motions'.

<sup>140</sup> VP 1985-87/23.

<sup>141</sup> VP 1985-87/81.

<sup>142</sup> VP 1970-72/445.

<sup>143</sup> NP 114(11.11.75)10502; VP 1974-75/1121.

<sup>144</sup> VP 1946-48/250; H.R. Deb. (17.9.47)4; and see Ch. on 'Motions'.

<sup>145</sup> VP 1948-49/303-5; see also VP 1962-63/411; VP 1904/174; H.R. Deb. (27.9.04)4918.

<sup>146</sup> VP 1961/11.

<sup>147</sup> H.R. Deb. (15.3.61)221.

<sup>148</sup> VP 1978-80/600.

<sup>149</sup> VP 1970-72/937; VP 1983-84/533, H.R. Deb. (8.3.84) 733.

<sup>150</sup> VP 1985-87/1298.

<sup>151</sup> VP 1968-69/301.

*Matters of privilege*

A Member may rise at any time to speak on a matter of privilege suddenly arising.<sup>152</sup> Until a matter of privilege is disposed of, for example, by the Speaker giving a decision forthwith or stating that the matter will be considered, or unless debate on a motion arising from a matter is adjourned, it suspends the consideration and decision of every other question. But **precedence over other business** is not given to any motion if, in the opinion of the Speaker, a prima facie case of breach of privilege has not been made out or the matter has not been raised at the earliest opportunity.<sup>153</sup>

When consideration of a substantive motion on a matter of privilege or a report from the Committee of Privileges is made an order of the day, the practice is to place it on the Notice Paper with a note 'to take precedence'. If it is not desired to consider the motion or report as the first item of business, a positive motion to postpone the order is necessary.<sup>154</sup> It has been the practice of the House to proceed with the ordinary routine of business under standing order 101 up to, but not including, 'Notices and orders of the day' (which, under standing order 101 before the 1983-84 modifications by sessional order, did not occur until well after questions without notice) before a privilege motion or report is considered.

*Votes of thanks or condolence*

Precedence is ordinarily given, by courtesy, to a vote of thanks of the House or to a motion of condolence.<sup>155</sup> The practice of the House is that condolence motions or references to the deaths of certain persons are dealt with immediately following Prayers<sup>156</sup> after which the ordinary routine of business may be proceeded with. However, following a condolence motion the House may be adjourned, or suspended to a fixed hour, as a mark of respect. If the House has been suspended, the ordinary routine of business may be proceeded with on the resumption of the sitting.<sup>157</sup>

*Motions for leave of absence to a Member*

A motion to grant leave of absence to a Member can be moved without notice and has priority over all other business.<sup>158</sup> The motion is usually moved after presentation of papers.

*Announcements of ministerial arrangements*

The Prime Minister from time to time informs the House of changes in the Ministry, of the absence or illness of Ministers, of any acting and representational arrangements that are made within the Ministry, and of changes in departmental and administrative arrangements. It is the practice for such an announcement to be made before questions without notice to assist Members in directing their questions.

*Swearing-in of Members and announcements of returns to writs*

Every Member of the House must make and subscribe an oath or affirmation of allegiance before taking his or her seat.<sup>159</sup> Any Member absent at the opening of a Parliament is sworn in at the first opportunity.<sup>160</sup> On the election of a Member at a by-election the Speaker usually announces the return to the writ immediately after Prayers and the new Member is then introduced and sworn in.<sup>161</sup>

152 S.O.s 84, 95.

153 S.O. 96; *see also* Ch. on 'Parliamentary privilege'.

154 NP 18(12.4.78)913; VP 1978-80/142; H.R. Deb. (12.4.78)1462-7.

155 S.O. 157.

156 *See also* Ch. on 'Motions'.

157 VP 1976-77/391.

158 S.O. 35; *and see* Ch. on 'Members'.

159 *See* Ch. on 'Members'.

160 VP 1978-80/75.

161 VP 1978-80/433.

## **Other matters that can interrupt the ordinary routine of business**

### *Personal explanations*

With the leave of the Chair, Members may explain matters of a personal nature.<sup>162</sup> Because Members often wish to make personal explanations as early as possible on a sitting day, the practice now is for a Member desiring to make a personal explanation to inform the Speaker and for the Speaker to call on the Member as soon as practicable after the presentation of papers. This practice does not prevent Members making personal explanations at other times, subject to the overall authority of the Speaker, but such a course is not encouraged.<sup>163</sup>

### *Acknowledgment and admission of distinguished visitors*

The Speaker may acknowledge the presence of distinguished visitors in the gallery and, with the implied concurrence of the House, distinguished visitors have on occasion been admitted to a seat on the floor of the House.<sup>164</sup> This action has been taken by the Speaker immediately after Prayers but it can occur at any time during a day's proceedings. It is most common for distinguished visitors to be present during questions without notice.

### *Announcements and statements by the Speaker*

The Speaker may be called upon to make a number of announcements during the course of a day's proceedings. These include messages from the Governor-General notifying assent to bills<sup>165</sup>, messages from the Senate<sup>166</sup>, and advice of the names of Members who have been appointed to serve on certain committees. When these details are available prior to the meeting of the House, the announcements are usually held until after the presentation of papers. When they become available later during the course of the sitting, they may be announced between items of business. The Speaker also makes statements to the House, for example, on matters of parliamentary administration, and these are made sometimes between items of business<sup>167</sup> or occasionally at another time which is convenient to the Speaker.<sup>168</sup>

### *Committee reports and papers*

Reports of parliamentary committees may be presented at any time when other business is not before the House<sup>169</sup>, but they were, in the past, usually tabled following ministerial statements. Under sessional orders first effective from March 1988, a fixed period has been made available each Thursday morning for the presentation and consideration of parliamentary committee reports—see p. 292. A statement in relation to the report is often made by the Member presenting it and by other Members. In normal circumstances leave is required to make such a statement but not during the period set aside on a Thursday morning. Consideration of the report may be set down for a subsequent sitting when a specific motion without notice in connection with it may be moved.

Ministers may table papers at any time when other business is not before the House. A paper should not be tabled during a speech<sup>170</sup>, except by leave. An exception is a document relating to public affairs quoted from by a Minister in the course of a speech which must be tabled, if required by any Member, unless it is stated to be of a confidential nature.<sup>171</sup>

162 S.O. 64.

163 See Ch. on 'Control and conduct of debate'; and see H.R. Deb. (7.3.74)149,153-4 for ruling and further discussion on this matter.

164 S.O. 312.

165 S.O. 294.

166 S.O. 372.

167 VP 1985-87/977.

168 VP 1985-87/1526.

169 S.O. 102.

170 H.R. Deb. (9.4.74)1223.

171 S.O. 321.

*Matter of special interest*

At any time when other business is not before the House a Minister may indicate to the House that it is proposed to discuss a matter of special interest on which it is not desired to form a motion in express terms.<sup>172</sup> A matter of special interest has been discussed by the House on only one occasion when it was discussed early in the routine of business prior to the giving of notices.<sup>173</sup>

*Suspension of standing orders*

It is not unusual in the functioning of the House for it to be found necessary to suspend standing orders, or a particular standing order, to permit certain action to be taken. Common instances are to grant unlimited or extended time for particular speeches, to permit the introduction of particular bills without notice and their passage without delay, the consideration of certain bills together, to enable the introduction of new business after 11 p.m., and so on. The suspension of standing orders may also affect the ordinary routine of business, for example, when it is to enable an item of private Members' business to be called on in other than its proper order, or to allow a notice of motion to be called on forthwith, the notice having been given for the next sitting.

Having received the call from the Chair, a motion to suspend standing orders may be moved by any Member without notice, but to be passed it must be carried by an absolute majority of all Members (75 votes in a House of 148 Members). If the motion is moved pursuant to notice, pursuant to contingent notice, or with the leave of the House, it may be carried by a simple majority of Members present. A motion for the suspension of standing orders may only be moved if the substance of the motion is relevant to the item of business before the House, or, alternatively, when there is no business before the House, that is, between items of business.<sup>174</sup> There have however been occasions when such motions not relevant to items before the House, and perhaps diversionary or retaliatory in nature, have interrupted the business of the House.<sup>175</sup>

*Points of order*

Any Member may raise a point of order at any time which, until disposed of, suspends the consideration and decision of every other question. A point of order necessitates a ruling being given by the Chair which may be objected to and a motion of dissent moved.<sup>176</sup> A motion of dissent must be debated and determined immediately.<sup>177</sup>

There are grounds for considering that a Member taking a point of order shall not be interrupted by another Member taking a point of order on the first point of order. The basis of this point of view is that as a point of order is an appeal or complaint to the Chair in connection with the operations of the House, a Member has a right to make the point without interruption except by the Chair and have a ruling or decision given. However, there are circumstances where the above argument fails and a point of order on a point of order is justified. These circumstances include an inordinately long point of order, a frivolous point of order, a dubious point of order, and the use of unparliamentary language in the course of a point of

<sup>172</sup> S.O. 108.

<sup>173</sup> VP 1974-75/815-17; H.R. Deb. (9.7.75) 3556.

<sup>174</sup> VP 1983-84/543, H.R. Deb. (27.3.84) 803.

<sup>175</sup> See Ch. on 'Motions' for further discussion.

<sup>176</sup> S.O.s 98-100.

<sup>177</sup> VP 1978-80/1182-3; see also Ch. on 'The Speaker, the Chairman of Committees and Officers'.

order. It would be expected that the Chair would normally intervene in these cases but, if there is a failure to do so, a point of order on the point of order could be raised.

### *Disorder*

The proceedings of the House may also be interrupted by disorder arising in the House or in the galleries. In the case of grave disorder arising, the Speaker may adjourn the House<sup>178</sup> or suspend the sitting until a time to be named.<sup>179</sup>

## **ELEVEN O'CLOCK RULE**

Standing order 103 provides that no new business may be taken after 11 p.m. unless the House otherwise orders. This standing order replaced one which prohibited the taking of 'opposed' business, that is, the taking of business without unanimous consent, after 11 p.m. New business was defined by Speaker Johnson as a proposal relating to a matter not before the House.<sup>180</sup>

The following points are relevant to an understanding of the eleven o'clock rule:

- the rule has its origins in House of Commons procedural reforms made in 1888 in order that some restriction be placed on protracted sittings at night;
- as a general rule the only business which the House should proceed with after 11 p.m. is the matter which is immediately before the House or business of a formal nature;
- the rule has a purpose in protecting the minorities in the House from the introduction of new business, perhaps by surprise late in a sitting, upon which a vote may be taken;
- in cases of urgency or necessity the House may determine, prior to 11 p.m., that new business be taken after 11 p.m., by suspending the standing order, and
- since the introduction of the automatic adjournment provisions in 1973 (see p. 300) the rule has rarely had to be applied, as sittings of the House after 11 p.m. are now comparatively infrequent.

The following business, on which the House does not have to make a decision of substance, may be transacted after 11 p.m. without infringing the eleven o'clock rule:

- a message from the Senate agreeing to a bill without amendment or requests may be announced by the Speaker<sup>181</sup>;
- a message from the Senate forwarding a bill for the concurrence of the House may be announced by the Speaker and the bill read a first time; the second reading must be made an order of the day for the next sitting<sup>182</sup> and no debate on that motion is permitted<sup>183</sup>;
- a Minister may provide information, or additional information, in response to a question<sup>184</sup>, and
- the appointment of Members to committees may be announced.

A motion to suspend standing orders moved after 11 p.m. in relation to a matter which is before the House, for example, to enable the remaining stages of a bill to be passed without delay, is not regarded as new business.<sup>185</sup>

178 VP 1985-87/1272-3.

179 See S.O. 308 and Chs on 'Parliament House and the House of Representatives Chamber' and 'Control and conduct of debate'.

180 H.R. Deb. (5.11.13)2932.

181 VP 1962-63/37.

182 VP 1962-63/37. It is not new business to fix a future day for the second reading of a bill, H.R. Deb. (3.6.30)2432.

183 H.R. Deb. (16-17.11.33)4750.

184 H.R. Deb. (3.6.30)2432-3.

185 H.R. Deb. (5.11.13)2932.

Bills which are part of a cognate debate before the House at 11 p.m. would not seem to constitute new business as the term was defined by Speaker Johnson, as unanimous consent has been given to debate them together, although the practice has been to suspend standing order 103 in such circumstances.

The House, on occasions, suspends standing order 103 (sometimes together with standing order 48A—automatic adjournment) to enable new business to be taken after 11 p.m.<sup>186</sup> In order that the motion to suspend the standing order is not itself classed as new business, the motion must be moved before 11 p.m. Although the standing order has been suspended after 11 p.m. with the concurrence of an absolute majority<sup>187</sup> and the motion has been moved after 11 p.m. by leave of the House<sup>188</sup>, Speaker Mackay stated the correct procedure to be followed:

It would be well, however, that the Government, being in charge of the business of the House, should realise that a motion to suspend the Standing Orders is, in itself, 'new business' in a strict reading of the Standing Order.<sup>189</sup>

In 1931, the Speaker was questioned, during a division on a motion to suspend standing order 103, as to whether the vote would be effective if not completed before 11 p.m. The Speaker replied that, as Members had crossed the floor and tellers had been appointed before 11 p.m., the vote was to be regarded as having taken place within the specified time.<sup>190</sup>

## ADJOURNMENT

### Standing orders provisions

The termination of a sitting is known as the adjournment. With certain exceptions, the House can only be adjourned by its own resolution<sup>191</sup> following either a motion moved by a Minister<sup>192</sup> or the Speaker automatically proposing the question 'That the House do now adjourn' pursuant to standing order 48A. The Speaker may adjourn the House to the next sitting day without putting the question under the following circumstances:

- want of a quorum (S.O.s 41,44,45,46), and
- grave disorder<sup>193</sup> (S.O. 308).

A further exception relates to the situation when the House is informed by the Clerk of the absence of both the Speaker and the Chairman of Committees. If the House does not proceed immediately to elect a Member to perform the duties of the Speaker, the House stands adjourned until the next sitting day.<sup>194</sup>

### *Motion moved by a Minister*

The motion 'That the House do now adjourn' can be moved only by a Minister and no amendment can be moved to it.<sup>195</sup> The motion cannot be moved while another question is before the Chair.<sup>196</sup> The motion may be debated without limitation of time subject to the closure and the automatic adjournment provisions. Debate on the motion cannot be adjourned. Matters irrelevant to the motion may be debated, thus providing a valued opportunity for private Members to raise matters of concern to them. For discussion of the 'adjournment debate' see Chapter on 'Private Members' business'.<sup>197</sup>

186 VP 1985-87/579.

187 VP 1978-80/153.

188 VP 1968-69/458.

189 H.R. Deb. (25.5.33)1801.

190 H.R. Deb. (23.7.31)4332.

191 S.O. 49.

192 S.O. 50.

193 VP 1985-87/1272-3.

194 S.O. 15.

195 S.O. 50.

196 H.R. Deb. (9.4.08)10451.

197 S.O.81.

As with other motions the reply of the mover closes the debate.<sup>198</sup> The mover has again addressed the House, by leave, without closing the debate.<sup>199</sup> After the mover has spoken in reply, individual Members have addressed the House, by leave<sup>200</sup>, and standing orders have been suspended to enable the debate to continue.<sup>201</sup> Also, during the course of the debate, the mover has made a statement, by leave, and later has spoken in reply.<sup>202</sup>

The motion for the adjournment has been withdrawn, by leave, to allow the presentation of a committee report<sup>203</sup>, and to allow a motion for the alteration of the hour of next meeting to be moved.<sup>204</sup> In 1959, the motion was moved immediately after questions without notice and debated while the House awaited certain legislation from the Senate. When the legislation had not arrived some four hours later, the motion was withdrawn, by leave, and a motion granting leave of absence to all Members and a special adjournment motion were agreed to. A further adjournment motion was then moved and agreed to.<sup>205</sup>

### *Automatic adjournment*

Standing order 48A, as amended by sessional order effective from March 1988<sup>206</sup>, provides that at 7.30 p.m. on Wednesdays, and at 10.30 p.m. on each other sitting day, the Speaker shall propose the question 'That the House do now adjourn'. If the House is in committee at that time, the Chairman reports progress and, upon such a report being made, the Speaker forthwith proposes the question 'That the House do now adjourn'. The question is open to debate and no amendment can be moved to it.

Other provisions relating to the automatic adjournment are:

- If a division is in progress at the time fixed for interruption, that division and any division consequent on that division are completed and the result announced.
- If, on the question 'That the House do now adjourn' being proposed, a Minister requires the question to be put forthwith without debate, the Speaker puts the question immediately. This provision provides the House with an opportunity to negative the adjournment in order to continue with the business before the House.
- If the question 'That the House do now adjourn' is negatived, the House or committee resumes its proceedings at the point at which they were interrupted.
- The business under discussion and not disposed of at the time of the automatic adjournment is set down on the Notice Paper for the next sitting.

The question has arisen in the House regarding the situation of a Member who is making a statement, by leave, at the time of interruption. Leave of the House does not over-ride the provision in the standing orders for the automatic adjournment, and the adjournment motion must be proposed at the specified time. If the motion is negatived, the Member is then able to continue his or her remarks<sup>207</sup>, but not otherwise.<sup>208</sup> The same situation applies if standing orders are suspended to enable a Member to make a statement. Unless standing order 48A has been specifically suspended, the statement is interrupted at the specified time and the Member is only able to continue his or her remarks if the adjournment motion is negatived.

198 S.O. 68.

199 VP 1967-68/143.

200 VP 1960-61/252.

201 VP 1960-61/252.

202 VP 1940-43/118; H.R. Deb. (3.4.41)703-11.

203 VP 1964-66/151.

204 VP 1929-31/803.

205 VP 1959-60/311; H.R. Deb. (27.11.59)3299,3316.

206 VP 1987-89/298-9.

207 VP 1977/72.

208 H.R. Deb. (22.2.79)334.

The making of a statement by leave does not fall within the meaning of business under standing order 48A. As there is no question before the House, it cannot be set down on the Notice Paper for the next sitting.

If a Member is interrupted under the automatic adjournment provision while moving a motion, and the adjournment motion is not negatived, the motion is dropped and cannot appear on the Notice Paper. In this instance, the motion is not in the possession of the House as it has not been seconded (where necessary) and the question has not been proposed from the Chair (*see* Chapter on 'Motions').

### *Adjournment of the House*

If, at 11 p.m. (8 p.m. on those Wednesdays when the House rises early under the arrangements in effect since September 1987) the question before the House is 'That the House do now adjourn', the Speaker interrupts the debate at which time:

- a Minister may require that the debate be extended until 11.10 p.m. (8.10 p.m.) to enable Ministers to speak in reply to matters raised in the preceding adjournment debate; at 11.10 p.m. (8.10 p.m.) or upon the earlier cessation of the debate, the Speaker forthwith adjourns the House until the time of its next meeting, or
- if no action is taken by a Minister to extend the debate, the Speaker forthwith adjourns the House until the time of its next meeting.

This does not prevent a Minister from replying before the Speaker interrupts the debate, provided that no other Member rises to obtain the call.<sup>209</sup> If a Minister commences to reply before that time, the debate is still interrupted at the time of the automatic adjournment when the Minister may require the debate to be extended.

If all the business of the day is concluded before the time at which the motion to adjourn would be automatically proposed, the adjournment motion is moved immediately by a Minister. Debate may continue until the provisions of standing order 48A, relating to the extension of the debate by a Minister or the immediate adjournment of the House, apply.

If the adjournment motion is negatived when first proposed and the business of the day does not conclude within 30 minutes, that is, by the 'standard' time for the adjournment of the House, a Minister moves the adjournment motion at the conclusion of ordinary business and debate may ensue without any limitation of time.

When the question 'That the House do now adjourn' has been agreed to, the sitting formally concludes and the Speaker adjourns the House until the time of its next meeting, either in accordance with standing order 40 or a resolution of the House agreed to under standing order 51. The Speaker has been prevented from formally announcing the time of next meeting by the disorderly conduct of a Member.<sup>210</sup> Until such time as the Speaker leaves the Chair he or she is still in charge of the House.<sup>211</sup>

### **Adjournment of the House for special reasons**

The House has adjourned as a mark of respect on the death of a Prime Minister<sup>212</sup>, a former Prime Minister<sup>213</sup>, a reigning Monarch<sup>214</sup>, a Queen<sup>215</sup>, the Governor-General<sup>216</sup> and others.

209 H.R. Deb. (23.8.79)613.

210 H.R. Deb. (23.8.74)1168. The Member concerned was requested to apologise at the next sitting, H.R. Deb. (17.9.74)1239-40; VP 1974-75/154.

211 VP 1974-75/154-5.

212 VP 1945-46/179.

213 VP 1978-80/227.

214 VP 1951-53/257.

215 VP 1951-53/631.

216 VP 1961/6.



The House has also adjourned following the giving of a notice of a want of confidence motion, the last occasion being in 1947.<sup>217</sup> On four occasions the Chair has adjourned the House until the next sitting when grave disorder has occurred.

## QUORUM

### House

Section 39 of the Constitution states:

Until the Parliament otherwise provides, the presence of at least one-third of the whole number of the members of the House of Representatives shall be necessary to constitute a meeting of the House for the exercise of its powers.

The quorum fixed by the Constitution was thus 50 Members, including the occupant of the Chair, being one-third to the next highest whole number of the total number of 148 Members.

In May 1989 the Parliament 'otherwise provided' by enacting the House of Representatives (Quorum) Bill 1988. The bill provided:

The presence of at least one-fifth of the whole number of the members of the House of Representatives is necessary to constitute a meeting of the House for the exercise of its powers.<sup>218</sup>

Thus the quorum is now 30 Members, including the occupant of the Chair, being one-fifth to the next highest whole number of the total number of 148 Members.

### Committee of the whole

The quorum in committee of the whole House consists of the same number of Members as is requisite to form a quorum of the House.<sup>219</sup> The quorum of a committee of the whole, as with a select or standing committee<sup>220</sup>, is a matter for the House itself to decide as a committee is not 'a meeting of the House' in the sense in which the term is used in section 39 of the Constitution. A committee of the whole is created pursuant to the powers given to the House by section 50 of the Constitution, and the House may, therefore, determine by standing orders what quorum, if any, is to apply to its meetings. This fact was recognised by the Standing Orders Committee in its report of 10 June 1970 where it noted that the proceedings and decisions of a committee of the whole are always subject to confirmation by the House and are of no parliamentary effect unless the House confirms them by adopting the report from the committee. The committee recommended, however, that there should still be a quorum requirement in committee of the whole and that the quorum should continue to be the same as that for the House.<sup>221</sup>

### Standing orders provisions

At the commencement of each meeting of the House it has been considered the duty of the Speaker to ensure that a quorum is present before reading Prayers.<sup>222</sup> Subsequently in the day's proceedings that responsibility rests with the House.

217 VP 1946-48/250.

218 *House of Representatives (Quorum) Act 1989*, Act No. 42 of 1989.

219 S.O. 270.

220 See Ch. on 'Parliamentary committees'.

221 PP 114(1970)8. Some Speakers have taken the incorrect view that section 39 applied to a committee of the whole. See VP 1906/172; H.R. Deb. (10.10.06)6403-4; VP 1923-24/400; H.R. Deb. (11-12.9.24)4273-4; H.R. Deb. (16.9.24)4364-6.

222 S.O. 43.

*Quorum at time of meeting*

If a quorum is not present when the Chair is taken at the time fixed for the meeting of the House and if within five minutes, the bells having been rung, a quorum is still not present, the Speaker adjourns the House until the next sitting day, subject to the proviso that if the Speaker is satisfied there is likely to be a quorum within a reasonable time the Speaker announces that he or she will take the Chair at a stated time. If at that time there is not a quorum, the Speaker adjourns the House until the next sitting day.<sup>223</sup> No Member is permitted to withdraw from the Chamber within five minutes after the time appointed for the meeting of the House unless a House is formed.<sup>224</sup>

The Speaker has taken the Chair and, finding that a quorum of Members was not present, has ordered the bells to be rung. A quorum was then formed, and the Speaker read Prayers. Following one such occasion a Member raised the possibility of changing the standing orders so that those Members who wished to avoid Prayers could do so.<sup>225</sup>

In 1913, before the introduction of the proviso in the standing orders which gives the Speaker the discretion to take the Chair at a stated time, the Speaker declared the House adjourned because a quorum was not present either at the time fixed for the meeting of the House or within the prescribed time. The Members present were listed in the Votes and Proceedings and the meeting was recorded as a sitting of the House.<sup>226</sup>

In 1905, on the last sitting day of a session, when there was no quorum present at the time fixed for the meeting of the House at 2.45 p.m., Speaker Holder took the Chair at 3.07 p.m. in view of the fact that a message from the Governor-General desiring the immediate attendance of Members in the Senate Chamber had been announced.<sup>227</sup> This action was taken in accordance with the then practice of the House of Commons that a message from the Crown 'makes a House'.<sup>228</sup>

*Quorum during sitting*

## WANT OF QUORUM IN DIVISION

If, on a division in the House, it appears on the report of the tellers that the number of Members who voted did not constitute a quorum, the Speaker adjourns the House until the next sitting day and no decision of the House is considered to have been arrived at by the division. As in the case of a want of quorum at the time of meeting, a proviso operates to the effect that, if the Speaker is satisfied there is likely to be a quorum within a reasonable time, the Speaker announces that he or she will take the Chair at a stated time and, if there is not a quorum then present, the Speaker adjourns the House until the next sitting day.<sup>229</sup> If a quorum is present, the proceedings are resumed at the point at which they were interrupted. If the Speaker is informed by the Chairman of Committees, in consequence of a report by the tellers of a division of the committee, that a quorum is not present, the Speaker orders the bells to be rung and, if a quorum is present within the time fixed by the standing or sessional orders (four minutes at the time of publication) the Speaker leaves the Chair forthwith and the committee resumes. If there is no quorum at the expiration of the specified time, the Speaker adjourns the House to

223 S.O. 41.

224 S.O. 42.

225 VP 1974-75/379; H.R. Deb. (28.11.74)4231-2.

226 VP 1913/63.

227 VP 1905/227; H.R. Deb. (21.12.05)7461.

228 *May*, 10th edn, p. 224; Redlich, vol. II, pp. 68-9.

229 S.O. 44.

the next sitting day but again, if satisfied that there is likely to be a quorum within a reasonable time, the Speaker announces that he or she will take the Chair at a stated time and, if then a quorum is not present, he or she adjourns the House to the next sitting day. If a quorum is present, the Speaker forthwith leaves the Chair and the committee resumes.<sup>230</sup>

There have been five occasions when the House has been adjourned following a lack of quorum on division. On four occasions the division was on the question for the adjournment of the House.<sup>231</sup> The other occasion was in 1907 when the Chairman of the Committee of Ways and Means reported that a quorum of Members was not present during a division of the committee and the Deputy Speaker adjourned the House.<sup>232</sup>

#### WANT OF QUORUM NOTICED

Any Member may draw the attention of the Chair to what is termed 'the state of the House'. The Speaker or the Chairman, as the case may be, causes the House or committee to be counted and, if a quorum is not present, the same procedure is followed by the Chair as for a want of quorum on division.<sup>233</sup>

The fact that a quorum is not always present does not mean that the House cannot continue. The House regularly conducts its business when less than a quorum of Members is present in the Chamber. Because of the demands placed on Members generally, and Ministers and office holders in particular, it is essential that they spend a greater proportion of their time on public duties outside the Chamber.<sup>234</sup> Provided that a quorum is present to constitute a meeting of the House and to record a vote of the House when one is called for, it is not necessary to maintain a quorum continuously. It is the duty of all Members to form a quorum, not just government Members.<sup>235</sup>

A Member is entitled at any time to draw the Chair's attention to the state of the House although it is out of order to debate the situation<sup>236</sup> or to draw attention while the Speaker is in the process of putting a question.<sup>237</sup> Once a quorum has been called for there can be no withdrawal and the House must be counted.<sup>238</sup>

There are two general principles to be observed by the Chair in respect of a quorum:

- it is not the duty of the Chair to count the House until attention has been drawn by a Member to the state of the House<sup>239</sup>, and
- when attention is drawn, the Chair is obliged to make a count or have a count made.<sup>240</sup>

The following cases have occurred in conflict with these principles and are included for historical purposes. They are irregular and have no validity as precedents:

- the Speaker has adjourned the House during the adjournment debate without ringing the bells for two minutes and counting the House<sup>241</sup>;
- the Speaker warned Members that, as soon as the numbers present fell below 40, he would order the bells to be rung and did so on two occasions<sup>242</sup>;

230 S.O. 46.

231 VP 1901-02/545; VP 1909/70; VP 1934-37/23,100.

232 VP 1907-08/205,694.

233 S.O.s 45,46,47. For a case where a quorum has not been obtained within the prescribed time in committee, the Chairman has reported the fact to the Deputy Speaker, and a quorum was then formed and the committee resumed, *see* VP 1957-58/189.

234 *See* Ch. on 'Members'.

235 H.R. Deb. (13.3.73)497.

236 H.R. Deb. (5.4.73)1159.

237 H.R. Deb. (10.12.30)1247.

238 H.R. Deb. (5.12.30)1092.

239 H.R. Deb. (20.11.51)2263-4.

240 S.O. 45.

241 VP 1951-53/466; H.R. Deb. (30.9.52)2313-14.

242 H.R. Deb. (21.10.54)2241,2245.

- the Speaker stated that if the Members on his left adopted the practice of calling for a quorum as soon as the Members on his right rose to speak, he would take action to have a quorum present whenever Members on his left were speaking<sup>243</sup>;
- a Member having twice called attention to the state of the House within a short period of time, the Chair stated that it would not again count the House until a reasonable period of time had elapsed, 15 minutes being considered reasonable<sup>244</sup>;
- the Chair refused to count the House as it saw the quorum call as an attempt to obstruct proceedings and embarrass a Member<sup>245</sup>, and
- the Chair, in order that business could be facilitated, asked Members not to cause annoyance by frequent quorum calls.<sup>246</sup>

It is considered to be highly disorderly for a Member to call attention to the state of the House when a quorum is in fact present. It is normal in these circumstances for the offending Member to be named and suspended from the service of the House.<sup>247</sup>

When the attention of the Chair is called to the lack of a quorum no Member present may leave the Chamber until a quorum is present or four minutes, depending on the standing or sessional orders in force at the time, have elapsed.<sup>248</sup> All Members who are within the physical limits of the Chamber should be counted.<sup>249</sup> The report of the Standing Committee on Procedure tabled in the House on 14 April 1988 expressed the view that the term 'physical limits' included all areas on the floor of the Chamber, including officials' seats, that is, all floor areas up to the doorway.<sup>250</sup>

On occasions when Members, including party whips, have sought to leave the Chamber at the time of a quorum call they have been ordered to return to their seats.<sup>251</sup> The Chair has directed the Serjeant-at-Arms to bring back Members leaving the Chamber.<sup>252</sup> A Member who, in these circumstances, disregards the authority of the Chair by refusing a direction may be named and suspended from the service of the House.

Whenever the Chair is engaged in counting the House or committee, the doors are unlocked and the bells rung, as in a division.<sup>253</sup> The Chair has refused to hear a point of order during the ringing of the bells to form a quorum of Members<sup>254</sup> and on one occasion ordered the bells to be rung again after the Chair's attention was drawn to the fact that the bells were not ringing in some parts of the building.<sup>255</sup>

On the occasion of a count out of the House on 26 August 1971 the Chair ordered the doors to be locked after it was found that a quorum was not present after two minutes, in order that a precise final count could be made.<sup>256</sup>

243 H.R. Deb. (20.3.53)1473-4.

244 VP 1920-21/693; H.R. Deb. (22.7.21)10505; *see also* H.R. Deb. (21.8.23)3176; H.R. Deb. (16-17.7.25) 1149,1151.

245 VP 1934-37/210; H.R. Deb. (9.4.35)1052-3.

246 H.R. Deb. (13.5.36)1651.

247 VP 1974-75/695-6.

248 S.O. 47, *but see* sessional orders in force from time to time.

249 VP 1987-89/571.

250 'The ringing of bells and the Chamber precincts in the new Parliament House, and certification of petitions not in the English language', *Report of the Standing Committee on Procedure*, PP 149 (1988); H.R. Deb. (14.4.88) 1535-7.

251 H.R. Deb. (30.9.54)1776.

252 H.R. Deb. (27.11.59)3314; H.R. Deb. (1.3.73)168; H.R. Deb. (23.4.80)2165.

253 S.O. 48.

254 H.R. Deb. (13.3.73)497.

255 H.R. Deb. (7.8.23)2240.

256 PP 242(1971)44.

The House has been adjourned because of the lack of a quorum on 64 occasions. On 54 of these occasions the question before the House was the adjournment motion.<sup>257</sup> Standing order 44<sup>258</sup> gives the Speaker the discretion in the absence of a quorum to state that he or she will take the Chair at a specified time, if satisfied that there is likely to be a quorum within that time. Up to the end of 1988, these provisions had been used to allow a quorum to be formed on five occasions.<sup>259</sup>

Once the House has been counted out the Speaker is still in control of proceedings until he or she leaves the Chamber. On 22 February 1917 the House suspended a Member who had been named for disobeying the Chair after the House had been counted out at the previous sitting but before the House was formally adjourned by the Deputy Speaker.<sup>260</sup>

#### *Resumption of proceedings after count out*

If the proceedings of the House have been interrupted by a count out they may, on motion after notice, be resumed at the point where they were interrupted.<sup>261</sup> Business which has been interrupted by a count out has been resumed by motion moved pursuant to contingent notice<sup>262</sup>, by motion moved by leave<sup>263</sup>, and by motion moved pursuant to notice.<sup>264</sup>

#### **Proposed changes to quorum provisions**

The quorum of the House was determined by the Constitution to be one-third of Members 'until the Parliament otherwise provides'.<sup>265</sup> In 1929 the Attorney-General's Department advised the Standing Orders Committee that a proposal to prevent a quorum being called for within a half an hour of the House or a committee being constituted would be in conflict with section 39 of the Constitution.<sup>266</sup>

In 1986 the Standing Committee on Procedure observed that the House of Representatives had a high quorum requirement compared with many legislatures (for example 7.1% of Members in the Canadian House of Commons and 6.2% in the United Kingdom House of Commons) and agreed that quorum calls caused considerable disruption to Members' duties outside the Chamber. The committee concluded that the quorum requirement of one third was unnecessarily large and recommended that it be reduced to one-fifth.<sup>267</sup> On 9 December 1987 the House resolved:

That this House endorses in principle the recommendation of the Standing Committee on Procedure that legislative action be taken to reduce the quorum of the House from one-third of the Members to one-fifth and requests the Government to introduce legislation to achieve this end.<sup>268</sup>

The bill to give effect to the recommendation was introduced on 25 May 1988, passed by the House on 29 August, passed by the Senate on 25 May 1989 and assented to on 2 June 1989.<sup>269</sup>

257 For the most recent precedent on the adjournment of the House see VP 1954-55/126. For precedents during other debates see VP 1904/157, VP 1912/216, VP 1920-21/254, VP 1934-37/252, VP 1970-72/688.

258 This standing order was adopted in 1978 following its trial as a sessional order, VP 1978-80/19.

259 VP 1980-83/1102; VP 1983-84/671; VP 1985-87/699; VP 1987-89/296; VP 1987-89/880-1.

260 VP 1914-17/567; H.R. Deb. (15.2.17)10550.

261 S.O. 90.

262 VP 1907-08/207; NP 79(23.11.07)357.

263 VP 1970-72/691.

264 VP 1934-37/305.

265 Constitution, s.39. A history of previous attempts to alter the quorum provisions was given in the first edition, pp 295-7.

266 Advice of Attorney-General's Department to Standing Orders Committee, dated 30 July 1929.

267 PP108 (1986) 42-46.

268 VP 1987-89/303-4.

269 VP 1987-89/1323.

United Kingdom House of Commons standing order 40 reads:

- (1) If it should appear that fewer than forty Members (including the occupant of the Chair and the Tellers) have taken part in a division, the business under consideration shall stand over until the next sitting of the House and the next business shall be taken.

- (2) The House shall not be counted at any time.

Thus, the absence of a quorum in the House of Commons does not entail the termination of a sitting.<sup>270</sup>

## DIVISIONS

### Determination of questions arising

All questions arising in the House are determined by a majority of votes other than that of the Speaker. The Speaker does not vote unless the numbers are equal when he or she has a casting vote.<sup>271</sup> Questions in committee are decided in the same manner as in the House, the Chairman having a casting vote only.<sup>272</sup> A question may be determined on the voices, by division, or by ballot. The only exception to this general rule is that by practice a vote or address of condolence is carried by all Members present rising in their places, in silence, thereby indicating approval of the motion.<sup>273</sup>

When debate upon a motion has concluded or has been interrupted in accordance with the standing orders, in either the House or committee, the Chair puts the question on the motion and declares whether, in its opinion, the majority of voices is for the 'Ayes' or the 'Noes'. If more than one Member challenges this opinion, the question is decided forthwith by division.<sup>274</sup> The House has on one occasion fixed a specific time for taking a division.<sup>275</sup>

The opinion of the Chair cannot be challenged later<sup>276</sup>, but the Chair has put the question again when an assurance was given that some misunderstanding had taken place<sup>277</sup> and by leave of the House following a protest by the Opposition.<sup>278</sup>

Once a division has been called for by at least two Members the division call cannot be withdrawn<sup>279</sup> unless by leave of the House.<sup>280</sup> A closure motion has been withdrawn, by leave, as the House was proceeding to a division, and the division was not further proceeded with.<sup>281</sup>

The highest number of divisions held in any one year was 359 in 1975 and the highest number during one sitting was 83 on 9 and 10 April 1935.<sup>282</sup> During the period 1970-1988 the average number of divisions each sitting day was 2.6.

270 *May*, pp. 318, 1109 (Standing order renumbered since publication).

271 Constitution, s. 40. For discussion of the casting vote see Ch. on 'The Speaker, the Chairman of Committees and Officers'. For discussion of the restrictions regarding voting at various times by Members for the Northern Territory and the Australian Capital Territory see Ch. on 'Members'.

272 S.O. 276.

273 VP 1978-80/959; and see Ch. on 'Motions'.

274 S.O.s 165, 167-8, 192-3.

275 VP 1920-21/211.

276 H.R. Deb. (27.7.22) 895-6.

277 VP 1923-24/43.

278 VP 1970-72/987; H.R. Deb. (28.3.72) 1239.

279 H.R. Deb. (22-23.6.50) 4824.

280 H.R. Deb. (24.9.36) 501.

281 VP 1960-61/46.

282 VP 1934-37/209-40; see also Appendix 20 for numbers of divisions held.

## Entitlement of Members to vote

No Member is entitled to vote in any division upon a question (not being a matter of public policy) in which he or she has a direct pecuniary interest not held in common with the rest of the subjects of the Crown (*see* Chapter on 'Members'). The vote of a Member may not be challenged except on a substantive motion moved immediately after the division is completed, and the vote of a Member determined to be so interested is disallowed.<sup>283</sup>

No Member is entitled to vote in any division unless, when the tellers are appointed, he or she is within the seats allotted to Members.<sup>284</sup> Following a division on 3 September 1975, the Speaker upheld a point of order that the vote of a Member who had been occupying the Chair as Deputy Speaker when the tellers were appointed, and who had then left the Chair and voted in the division, should not be counted.<sup>285</sup>

## Divisions not proceeded with

A division is not proceeded with unless more than one Member challenges the Chair's opinion by calling for a division.<sup>286</sup> Although standing order 204 provides that if there is only one Member on a side in a division, the Chair, without completing the division, forthwith declares the decision of the House, it is a circumstance which should not arise in view of the requirement of standing order 193.<sup>287</sup> An exception to this rule is a division on the third reading of a constitution alteration bill on which the agreement of an absolute majority of Members is required to be established. In this case the bells are rung as for a division and Members' names recorded, even when there is no opposition to the bill.<sup>288</sup> A further exception has occurred when the Speaker, in accordance with a prior order of the House, has directed that the names of those Members agreeing to a question be recorded.<sup>289</sup>

In 1933, on a call for a division on the motion that the House, at a later hour, again resolve itself into committee, the Speaker held the view that the division call was obstructive<sup>290</sup> and, citing House of Commons practice, informed the House that it was within the discretion of the Chair to regard unnecessary calls for divisions on what are termed formal motions as obstructing the business of the House.<sup>291</sup> The Chair has no such discretion in the House of Representatives and the so-called discretion has not been claimed by subsequent Speakers. In fact, the Chair has occasionally dismissed points of order that certain calls for a division were disruptive.<sup>292</sup>

## Recording dissent

In the event of only one Member calling for a division, that Member may inform the Chair that he or she wishes his or her dissent to be recorded in the Votes and Proceedings and in Hansard and the dissent is so recorded.<sup>293</sup> More than

283 S.O. 196; *see also* Ch. on 'Members' for discussion of pecuniary interest.

284 S.O. 197.

285 VP 1974-75/892.

286 S.O. 193; H.R. Deb. (26.2.53)428.

287 VP 1934-37/194; VP 1960-61/264.

288 VP 1987-89/531-6.

289 VP 1968-69/165.

290 H.R. Deb. (30.11.33)5290.

291 VP 1932-34/839; H.R. Deb. (30.11.33-1.12.33)5310-12.

292 H.R. Deb. (13.3.56)714.

293 S.O.s 193,204.

one Member cannot record dissent, as a division would then have to be held<sup>294</sup> although on one occasion the dissent of the Opposition as a whole was recorded, by leave.<sup>295</sup>

## Procedure during divisions

### *Ringling of bells and locking of doors*

Once a division has been called for and the call accepted by the Chair, the Clerk causes the division bells to be rung and the relevant sand glass or glasses kept on the Table turned. At the lapse of four minutes (the period fixed at the time of publication), as indicated by the sand glass, the doors are locked at the direction of the Chair.<sup>296</sup> When successive divisions are taken and there is no intervening debate after the first division, the bells for the ensuing division are rung for one minute only.<sup>297</sup> The period of time for which the bells are rung was altered from two to three minutes by sessional order following the increase in the membership of the House in 1985 and the housing of some Members in an annexe to the provisional Parliament House<sup>298</sup> and finally increased to four minutes when the new building was occupied in 1988.<sup>299</sup>

In 1974, the third reading of a bill to alter the Constitution not having been carried by an absolute majority, the Speaker made a statement explaining that for some inexplicable reason the bells had been rung for only one minute 26 seconds. The vote on the third reading of the bill was later rescinded and taken again.<sup>300</sup>

A Member calling for a division cannot leave the area within the seats allotted to Members and must vote with those who, in the opinion of the Chair, were in the minority when the voices were taken.<sup>301</sup> On one occasion when no Members passed to the 'Noes' side, the Speaker directed those Members who called 'No' to vote accordingly.<sup>302</sup> The Speaker ruled in 1944 that it was not within the province of the Chair to direct attention to the fact that those who called for a division did not vote with the minority but that the Chair's attention must be directed to the situation at the time.<sup>303</sup> In 1935 a Member who called for a division and then left the Chamber against the express direction of the Chair was subsequently named and suspended from the service of the House.<sup>304</sup>

After the doors are locked no Member may enter or leave the Chamber until after the division has been completed.<sup>305</sup> Both the Prime Minister and Leader of the Opposition, however, have been allowed to withdraw when they have found that they should not be voting because of pairing arrangements.<sup>306</sup> Other Members have been permitted to withdraw for the same reason.<sup>307</sup> Before a division Senators and strangers may be ordered to withdraw from the Chamber, although the provision is of little practical effect in the new building where Senators are not permitted to sit on the same level as Members.<sup>308</sup>

294 H.R. Deb. (25.10.77)2349-50.

295 VP 1978-80/686.

296 S.O.s 199,200.

297 S.O. 200A. This standing order was adopted in 1978 following its trial as a sessional order, VP 1978-80/20.

298 VP 1985-87/36.

299 Sessional orders providing for bells to be rung for four minutes were in force during the first several sitting weeks in the new Parliament House. The change was later made permanent—VP 1987-89/799.

300 VP 1974/19,28; H.R. Deb. (6.3.74)111-12.

301 S.O. 195.

302 H.R. Deb. (8.5.52)219-20.

303 H.R. Deb. (15-16.3.44)1416.

304 H.R. Deb. (20-21.11.35)1861; H.R. Deb. (21.11.35)1863-4.

305 S.O. 200.

306 H.R. Deb. (6.5.76)2073.

307 H.R. Deb. (14.11.74)3533.

308 S.O. 198.



### *Appointment of tellers*

When the doors have been locked and all Members present are in their places, the Chair re-states the question to the House and directs the 'Ayes' to pass to the right of the Chair and the 'Noes' to the left. When Members have taken their seats accordingly, the Chair appoints two tellers from each side to record the names of Members voting.<sup>309</sup> The Chair's attention has been drawn to the fact that a teller appointed for the 'Ayes' did not move from his place with the 'Noes' to join Members voting 'Aye' until after his nomination; he was directed to return to his place and the Chair then appointed another teller for the 'Ayes'.<sup>310</sup>

The tellers are usually, although not invariably, appointed from the party whips or deputy whips. A Prime Minister, on the occasion of a free vote, has been appointed as a teller.<sup>311</sup>

From time to time those appointed as tellers have refused to act, and the following action has been taken by the Chair:

- when tellers for the 'Noes' refused to act, and all Members of the Opposition took the same position, tellers were appointed from the 'Ayes' to count the 'Noes': their votes were recorded with the 'Noes'<sup>312</sup>;
- the Speaker noted that whether a Member so declining could be compelled to do so or was to suffer a penalty was a matter which he would consider<sup>313</sup>;
- when tellers for the 'Noes' refused to act, the Chairman stated that it was an act of contempt for a Member to refuse to do his duty and appointed tellers from the 'Ayes' to count the 'Noes': their votes were recorded with the 'Ayes'<sup>314</sup>, and
- after a teller for the 'Noes' refused to act, the Speaker stated that any disobedience to the call of the Chair was an offence, and that the Member rendered himself liable to be named.<sup>315</sup>

When the tellers for the 'Noes' refused to act in 1918, Speaker Johnson made a statement from which has evolved the modern practice for dealing with this problem. After drawing attention to the standing order which referred to a Member wilfully disobeying an order of the House, the Speaker stated that a direction by the Chair to any Member to act as a teller is a lawful order of the House through the Speaker as its mouthpiece. He added that, as the House had no special standing order dealing with the refusal of a teller to act, he would draw on the practice of the House of Commons which provides that, if two tellers cannot be found for one of the parties in a division, the division cannot take place and the Chair forthwith announces the decision of the House.<sup>316</sup>

The current practice, derived from that background, is that if those Members appointed by the Chair, usually the whip and deputy whip, refuse to act as tellers, it is taken to mean that no Members of that party will act as tellers, the division is not proceeded with and the Chair immediately declares the question resolved in the affirmative or the negative as appropriate.<sup>317</sup>

### *Voting*

Voting does not commence until the tellers are appointed.<sup>318</sup> On the tellers being appointed, every Member within the seats allotted to Members must vote, that is, be counted, and no Member may move from his or her place until the result of the

309 S.O. 201.

310 H.R. Deb. (13.12.34)1253.

311 VP 1970-72/289.

312 H.R. Deb. (12.11.09)5803-4.

313 H.R. Deb. (24.11.09)6259.

314 VP 1917-19/244-6; H.R. Deb. (29.5.18)5246.

315 H.R. Deb. (5.4.33)869-70.

316 VP 1917-19/245; H.R. Deb. (29.5.18)5247-8.

317 VP 1970-72/518; VP 1974-75/430.

318 H.R. Deb. (5.4.78)1055.

division is announced.<sup>319</sup> The Chair has drawn attention to the movement of Members during a division which may confuse the tellers.<sup>320</sup> Members not within the seats allotted to Members are not entitled to vote<sup>321</sup>, but the Chair, on the suggestion of the whips, has agreed that the vote of an indisposed Member who had left the Chamber be recorded.<sup>322</sup> The Chair has also directed that the vote of an infirm Member who wished to vote with the 'Ayes' but was sitting with the 'Noes' be recorded with the 'Ayes'.<sup>323</sup> On another occasion, with the concurrence of the committee, the Chair directed that the vote of a Member who had tried to enter the Chamber **while the bells were ringing** but found the doors locked be recorded.<sup>324</sup>

A Member who has crossed the floor after tellers have been appointed has been directed to return to his place.<sup>325</sup> On the understanding that it should not constitute a precedent, a Member was allowed to cross the floor after tellers were appointed as there had been a degree of confusion on a free vote.<sup>326</sup>

Standing order 203 provides for every Member within the seats allotted to Members to be counted, for his or her name to be taken down by the tellers and for the tellers to sign their list, and present it to the Speaker, who shall declare the result to the House. In practice the names are marked off on printed division lists which are not signed by the tellers until their count and counts made by the Clerk and Deputy Clerk are in agreement. The signed lists are then handed to the Clerk who passes them to the Speaker for the declaration of the result. In marking the list for each side, a teller for the 'Ayes' operates with a teller from the 'Noes' but the two tellers for the 'Ayes' sign the 'Ayes' list and those telling for the 'Noes', the 'Noes' list.

Every Member must vote in accordance with his or her call, either 'Aye' or 'No'.<sup>327</sup> When no Members have passed to the 'Noes' side, the Speaker has directed those Members who called 'No' to vote accordingly.<sup>328</sup> It is in order, however, for a Member to vote against his or her own motion<sup>329</sup> or amendment.<sup>330</sup>

### *Business arising during a division*

While the House is dividing, any Member may speak, sitting, to a point of order arising out of or during the division.<sup>331</sup> Because Members are required to be seated during a division, if a Member wishes to raise or speak to a point of order, it is the traditional practice of the House for the Member to hold a sheet of paper over the top of his or her head while doing so in order to be more easily identified by the Chair. (This tradition has been developed from practice of the House of Commons that a Member wishing to speak in debate stands up, and if he has a hat on, he must take it off. However, if the House is in the middle of a division, a Member wishing to raise a point of order must do the opposite; he or she must remain seated and must be covered. A Member is able to fulfil the requirement to be covered by borrowing one of the two opera hats kept for this purpose by the Serjeant-at-Arms. The use of such articles as a handkerchief or a Notice Paper, instead of one of the opera hats, is not acceptable in the House of Commons. The

319 S.O. 202.

320 H.R. Deb. (6.4.76)1361.

321 S.O. 197.

322 H.R. Deb. (5.6.79)2934.

323 H.R. Deb. (26.6.31)3098.

324 VP 1934-37/720.

325 H.R. Deb. (18-19.11.59)2885.

326 H.R. Deb. (19.8.76)430.

327 S.O. 194; H.R. Deb. (25.10.33)3956-7.

328 H.R. Deb. (8.5.52)219-20.

329 H.R. Deb. (7.5.08)11010.

330 VP 1978-80/1308 (Mr Simon's amendment).

331 S.O. 205.

practice is considered by some Members to be anachronistic and ridiculous.<sup>332</sup> Decorum should prevail during a division, and it is not in order for Members to engage in debate<sup>333</sup> or exchange remarks across the Chamber.<sup>334</sup> Conversation audible to the Chair has been regarded as disorderly.<sup>335</sup> Remarks made during a division are not regarded as part of the proceedings of the House and are not recorded by Hansard.<sup>336</sup> The Speaker has pointed out to Members that such remarks might not be covered by privilege and that this also has implications for media reports.<sup>337</sup>

### **Deferral of divisions**

Under sessional orders governing the routine of business on Thursday mornings, and effective from March 1988, standing order 193 was amended to provide that, on sitting Thursdays, any division called for in the House before 12.30 p.m. on a question, other than a motion moved by a Minister, stands deferred until 12.30 p.m.<sup>338</sup>

### **Record of divisions**

Lists of divisions are recorded in the Votes and Proceedings<sup>339</sup> and in Hansard. Members' names are listed in Hansard alphabetically under 'Ayes' or 'Noes' and since 1929 the name of the occupant of the Chair has been recorded at the top of the division list. Prior to 1979 the names of the tellers were recorded at the bottom of each list but following reports that the press sometimes overlooked the tellers in recording how Members had voted on a particular question, the Speaker directed that their names be included in the alphabetical list with 'teller' placed after their names.<sup>340</sup> A similar method is used in the Votes and Proceedings where the tellers' names are marked with an asterisk.

The Speaker may cause the record to be corrected if a complaint is made to the House that a division has been inaccurately reported.<sup>341</sup> The Chair has directed that the Leader of the Opposition's vote be deleted as he was paired with the Prime Minister who was not in the Chamber.<sup>342</sup> If any confusion or error concerning the numbers reported cannot be otherwise corrected, the House proceeds to another division.<sup>343</sup> In practice, many errors are corrected by agreement between the tellers or by consultation between the whip and officers of the House after a division when a name has been recorded incorrectly. The Speaker has directed that the official record be corrected when a Member's name has been recorded incorrectly<sup>344</sup> and the name of a Member has been omitted.<sup>345</sup>

### **Pairs**

The pairs system, a practice of some antiquity<sup>346</sup>, is an **unofficial** arrangement between Members, organised by party whips, which enables a Member on one side of the House to be absent for any votes when a Member from the other side is to be absent at the same time or when, by agreement, a Member abstains from voting.

332 G. Cunningham, 'The Hat and I', *The Parliamentarian* LVIII, 4, 1977, pp. 280-2.

333 H.R. Deb. (10.8.23)2597.

334 H.R. Deb. (7.9.09)3099.

335 H.R. Deb. (29.3.50)1325.

336 H.R. Deb. (13.10.83)1801.

337 H.R. Deb. (8.10.84)1875.

338 VP 1987-89/302.

339 S.O. 207.

340 H.R. Deb. (27.3.79)1143-4; H.R. Deb. (28.3.79)1210.

341 S.O. 209.

342 H.R. Deb. (7.4.78)1239-40.

343 S.O. 208; VP 1977/145.

344 VP 1932-34/121.

345 VP 1940/105.

346 Wilding and Laundry, p. 515.

By this arrangement a potential vote on each side of a question is lost and the relative voting strengths of the parties are maintained. The system also means that the voting intentions of absent Members are shown in Hansard which, as a matter of practice, records pairs in conjunction with each division list.<sup>347</sup>

From time to time difficulties have been encountered with the system because:

- Members forget they have made pairing arrangements and vote in divisions<sup>348</sup>;
- the voting intentions of a Member have been misrepresented in the pair book<sup>349</sup>;
- there have been allegations of tampering with the pair book after a division<sup>350</sup>, and
- of accusations that parties refused to enter into pairing arrangements.<sup>351</sup>

These were earlier cases in the history of the House when the House was not always divided into distinct political parties. With the development of the modern party system pairing arrangements were facilitated and Members are now paired not only on particular questions or for one sitting of the House, but for extended periods. It is usual for the Prime Minister and the Leader of the Opposition to be automatically paired unless one indicates to the other that he or she wishes to vote on a particular issue. The closer the relative strength of the parties the more crucial the pairing arrangements become. In these circumstances disputations on pairing arrangements are more likely to occur, especially on vital votes, and have been the cause of protracted disorderly proceedings. Statements have been made to the House on guidelines for the granting of pairs.<sup>352</sup> Pairs have been cancelled by the Government because of the need for an absolute majority to pass a bill to alter the Constitution.<sup>353</sup> The Opposition has cancelled the arrangements for the remainder of the session as a consequence of its view on the manner in which the proceedings of the House were being conducted.<sup>354</sup>

Although there is no rule or order of the House requiring a Member to observe a pair, there is a considerable moral and political obligation on his or her part to adhere to such an agreement. The consistent attitude of the Chair on this question was summed up by Speaker Watt when, in reply to a question as to whether it would be a breach of honour if a Member did not observe a pair, he observed that the Chair knew nothing of pairs, the question of honour being a matter for the Members and not the Chair to decide.<sup>355</sup>

During a division, it is the practice that Members who are paired either leave the Chamber before the doors are locked or leave the area within the seats allotted to Members prior to the appointment of tellers, so as to avoid voting. However, if a paired Member calls for a division, he or she is bound not to leave the area within the seats allotted to Members, and to vote.<sup>356</sup> Both the Prime Minister and Leader of the Opposition have been allowed to withdraw from the area within the seats allotted to Members *after* the doors have been locked when they have found that they should not be voting because of pairing arrangements.<sup>357</sup> Other Members have been permitted to withdraw for the same reason.<sup>358</sup>

347 H.R. Deb. (29.11.01)8063.

348 H.R. Deb. (12.7.06)1264.

349 H.R. Deb. (23.11.07)6506. Until 1966 pairing arrangements were recorded in a pairs book kept on the Table.

350 H.R. Deb. (30.10.13)2715.

351 H.R. Deb. (23.4.08)10544-6; H.R. Deb. (30.4.08)10703-6.

352 VP 1974-75/596; H.R. Deb. (17.4.75)1760-2.

353 VP 1974-75/789; H.R. Deb. (5.6.75)3405-6.

354 H.R. Deb. (15.8.23)2783.

355 H.R. Deb. (14.7.25)1007.

356 S.O. 195.

357 H.R. Deb. (6.5.76)2073.

358 H.R. Deb. (14.11.74)3533.

## Free votes

Most decisions of the House are determined on party lines, but occasionally a question before the House is decided by what is termed a 'free vote'. A free vote may occur when a party has no particular policy on a matter or when a party feels that Members should be permitted to exercise their responsibility in accordance with conscience.<sup>359</sup> Within the committees of the House party lines are less rigid and questions are often decided by what is, in effect, a free vote.

Free votes are most often held on questions pertaining to the Parliament, such as questions arising out of reports of the Privileges Committee and the Standing Orders Committee. They are also occasionally held on social issues where the vote is governed by conscience. More recent examples of a free vote have been:

- *Privileges Committee report*  
1955—Browne and Fitzpatrick case.<sup>360</sup>
- *New and Permanent Parliament House*  
Motions as to site—1968<sup>361</sup>, 1973<sup>362</sup>;  
Parliament Bill 1974 (private Member's bill).<sup>363</sup>
- *Standing Orders Committee reports and related matters*  
Reports dated: 10 June 1971<sup>364</sup>, 19 August 1971<sup>365</sup>, 20 March 1972<sup>366</sup>;  
House of Representatives (Quorum of Members) Bill 1970.<sup>367</sup>
- *Private Members' bills and motions*  
Medical Practice Clarification Bill 1973<sup>368</sup>;  
Sexual relationships—Social educational and legal aspects—Proposed Royal Commission (motion)<sup>369</sup>;  
Homosexual acts and the criminal law (motion)<sup>370</sup>;  
Termination of pregnancy—Medical benefits (motion)<sup>371</sup>;  
Fluoridation of Canberra water supply (motion).<sup>372</sup>
- *Others*  
Matrimonial Causes Bill 1959<sup>373</sup>;  
Death Penalty Abolition Bill 1973 (Senate bill)<sup>374</sup>;  
Family Law Bill 1974 (Senate bill)<sup>375</sup>;  
Family Law Amendment Bill 1983 (Senate bill)<sup>376</sup>;  
Sex Discrimination Bill 1984 (Senate bill).<sup>377</sup>

In 1955, Leader of the Opposition Evatt informed the House that the matter of privilege in the Browne and Fitzpatrick case did not involve party consideration and that on no occasion had a question of privilege been discussed at a party meeting by Australian Labor Party Members.<sup>378</sup> These views were reiterated in 1971 by Leader of the Opposition Whitlam who indicated that his party always allowed a free vote on matters arising from parliamentary committees and that it had never

359 See H.R. Deb. (19.8.70)172.

360 VP 1954-55/270-1.

361 VP 1968-69/242.

362 VP 1973-74/476.

363 VP 1974-75/198,199,199-200,200.

364 VP 1970-72/243,252-3.

365 VP 1970-72/686,687.

366 VP 1970-72/1009,1010.

367 VP 1970-72/294,295.

368 VP 1973-74/172,172-3.

369 VP 1973-74/327,327-8,328.

370 VP 1973-74/458.

371 VP 1978-80/692,692-3.

372 VP 1964-66/251.

373 VP 1959-60/261(2),264-5,265,265-6.

374 VP 1973-74/329,330(2).

375 VP 1974-75/384 (and on subsequent divisions during proceedings on the bill).

376 VP 1983-84/305-10.

377 VP 1983-84/528-30.

378 H.R. Deb. (10.6.55)1630.

caucused on any committee findings.<sup>379</sup> Even though parties may allow a free vote of its Members on a particular issue the vote may, in fact, follow party lines substantially or completely.<sup>380</sup>

### Proposals for change in division procedure

There have been a number of proposals for changing the procedure used by the House during divisions. Most proposals have been aimed at either avoiding problems of overcrowding or reducing the time taken by divisions. Both these problems are especially noticeable during periods when the Government has a large majority. The average time taken for a division in 1976 was nine minutes and in 1975, when the Government's majority was far less, seven minutes. Some improvement has been effected since 1978 when the House adopted standing order 200A which limits the time for the ringing of the bells to one minute when successive divisions are taken and there is no intervening debate after the first division. Thus, the average time taken for a division in 1980 was seven minutes, even though the Government had a large majority. The average time taken in 1986, in a larger House, was eight minutes. In 1989, in the new Parliament House, the time was also eight minutes.

The following proposals raised in recent years were not adopted:

- a proposal considered by the Standing Orders Committee in 1976 to give the Speaker the discretion to appoint an additional teller for each side in an attempt to reduce the time in counting divisions brought about by the large government majority;
- the adoption of a system whereby Members file past the Chair and cast their votes while the bells are ringing, possibly saving four to five minutes on each division<sup>381</sup>;
- that government Members (National Party) seated on the opposition side remain in their places during the counting of a division in order to alleviate crowding and difficulty of counting on the right of the Chair;
- that the Chair should have discretionary power, as in the House of Commons, to reject the call for a division, thus minimising 'unnecessary' divisions called primarily as a tactical measure<sup>382</sup>, and
- the introduction of electronic voting as a time-saving device and to enable Members to vote without leaving their seats and obviating the need to appoint tellers.<sup>383</sup>

Of all these proposals the question of electronic voting has received the most attention. In 1970 the Joint Select Committee on the New and Permanent Parliament House agreed that, although the installation of electronic voting was not desirable at that time, the Chambers in the new Parliament House should be provided with all necessary conduits and ducts in preparation for the possible installation of electronic voting cabling at a later date. One important factor taken into consideration by the committee was the view that electronic voting was not warranted in a House of less than 250 Members.<sup>384</sup> In answer to a question in 1973 Speaker Cope referred to the views of the committee and added that the cost of installing a system of electronic voting could hardly be justified by the infrequent

379 H.R. Deb. (8.9.12.71)4363.

380 VP 1970-72/901-2.

381 H.R. Deb. (10.9.75)1214.

382 H.R. Deb. (14.10.76)1926; see also the address to the National Press Club on 8 June 1978 by Speaker Snedden (unpublished) and Selwyn Lloyd, *Mr Speaker, Sir*, Jonathan Cape, London, 1976, pp. 96-8; but see also comments by

Speaker Snedden, *Report of 4th Conference of Commonwealth Speakers and Presiding Officers, 1976, London*, p. 9.

383 See H.R. Deb. (19.4.66)955.

384 'Proposed New and Permanent Parliament House for the Parliament of the Commonwealth of Australia', *Report of Joint Select Committee*, PP 32(1970)30.

occasions when there was overcrowding on the benches during divisions.<sup>385</sup> The matter was also raised at a meeting of the Standing Orders Committee in 1973 but the committee did not reach any firm conclusion.

The question of electronic voting is not concerned solely with the speed of recording divisions. The introduction of this system could affect an important safeguard in respect of the right of the Opposition to be heard.<sup>386</sup> In 1978 the Speaker explained the situation in the following terms:

A frequent criticism of Parliamentary procedure is the 'waste of time' counting a division. With tellers calling the names to be marked on the voting sheet the average time taken, including the ringing of the bells, is about 8 minutes. It can take 10 or 12 minutes when the numbers don't balance. Why not electronic voting? The answer is simply this. If the ministerial managers will not give time to debate an issue the opposition can register its disapproval and non co-operation by calling for divisions. The 'waste of time' is the opposition's only weapon and usually restores the process of consultation and accommodation but only after disruption. To adopt electronic voting without a parallel change in the discretionary use of the gag or the establishment of a joint management committee to allot times for debate would improperly weaken an essential element of the Parliamentary democratic process—Her Majesty's loyal opposition. One or other of these latter methods have been adopted in other Parliaments.<sup>387</sup>

The Chamber is fitted with the necessary conduits to facilitate the introduction and operation of electronic voting, should the House decide to have such a facility at some time in the future.

Suggestions have sometimes been made that divisions should take place at a set time each day, in order to save the time of the House and to avoid the disruption that unpredictable divisions can cause to Members and Ministers.<sup>388</sup> Although such a procedure has some attractions, the legislative program could be particularly affected, as each subsequent stage of a bill is dependent on a decision having been reached on the previous stage, and each division called could necessitate postponement of further consideration of a bill, perhaps for a significant period. This is not to say that divisions could not in many cases be arranged to occur at times which suited both Government and Opposition, but this would result from consultation and cooperative timetabling of business rather than from the setting of an arbitrary time for the holding of divisions. Any problems perceived were not considered to be of the same moment in so far as private Members' business was concerned, and the deferral of divisions called during Thursday morning sittings has been provided for (*see* Chapter on 'Private Members' business').

## BALLOTING

Apart from ballots for the election of the Speaker and the Chairman of Committees<sup>389</sup>, the standing orders make provision for the taking of a ballot whenever the House thinks fit, but the system has not been used for many years. Before the House proceeds to a ballot, the bells are to be rung as in a division.<sup>390</sup> The manner of taking a ballot, unless otherwise expressly provided, is also detailed.<sup>391</sup> A ballot could be used to elect Members to perform a function or to serve on a committee, statutory body or delegation.

385 H.R. Deb. (2.5.73)1560.

386 H.R. Deb. (2.3.67)297-8.

387 Speech to University of Western Australia Law School by Speaker Snedden (unpublished).

388 *See* A. R. Browning 'The ringing of the bells causes some divisions', *Canberra Times* 27.9.87 p. 2.

389 *See* Ch. on 'Speaker, the Chairman of Committees and Officers'.

390 S.O.s 390,391.

391 S.O. 392.

In 1905 the House agreed to appoint Members to a proposed select committee by ballot.<sup>392</sup> The ballot did not eventuate as the motion to appoint the committee was negatived.<sup>393</sup> In the same year a message was received from the Senate requesting concurrence with a resolution that the High Commissioner for the Commonwealth of Australia be selected by exhaustive ballot at a joint meeting of the Senate and House of Representatives. Consideration of the message lapsed at prorogation.<sup>394</sup>

On three occasions, in 1903, 1904 and 1908, the House resolved to hold open exhaustive ballots to determine the opinion of Members as to the site of the seat of government of the Commonwealth.<sup>395</sup> On each occasion the House agreed to specific resolutions determining the method of taking the ballot. Prior to the 1903 ballot the Speaker issued a short statement setting out further rules which were to be observed in connection with the ballot as to seating of Members and marking of papers. The rules also indicated that in the event of a signed paper being incorrectly marked, the Member would be called to the Table to indicate the true nature of his vote which would then be counted.<sup>396</sup> On the first occasion six ballots were held, two on the second and nine on the third before the result was determined.<sup>397</sup> The ballots were not secret, and the record of how Members voted was laid upon the Table and appeared in Hansard.<sup>398</sup>

Consideration has been given in recent years to the possible use of secret ballots on certain conscience issues which were to be decided by free vote, but no procedure has been proposed to the House.

392 Members to serve on parliamentary committees are regularly elected by ballot in the party rooms.

393 VP 1905/135-6; H.R. Deb. (26.10.05)4169. The method of appointment of Members was agreed to pursuant to old S.O. 324 (no longer operative) which provided that, if six Members so required, a committee was to be appointed by ballot.

394 VP 1905/82,xliv.

395 VP 1903/161-2; VP 1904/129; VP 1908/29-30. The 1904 ballot was to determine the opinion of Members as to the district in N.S.W. in which the seat of government should be; the other two were for actual sites.

396 H.R. Deb. (8.10.03)5935.

397 VP 1903/163-4; VP 1904/141; VP 1908/38-9.

398 H.R. Deb.(8.10.03)5935-6; H.R. Deb.(9.8.04)3936; H.R. Deb. (8.10.08)938-9.