

Members

THE MEMBER'S ROLE

This chapter is confined, in the main, to the role of the private Member, who may be defined generally as a Member who does not hold any of the following positions: Prime Minister, Speaker, Minister, Leader of the Opposition, Deputy Leader of the Opposition, or Leader of a recognised party.¹ The commonly used term backbencher, which is sometimes used as a synonym of the term private Member, strictly refers to a Member who sits on a back bench as opposed to those Members who sit on the front benches which are reserved for Ministers and members of the opposition executive.

It is a rare occurrence for a person to be elected as a Member of the House of Representatives unless as a member of one of the established political parties represented in the House.² Since 1949 there have been only two instances when an independent has been elected,³ while there have been six occasions when Members have sat as independents after resigning from their party during the course of a Parliament.⁴

If a Member is elected with the support of a political party, it is not unreasonable for the party to expect that the Member will testify loyalty and support by actions in the House. Most decisions of the House are determined on party lines and, thus, a Member's vote will usually be in accord with the policies of the party.

An exception to this rule arises in the relatively rare case of 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 their consciences. A free vote may also be extended to matters affecting the functioning of the House, such as changes to the standing orders.⁵

The private Member has a number of distinct and sometimes competing roles. His or her responsibilities and loyalties lie with:

- the House of Representatives but with an overriding duty to the national interest;
- constituents—he or she has a primary duty to represent their interests, and
- the parliamentary party, the party nationally and the party branches within the electorate.

These roles are discussed briefly below.

Parliamentary

The national Parliament is the forum for debating and publicising matters of national and international importance. The role played by the Member in the House

1 See Ch. on 'House, Government and Opposition' for discussion of the Ministry and office holders.

2 Since the general election in 1949 the only other party represented in the House has been the Australian Labour Party (Anti-Communist) in 1955 which comprised seven former members of the Australian Labor Party, VP 1954-55/161; H.R. Deb. (19.4.55)3. For an analysis of party affiliations of Members since 1901 see Appendix 10.

3 Mr L. W. Nott in 1949 and Mr S. J. Benson in 1966 (Mr Benson had resigned from the ALP during the previous Parliament on 31.8.66).

4 St. John, E. H. (Lib.) resignation statement 15.4.69. Bate, H. J. (Lib.) resigned 10.10.72. Gorton, J. G. (Lib.) resigned 23.5.75. Chipp, D. L. (Lib.) resigned 24.3.77. Wentworth, W. C. (Lib.) resignation statement 11.10.77. Richardson, P. A. (Lib.) resigned 14.10.77.

5 See Ch. on 'Routine of business and the sitting day'.

is the one with which the general observer is most familiar. It is the Chamber role which probably attracts the most publicity but, at the same time, it is the one which is probably least demanding of a Member's time.

During the period 1970-1988 the House met on an average of 66⁶ days in each year, with the normal sitting periods extending from February to June and August to December. Most of the time of the House is taken up with the consideration of bills, the discussion of matters of public importance, question time, and debates on substantive motions, ministerial statements and the motion for the adjournment of the House. Thus opportunities are available, within the existing system, which allow the perceptive private Member to fulfil the role of scrutinising the actions of the Government and of seeking to influence the direction of national policy.

Since the late 1960s – early 1970s the House of Representatives has sought to strengthen its ability to scrutinise the actions and policies of the Government, mainly through the creation of committees.⁷ This has placed considerable demands on the time of the private Member as committee meetings are held during sitting and non-sitting periods and, in some instances, a committee may decide to hold hearings in many places throughout Australia. In order to make a substantive contribution to the work of a committee, a Member must invest a considerable amount of time in becoming familiar with the subject-matter of the inquiry. This may involve private research or the evaluation of research undertaken by the committee secretariat or the Legislative Research Service of the Parliamentary Library. Committees are given wide powers of investigation and study, and their reports testify to the thoroughness of their work. They are valuable vehicles for acquiring and disseminating information and supplement the normal parliamentary role of a private Member considerably.

The volume of legislation and the increasing breadth and complexity of government activity in recent times has required the typical private Member to narrow his or her range of interest and activity, and to specialise in areas which are of particular concern.

Constituency

The electoral Divisions in Australia have an average population of about 108 000 people (75 230 electors) and range in area from 17 square kilometres to 2.3 million square kilometres. Members provide a direct link between their constituents and the federal administration. Constituents constantly seek the assistance of their local Member in securing the redress of some grievance or help with various problems they may encounter. Many of the complaints or calls for assistance fall within the areas of social welfare, immigration and taxation. A Member will also deal with problems concerning family law, postal and telephone services, employment, housing, health and education—even the task of just filling out forms. Many Commonwealth and State functions overlap and when this occurs cross referrals of problems are made between Federal and State Members, regardless of political affiliations.

A Member has an important influence and standing outside Parliament and typically has a wide range of contacts with government bodies, political parties, and the community as a whole. Personal intervention by a Member traditionally commands priority attention by departments. If the problem of a constituent is purely an administrative one, the Member may contact the department or authority concerned, where the case will be dealt with by the relevant section. If the problem is urgent, the Member may approach the Minister direct or, if the Member feels

⁶ The average since Federation is 68 days.

⁷ See also Ch. on 'Parliamentary committees'.

the case requires public ventilation, he or she may bring the matter before the House, for instance, by addressing a question to the responsible Minister, by raising it during a grievance debate or by speaking on it during an adjournment debate. It is more common however for the concerns or grievances of citizens to be dealt with by means of representations to departments and authorities, or Ministers, and for them to be raised in the House only if such representations fail.

A Member may also make representations to the Government on behalf of his electorate as a whole on matters which are peculiar to the electorate. The building of an airport or other major project within the electorate, or the prospect of closure of a local industry which would cause unemployment or other problems for the area, are examples of this type of representation closely related to local circumstances. Such matters are more likely to be the subject of questions on notice or to be raised in the House than are problems of individual constituents.

Party⁸

A Member will rarely challenge effectively the policies of his or her party on the floor of the House because of the strong tradition of party loyalty that exists in Australia. However policy can be changed both in the party room and through the system of party committees. All parties hold meetings, usually weekly when the Parliament is sitting, at which proposals are put before the parliamentary parties and attitudes are determined.

Both the Australian Labor Party and the Liberal-National Parties make extensive use of back bench party committees, each committee specialising in a particular area of government. These committees scrutinise legislative proposals and government policy, and, to some degree, may develop party policy. They can enable private government Members to have detailed discussions with senior departmental officials and may provide a platform for hearing the attitudes of community groups and organisations on particular matters. Back bench party committees of a party or parties in government are particularly important, for example, Australian Labor Party back bench party committees have a significant role in the consideration of draft legislation prior to its actual presentation to Parliament.

NUMBER OF MEMBERS

A list showing the number of Members of the House of Representatives in each Parliament since 1901 is shown at Appendix 11. As indicated in the appendix only three significant variations in the number of Members have occurred since 1901, that is, in 1949, 1977 and 1984⁹. Following the 1984 and 1987 general elections representation of the States and Territories was as follows:

New South Wales	51
Victoria	39
Queensland	24
South Australia	13
Western Australia	13
Tasmania	5
Australian Capital Territory	2
Northern Territory	1
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⁸ See also Ch. on 'House, Government and Opposition'.

⁹ The *Representation Act 1948* and *Representation Act 1983* increased the number of Senators in each State from 6 to 10 and from 10 to 12 respectively.

The process of determining the number of Members for the several States is laid down in the Commonwealth Electoral Act. This, and the history of the increase in the membership of the House since Federation, is covered in detail in the Chapter on 'Elections and the electoral system'.

Territorial representation

The Parliament may admit new States to the Commonwealth or establish new States, and may determine the extent of representation of new States in either House.¹⁰ The Parliament may also make laws for the government of any Commonwealth Territory and determine the extent and terms of representation of any such Territory in either House.¹¹ Thus, the Parliament has determined that the Australian Capital Territory and the Northern Territory shall be represented in both the House of Representatives and the Senate.

A Member for the Northern Territory was first elected on 16 December 1922.¹² At that time the Member was subject to certain 'disabilities' which prevented him from:

- voting on any question in the House;
- being counted as a Member in determining whether a quorum of the House was present;
- being chosen as Speaker or Chairman of Committees or performing their duties, or
- being counted for determining a question where an absolute majority was required under section 57 or 128 of the Constitution.

The Act was amended in 1936 to allow the Member for the Northern Territory to vote on any motion for the disallowance of any ordinance of the Northern Territory or on any amendment of any such motion.¹³ It was again amended in 1959 to allow the Member to vote on any question in connection with bills relating solely to the Northern Territory, and upon any motion, and amendment to such motion, for disallowance of a regulation made under an ordinance of the Territory.¹⁴ In 1968, with the growth of population, all disabilities were removed.¹⁵

A Member for the Australian Capital Territory was first elected on 10 December 1949. The Member was subject to disabilities similar to those affecting the Member for the Northern Territory as at 1948.¹⁶ The Act was amended in 1959 to allow the Member to vote on any question in connection with bills relating solely to the Australian Capital Territory, and on any motion, and amendment to such motion, for disallowance of an ordinance of the Territory, regulation made under an ordinance, or modification or variation of the plan of lay-out of the city of Canberra.¹⁷ In 1966 all disabilities were removed.¹⁸ In 1973 the number of Members representing the Australian Capital Territory in the House was increased to two¹⁹ and earlier Acts relating to Australian Capital Territory representation were repealed.

10 Constitution, s. 121.

11 Constitution, s. 122.

12 *Northern Territory Representation Act 1922* (Act No. 18 of 1922).

13 *Northern Territory Representation Act 1936* (Act No. 65 of 1936).

14 *Northern Territory Representation Act 1959* (Act No. 27 of 1959).

15 *Northern Territory Representation Act 1968* (Act No. 11 of 1968).

16 *Australian Capital Territory Representation Act 1948* (Act No. 57 of 1948).

17 *Australian Capital Territory Representation Act 1959* (Act No. 31 of 1959); *Australian Capital Territory Representation Act (No. 2) 1959* (Act No. 91 of 1959).

18 *Australian Capital Territory Representation Act 1966* (Act No. 3 of 1966).

19 *Australian Capital Territory Representation (House of Representatives) Act 1973* (Act No. 111 of 1973).

In 1975 a challenge was brought before the High Court concerning the constitutionality of territorial representatives sitting in the Parliament. The decision handed down upheld the right of the Territories to be represented in both the House of Representatives and the Senate.²⁰

In 1983 the provisions for Australian Capital Territory and Northern Territory representation were inserted in the Commonwealth Electoral Act²¹ and earlier specific legislation was repealed. In 1984 the Commonwealth Electoral Act was amended²² to provide that the Territories of Cocos (Keeling) Islands and Christmas Island be included as part of the Northern Territory for Federal electoral purposes, each of the two territories forming a district of the Northern Territory electoral Division.²³

In 1986, in responding to a report from the Joint Committee on Electoral Reform,²⁴ the Government stated its intention of introducing amendments to the Commonwealth Electoral Act to provide for the following²⁵:

- the Australian Capital Territory and the Northern Territory to be represented in proportion to their populations, population quotas being determined in the same manner as for the original States under section 48 of the Act, subject to the proviso that they each have at least one Member;
- any other Commonwealth territory to be entitled to separate representation only if its population exceeds one half of a quota under section 48; until that time the population of such territories would continue to be included in the electoral Divisions of the Australian Capital Territory or the Northern Territory, and
- Commonwealth territories to be represented in the Senate on the basis of one Senator for every two Members of the House of Representatives to which they are entitled, subject to the proviso that the Australian Capital Territory and the Northern Territory each have at least two Senators.

Legislation on this matter was introduced in 1988.²⁶

QUALIFICATIONS AND DISQUALIFICATIONS

In order to be eligible to become a Member of the House of Representatives a person must be²⁷:

- of the full age of 18 years;
- an Australian citizen, and
- an elector, or qualified to become an elector, who is entitled to vote in a House of Representatives election.²⁸

A person is incapable of being chosen or of sitting as a Member of the House of Representatives if the person:

- is a subject or citizen of a foreign power or is under an acknowledgment of allegiance, obedience or adherence to a foreign power;
- is convicted (attainted) of treason;

20 *Western Australia v. Commonwealth* (1975) 134 CLR 201 (Territories Representation Case).

21 *Commonwealth Electoral Act 1918*, ss. 51, 52.

22 *Christmas Island Administration (Miscellaneous Amendments) Act 1984* and *Cocos (Keeling) Islands Self-Determination (Consequential Amendments) Act 1984*.

23 *Commonwealth Electoral Act 1918*, ss. 4, 79.

24 'Determining the Entitlement of Federal Territories and New States to Representation in the Commonwealth Parliament', PP 1 (1986).

25 Government response tabled 25 September 1986.

26 Electoral and Referendum Amendment Bill 1988.

27 The Parliament has laid down these qualifications in place of those prescribed in the Constitution, s. 34.

28 *Commonwealth Electoral Act 1918*, s. 163.

- has been convicted and is under sentence or subject to be sentenced for an offence punishable by imprisonment for one year or longer under a State or Commonwealth law;
- is an undischarged bankrupt or insolvent;
- holds any office of profit under the Crown or any pension payable during the pleasure of the Crown out of any Commonwealth revenues, but this does not apply to:
 - Commonwealth Ministers;
 - State Ministers;
 - officers or members of the Queen's Armed Forces in receipt of pay, half-pay or pension;
 - officers or members of the Armed Forces of the Commonwealth in receipt of pay but whose services are not wholly employed by the Commonwealth, or
 - the offices of President of the Senate and Speaker of the House;
- has any direct or indirect pecuniary interest in any agreement with the Commonwealth Public Service in any way other than as a member in common with other members of an incorporated company consisting of more than 25 persons²⁹;
- has been convicted of bribery or undue influence or attempted bribery or undue influence at an election, disqualification being for two years from date of conviction³⁰, or
- has been found by the Court of Disputed Returns to have committed or attempted to commit bribery or undue influence when a candidate, disqualification being for two years from date of finding.³¹

A person is also disqualified by virtue of not being eligible as an elector, in accordance with section 163 of the Commonwealth Electoral Act, if the person is of unsound mind.³²

No person who nominates as a Member of the House of Representatives can be at the hour of nomination a member of a State Parliament, the Northern Territory Legislative Assembly or the Australian Capital Territory House of Assembly.³³

A Member of either the House of Representatives or the Senate is incapable of being chosen or of sitting as a Member of the other House.³⁴ Thus, a Member of either House must resign if he or she wishes to stand as a candidate for election to the other House. Recent resignations from the Senate to contest a House of Representatives election have been:

- in 1968 former Senator Gorton successfully contested a by-election for the Division of Higgins;
- in 1977 former Senator Hall was an unsuccessful candidate at the general election for the Division of Hawker;
- in 1980 former Senator Wriedt was an unsuccessful candidate at the general election for the Division of Denison;
- in 1981 former Senator Rocher successfully contested a by-election for the Division of Curtin, and

²⁹ Constitution, s. 44.

³⁰ *Commonwealth Electoral Act 1918*, s. 386.

³¹ *Commonwealth Electoral Act 1918*, s. 386.

³² *Commonwealth Electoral Act 1918*, s. 93.

³³ *Commonwealth Electoral Act 1918*, s. 164.

³⁴ Constitution, s. 43.

- in 1984 former Senator Martin (later Sullivan) was a successful candidate at the general election for the Division of Moncrieff.

In 1981 the Senate Standing Committee on Constitutional and Legal Affairs report *The Constitutional Qualification of Members of Parliament* recommended a substantial simplification of the constitutional provisions relating to qualification and disqualification, however action has not been taken to implement its recommendations.³⁵

Challenges to membership

The House may, by resolution, refer any question concerning the qualifications of a Member to the Court of Disputed Returns.³⁶ There has been no instance of the House taking such action, but cases have occurred in the Senate.

Section 44(v.) of the Constitution

On 4 April 1975 a witness appearing before the Joint Committee on Pecuniary Interests alleged, in a written submission, that Senator Webster (also a member of the committee) was disqualified from sitting as a Senator under the terms of section 44(v.) of the Constitution. The witness alleged that Senator Webster was a director, manager, secretary and substantial shareholder in a company which had had at least nine contracts with Commonwealth Government departments from 1964 to 1974.³⁷ On 15 April 1975 the chairman of the committee wrote to the President of the Senate informing him of the allegation.³⁸ The letter was read to the Senate by the President on 15 April³⁹ and on 22 April the Senate agreed to a resolution referring the following questions to the Court of Disputed Returns:

- whether Senator Webster was incapable of being chosen or of sitting as a Senator, and
- whether Senator Webster had become incapable of sitting as a Senator.⁴⁰

Chief Justice Barwick handed down his decision on 24 June 1975 and answered 'No' to the two questions referred to the Court by the Senate.⁴¹ The Chief Justice in his judgment said that the facts refuted any suggestion of any lack of integrity on the part of Senator Webster, or of any intention on his part to allow the Crown to influence him in the performance of his obligations as a member of the Senate and further that there was at no time any agreement of any kind between Senator Webster and the Public Service of the Commonwealth.⁴²

Section 44(iv.) of the Constitution

On 3 September 1975 the Queensland Parliament chose Albert Patrick Field to fill a casual vacancy caused by the death of Senator Milliner. On 9 September a motion was moved in the Senate to have his eligibility referred to the Standing Committee of Disputed Returns and Qualifications on the ground that he was not eligible to be chosen as a Senator on 3 September because he had not legally resigned from an office of profit under the Crown.⁴³ The motion was defeated and

35 'Constitutional qualifications of Members of Parliament', *Senate Standing Committee on Constitutional and Legal Affairs*, PP 131 (1981); Government response S. Deb. (6.9.84) 517-20.

36 *Commonwealth Electoral Act 1918*, s. 376; and see Ch. on 'Elections and the electoral system'.

37 'Declaration of Interests', *Joint Committee on Pecuniary Interests of Members of Parliament*, Transcript of Evidence, Vol. 2, 5 March-15 April, AGPS, Canberra, 1975, p. 1503.

38 'Qualifications of Senator Webster', *Reference to Court of Disputed Returns*, PP 113(1975)11.

39 J 1974-75/597.

40 J 1974-75/628-9.

41 J 1974-75/821.

42 *In re Webster* (1975) 132 CLR 270.

43 J 1974-75/905-6; S. Deb. (9.9.75)603.

Senator Field was sworn in.⁴⁴ A writ was served on Senator Field on 1 October 1975 challenging his eligibility to sit in the Senate.⁴⁵ The Senate then granted him leave of absence for 1 month.⁴⁶ The Senate was dissolved on 11 November and the matter did not come to court.

The view has been taken that a person who accepts an office of profit under the Crown is disqualified from membership of the Parliament from the date he is appointed to and accepts the office rather than from the time he commences his duties or receives a salary.⁴⁷

Section 45(ii.) of the Constitution

The interpretation and application of section 45 (ii.) arose in the House in 1977 in connection with Mr M. Baume, MP, who, before entering Parliament, had been a member of the stockbroking firm Patrick Partners, which had collapsed. On 5 May 1977 a motion was moved that the question of whether his place had become vacant pursuant to section 45 (ii.) should be referred to the Court of Disputed Returns for determination. It was argued that an agreement made by Mr Baume with the appointed trustee of the firm constituted a deed of arrangement or, alternatively, that he received benefits as a consequence of arrangements made by other members of the firm under Part X of the Bankruptcy Act. Speaking against the motion the Attorney-General tabled three legal opinions, including a joint opinion by himself and the Solicitor-General, to the effect that the matters in question did not come within the scope of section 45 (ii.) and stated that the deed executed by Mr Baume was not a deed of arrangement within the meaning of the Bankruptcy Act, not being a deed executed by him as a debtor under the Act as a deed of arrangement. On the question of whether Mr Baume had received benefits under the Bankruptcy Act as a result of deeds executed by other members of the firm, the opinions were to the effect that while benefits had been conferred, these were not the benefits to which section 45 (ii.) refers, and that the provision applies where a debtor takes benefits as a party to a transaction, as distinct from receiving benefits as a non-participant. The Attorney-General argued that the question of law was quite clear. He said there was no need for the matter to be referred to the Court of Disputed Returns and that the Government wanted it to be decided by the House. The motion for referral was negatived.⁴⁸

There has been no precedent in the House of Representatives of the seat of a Member being vacated because he has become bankrupt. Therefore, while a seat is vacated at the instant that the Member is declared bankrupt, the machinery for bringing this fact to the attention of the House is not established. The proper channel of communication would seem to be between the court and the Speaker and this could be achieved most effectively by a notification from the Registrar of Bankruptcy to the Clerk of the House who would then advise the Speaker. The Speaker would then inform the House, if it were sitting, and issue a writ for a by-election as soon as it was convenient to the various political parties in the House and the Chief Australian Electoral Officer. If the House was not sitting, the Speaker could issue the writ as soon as convenient and not wait for the House to reconvene.

Commonwealth Electoral Act s. 163

Senator W. R. Wood had not been an Australian citizen at the time of his election, as required by subsection 163 (1) of the Commonwealth Electoral Act,

44 J 1974-75/905-6.

45 *Odgers*, p. 107.

46 J 1974-75/928.

47 Opinion of Solicitor-General relating to appointment of Senator Gair as Ambassador to Ireland, dated 4 April 1974; and see *Odgers*, pp. 43-5.

48 H. R. Deb. (5.5.77) 1598-1608. See also PP 131 (1981) 33-4.

although he had believed himself to be a citizen and subsequently became one. On 16 February 1988 the Senate agreed to a resolution referring the following questions to the Court of Disputed Returns:

- whether there was a vacancy in the representation of New South Wales in the Senate for the place for which Senator Wood had been returned;
- if so, whether such vacancy could be filled by the further counting or recounting of ballot papers cast for candidates for election for senators for New South Wales at the election;
- alternatively, whether in the circumstances there was a casual vacancy for one senator for the State of New South Wales within the meaning of section 15 of the Constitution.⁴⁹

The decision of the court, handed down on 12 May 1988, was to the effect that there was a vacancy, that the vacancy was not a casual vacancy within the meaning of section 15 of the Constitution, and that the vacancy could be filled by the further counting or recounting of ballot papers. The court held that Mr Wood had not been eligible for election, that a vacancy had existed since the election, and that a recount should be conducted as if Mr Wood had died before polling day but with his name remaining on the ballot paper and attracting votes and with votes cast for him given to the candidate next in the order of the voter's preference.⁵⁰ Following a recount the court declared Ms I. P. Dunn, of the same party as Mr Wood, to be the elected candidate.⁵¹

Penalty for sitting while ineligible

The Constitution states that, until the Parliament otherwise provides, any person declared by the Constitution to be incapable of sitting as a Member shall be liable to pay £100 (\$200) to any person who sues for it in a court of competent jurisdiction for each day on which he so sits. The case of Senator Webster (*see p. 171*) prompted the Government in April 1975 to introduce the Common Informers (Parliamentary Disqualifications) Bill, one of the main provisions of which was to fix a maximum penalty for a past breach. As under the constitutional provision a penalty of \$200 per day could amount to an enormous sum where the infringement did not become apparent until years after it had occurred, the Act⁵² now provides for the recovery of a penalty of \$200 in respect of a past breach and \$200 per day for the period during which the Member sits while disqualified after being served with the originating process. The Act also restricts suits to a period no earlier than 12 months before the day on which the suit is instituted. The High Court of Australia is specified as the court in which common informer proceedings are to be brought.

SWEARING-IN

The Constitution provides that every Member of the House of Representatives, before taking his or her seat, must make and subscribe an oath or affirmation of allegiance before the Governor-General or some person authorised by him.⁵³ The oath or affirmation takes the following form:

49 S. Deb. (16.2.88) 3-16.

50 'Citizenship of Senator Wood', *Reference to Court of Disputed Returns*, Judgment 12 May 1988.

51 J 1987-89/845.

52 *Common Informers (Parliamentary Disqualifications) Act 1975* (Act No. 28 of 1975).

53 Constitution, s. 42.

OATH

I, *A.B.*, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors according to law.⁵⁴

The oath of allegiance need not necessarily be made on the authorised version of the Holy Bible although this has been the common practice. A Member may recite the oath while holding the New Testament or the Gospels, or in the case of a Jew who feels free to take an oath, he or she may make it on the *Pentateuch*, that is, on a copy of the five Mosaic books of the Old Testament, or on the whole of the Old Testament. There would be no defect in an oath made on a Roman Catholic missal if the maker regards the oath as binding his or her conscience. Every Member taking an oath should take it in a manner which affects his or her conscience regardless of whether a Holy Book is used or not.⁵⁵

The oath or affirmation of allegiance taken by all Members at the beginning of a new Parliament is normally administered by a Deputy appointed by the Governor-General, who is usually a Justice of the High Court.⁵⁶ The Deputy is ushered into the Chamber and conducted to the Chair by the Serjeant-at-Arms. The Deputy's commission from the Governor-General to administer the oath or affirmation is read to the House by the Clerk.⁵⁷

The taking of the oath or affirmation follows the tabling by the Clerk of the returns to the writs for the general election, showing the Member elected for each electoral Division.⁵⁸ No Member may take part in any proceedings of the House until sworn in.⁵⁹

All Members elected for that Parliament are called by the Clerk in turn and approach the Table in groups of approximately 10, make their oath or affirmation, and sign (subscribe) the oath or affirmation form. The Ministry is usually sworn in first, followed by the opposition executive. Other Members are then sworn in. The number of Members sworn in is inserted on Attestation Forms which are signed by the Deputy, thus attesting that those oaths and affirmations were made before him or her that day. Members stand while the Deputy then retires, preceded by the Serjeant-at-Arms.

Members not sworn in at this stage may be sworn in later in the day's proceedings or on a subsequent sitting day by the Speaker who receives a commission from the Governor-General to administer the oath or affirmation. This commission is tabled by the Speaker.⁶⁰ Those Members elected at by-elections during the course of a Parliament are also sworn in by the Speaker. In the case of a vacancy in the Speakership and the election of a new Speaker another commission is provided. A new Member elected at a by-election has been sworn in by an Acting Speaker, an authority for him to administer the oath or affirmation during any absence of the Speaker having been issued by the Governor-General.⁶¹ The oath or affirmation is actually read by the Member in the presence of the Clerk at the head

54 Constitution, Schedule.

55 Advice of Attorney-General's Department, dated 16 February 1962.

56 See also Ch. on 'The parliamentary calendar'.

57 VP 1980-83/3.

58 S.O. 2 (d).

59 On the opening day of the 21st Parliament a Member who had not been sworn in entered the House during the election of the Speaker. Having been advised that he could not take his seat until sworn in, he withdrew and was later sworn in by the Speaker, VP 1954-55/8.

60 VP 1980-83/6-7.

61 VP 1974-75/582; VP 1987-88/773.

of the Table. The oath or affirmation form is then signed by the Member and passed to the Speaker for attestation.

The authority from the Governor-General to the Speaker to administer oaths or affirmations to Members is customarily renewed when a new Governor-General is appointed, although this practice may not be strictly necessary.⁶²

In the event of the demise of the Crown, the House of Commons meets immediately and Members again take the oath.⁶³ This practice is not followed in Australia.⁶⁴

NEW MEMBERS

Before a new Member elected at a by-election takes his or her seat, the Speaker announces the return of the writ for that Division and, after admitting the new Member to the Chamber, administers the oath or affirmation, as described above. This procedure usually takes place at the beginning of a day's proceedings, immediately after Prayers.⁶⁵

It is customary for a new Member elected at a by-election, on being admitted, to be escorted to the Table by two Members of the Member's own party. This custom is derived from the House of Commons which resolved on 23 February 1688 that 'in compliance with an ancient order and custom, they are introduced to the table between two Members, making their obeisances as they go up, that they may be the better known to the House'.⁶⁶

Maiden speech

The term 'maiden speech' is used to describe the first speech made by a newly elected Member in the House even though the Member may have had previous parliamentary experience in a State Parliament. In a new Parliament, a newly elected Member normally makes his or her first speech during the Address in Reply debate. A speech made in relation to a condolence motion is not regarded as a maiden speech, nor is the asking of a question without notice.⁶⁷

There is a convention in the House that a maiden speech is heard without interjection⁶⁸ or interruption, and the Chair will normally draw the attention of the House to the fact that a Member is making a maiden speech.⁶⁹ In return for this courtesy the Member should not be unduly provocative. There have been occasions, however, when a Member's maiden speech has not been heard in silence.⁷⁰ It is also customary not to make other than kindly references to the maiden speech of a Member⁷¹, although this convention has also not always been observed. In 1967 a Member moved an amendment to a motion to take note of a ministerial statement during his maiden speech.⁷²

In the House of Commons it is a customary courtesy for the Chair to call a new Member who has not previously spoken, in preference to another Member who has risen at the same time. This privilege is not conceded unless claimed during the Parliament to which the Member was first elected.⁷³ This practice is not observed in the House of Representatives.

⁶² Advice of Attorney-General's Department, dated 24 July 1969.

⁶³ *May*, p. 281.

⁶⁴ VP 1934-36/511-12; VP 1951-53/255,257.

⁶⁵ VP 1978-80/927.

⁶⁶ *May*, p. 349-50.

⁶⁷ See H.R. Deb. (25.2.64)19; H.R. Deb. (10.3.64) 415.

⁶⁸ H.R. Deb. (23.2.50)91.

⁶⁹ H.R. Deb. (3.12.80)339.

⁷⁰ H.R. Deb. (25.3.76)1046; H.R. Deb. (26.11.80) 99.

⁷¹ H.R. Deb. (13.4.54)364.

⁷² H.R. Deb. (16.5.67)2166-72; VP 1967-68/116.

⁷³ *May*, p. 420.

A tape recording of a Member's maiden speech is taken and a copy made available to the Member.

PECUNIARY INTEREST

In the House of Representatives matters to do with the pecuniary interests of Ministers and Members are governed by precedent and practice established in accordance with sections 44 and 45 of the Constitution, standing orders 196 and 326, by resolutions of the House, and by the practice of the House of Commons as provided in standing order 1.

Section 44(v.) of the Constitution states that any person who has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than 25 persons shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives (*see* p. 171 for case of Senator Webster).

Section 45(iii.) provides that if a Senator or Member of the House of Representatives directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State, the place of the Senator or Member shall thereupon become vacant. There are no recorded cases of any substantive action taken under this section.

Standing order 196 states that a Member may not vote in a division on a question in which he or she has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. However, the rule does not apply to a question on a matter of public policy. A Member's vote can only be challenged by means of a substantive motion moved immediately following the completion of a division. If the motion is carried, the vote of the Member is disallowed.

Public policy can be defined as government policy, not identifying any particular person individually and immediately. All legislation which comes before the House deals with matters of public policy and there is no provision in the standing orders for private bills.⁷⁴

There have been a number of challenges in the House on the ground of pecuniary interest and in each case the motion was negatived or ruled out of order. On this matter *May* states:

No Member who has a direct pecuniary interest in a question is allowed to vote upon it: but, in order to operate as a disqualification, this interest must be immediate and personal, and not merely of a general or remote character. On 17 July 1811 the rule was explained thus by Mr Speaker Abbot: 'This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy'.⁷⁵

Therefore, it would seem highly unlikely that a Member could become subject to a disqualification of voting rights in the House because the House is primarily, if not solely, concerned with matters of public or state interest.

In 1984 the House resolved, *inter alia*, that Members must declare any relevant interest at the beginning of a speech (in the House, in the committee of the whole or in a committee), and if proposing to vote in a division. It was not necessary to declare an interest when directing a question in accordance with standing order 142

⁷⁴ 'Declaration of Interests', *Joint Committee on Pecuniary Interests of Members of Parliament*, Transcript of Evidence, Vol. 1, 30 January—27 February, AGPS, Canberra, 1975, p. 65.

⁷⁵ *May*, p. 411-12.

or 143. In 1988 the requirement was abolished, following a report from the Committee of Members' Interests which expressed doubt that the requirement served any useful purpose.⁷⁶

A case occurred in 1923 when the Speaker, on a motion to disallow a Member's vote, delivered a lengthy statement in which he referred to the above reference in *May* and certain cases in the State Parliaments. He drew attention to the vital distinction which had to be made between public and private bills and quoted the opinion of a distinguished Speaker of the Victorian Legislative Assembly that the practice was correctly stated that the rules governing a matter of pecuniary interest did not apply to questions of public policy, or to public questions at all.⁷⁷

In 1924 the question was raised as to whether the votes of certain Members, who were interested shareholders in a company which was involved in the receipt of a large sum from the Government, should be allowed. The Speaker made it quite clear that it was not his decision to rule on the matter as the responsibility lay with the House although he felt it his duty to point out, as he had on a previous occasion, the precedents and practice involved. The Speaker suggested that, if Members considered the matter sufficiently important, it might be debated as a matter of privilege following the moving of a substantive motion. No further action was taken.⁷⁸

In 1934 the Speaker was asked to rule whether certain Members were in order in recording a vote if they were directly interested as participants in the distribution of the money raised by means of the legislation. The Speaker stated that he could not have a knowledge of the private business of Members and therefore was not in a position to know whether certain Members had, or did not have, a pecuniary interest in the bill. He referred to the relevant standing order and advised that the words 'not held in common with the rest of the subjects of the Crown' really decided the issue. The matter was not further pursued.⁷⁹

In 1948 the Chair in ruling on a point of order stated that 'the honourable Members referred to are interested financially in the ownership of certain commercial broadcasting stations, but only jointly and severally with other people. Therefore, they are entitled to vote on the measure now before the House'.⁸⁰ A similar case was recorded in 1951 when the Speaker ruled that a Member who is financially interested in a bill, other than as a shareholder in a company under discussion, should declare himself. The Speaker concluded his remarks by saying that it was not his duty to make an inquiry.⁸¹

In 1957⁸² and 1958⁸³ when the House was dealing with banking legislation the Chair ruled out of order any challenge to a Member's vote, the ground of the ruling being that the vote was cast on a matter of public policy.

Personal interest in committee inquiry

Standing order 326 states that no Member may sit on a committee if personally interested in the inquiry before the committee. No instances have occurred in the House of a Member not sitting on a committee for the reason that he or she was **pecuniarily** interested. It should be noted that the requirements for oral declaration introduced by the 1984 resolution mentioned above, but abolished on 30 November 1988, also referred to committee proceedings.

76 VP 1983-84/945-6; 'Report relating to the need for oral declarations of interests by Members', PP 261(1988)8; VP 1987-89/961.

77 VP 1923-24/179-80; H.R. Deb. (23.8.23)3380-3.

78 VP 1923-24/405; H.R. Deb. (11.9.24)4334-7.

79 H.R. Deb. (12.12.34)1130.

80 H.R. Deb. (24.11.48)3470.

81 H.R. Deb. (15.11.51)2154. For a precedent of a Member declaring his interest in a bill before a division is taken see H.R. Deb. (3.11.77)2817.

82 VP 1957-58/282; H.R. Deb. (21.11.57)2447-9.

83 VP 1958/30; H.R. Deb. (19.3.58)478-9.

In 1955 Mr Morgan (Member for Reid), a member of the Committee of Privileges, took no active part as a member of the committee during the course of an inquiry in which he was personally interested.

On the appointment of Members to the Select Committee on the Grievances of Yirrkala Aborigines, a Minister on a point of order raised the question as to whether a Member, who was a litigant in related court proceedings and who had been nominated to serve on the committee, was personally interested in the matters to be inquired into by the committee. The Speaker stated that, in his opinion, 'the Chair was not able to determine whether or not a Member was personally interested in a committee of inquiry and could not properly be called on to so decide. A Member must be guided by his own feelings in the matter and by the dictates of respect due to the House and to himself. Having regard to the existence of the Standing Order and its terms, it was likely that if a matter of this kind were to be brought to issue, it would be one for the House to decide'.⁸⁴ The Member served on the committee.

Parliamentary committee on pecuniary interest

In 1974 both Houses agreed to the appointment of a Joint Committee on Pecuniary Interests of Members of Parliament⁸⁵, which reported on 30 September 1975.⁸⁶

The committee, *inter alia*, recommended:

- compulsory registration of the interests of Senators and Members, disclosures to be filed in a Register of Pecuniary Interests;
- that, subject to certain conditions, disclosures should be able to be inspected by members of the public;
- that a parliamentary registrar should be appointed, answerable to the President and the Speaker, and
- that a joint standing committee be appointed to supervise generally the operation of the register and a proposed media register, and that the committee have power to draft a code of conduct based on standing orders, practices, rulings and conventions.

A motion to give effect to the recommendations was moved⁸⁷ but lapsed on the dissolution of both Houses in November 1975. Notice of a similar motion was given in 1976,⁸⁸ but lapsed on prorogation in 1977.

Government committee on public duty and private interest

On 15 February 1978 the Prime Minister announced the appointment of a government committee to inquire into matters relating to public duty and private interest, to be chaired by the Chief Judge of the Federal Court of Australia, Sir Nigel Bowen. The terms of reference encompassed office holders and members of the Australian Public Service, as well as Members, Senators and Ministers. The report of the committee was presented on 22 November 1979.⁸⁹ The committee concluded *inter alia* that:

⁸⁴ VP 1962-63/559; H.R. Deb. (19.9.63)1176-9.

⁸⁵ VP 1974-75/173-4; J 1974-75/236.

⁸⁶ VP 1974-75/923; 'Declaration of Interests', *Report of Joint Committee on Pecuniary Interests of Members of Parliament*, PP 182(1975)46.

⁸⁷ VP 1974-75/1115-17.

⁸⁸ NP 2(19.2.76)12-14.

⁸⁹ VP 1978-80/1238-9; H.R. Deb. (22.11.79)3374-81; 'Public duty and private interest', *Report of the Committee of Inquiry*, PP 353(1979).

- it would not be possible to draw up a completely comprehensive and satisfactory statement of principles on the nature of private interest, pecuniary or otherwise;
- it was possible to refine principles which would promote the avoidance and if necessary the resolution of conflicts of interest;
- a statement of such principles would constitute a code of conduct;
- generally provisions for the enforcement of the code of conduct should be built into existing basic disciplinary procedures but for occasional areas of particular importance special machinery in the form of a Public Integrity Commission be established, and
- there was insufficient justification at that time to introduce a system of compulsory registration of office holders' interests, but instead reliance should be placed on the code of conduct which included a requirement for ad hoc declarations of interest.

The committee included a proposed code of conduct in its report, and made detailed recommendations to do with the implementation and application of the proposals. It was, for instance, suggested that each House appoint an ethics committee to receive, investigate and report on complaints of departures from the code of conduct and, in particular, upon allegations involving conflict of interest. The Government announced its broad acceptance of the recommendations, and accepted in full recommendations relating to Ministers and introduced detailed procedures concerning Ministers. The report was debated in the House, but final decisions were not made, *inter alia*, insofar as Senators and Members were concerned.

Registration—Committee of Members' Interests

On 22 September 1983 the Prime Minister tabled copies of statements by Ministers of their pecuniary interests and advised the House that further statements by Ministers declaring the actual values of those interests were retained by the Prime Minister on a confidential basis as had been the practice since 1978. In tabling the statements, the Prime Minister made it clear that the Government expected that the interests of other Members of the Parliament should be registered and available in a public register.⁹⁰ On 5 October 1983 the House agreed to a resolution declaring, *inter alia*, that it was of the opinion that all Members should provide statements of their private interests and those of their families of which they were aware, and that a public register should be established. The House referred to the Standing Orders Committee the question of what changes would be necessary to the standing orders to give effect to the proposals.⁹¹ A similar reference was made to the Senate Standing Orders Committee.⁹² The House of Representatives Standing Orders Committee majority report recommended the establishment of a Committee of Members' Interests to oversight the registration requirements and recommended that the declaration and registration requirements should be given effect by resolutions of the House rather than by amendment of the standing orders.⁹³ (The Senate Standing Orders Committee did not report on the matter).

On 8-9 October 1984 the House of Representatives adopted new standing order 28A which provided for a Committee of Members' Interests to be appointed at the

90 H.R. Deb. (22.9.83)1172-4, 1231.

91 VP 1983-84/263-5; H.R. Deb. (5.10.83)1383-1406.

92 J 1983-84/412-3.

93 'Report on Possible Changes to the Standing Orders in Respect of the Declaration and Registration of Private Interests of Members', PP 144(1984); H.R. Deb. (7.6.84) 3090.

commencement of each Parliament. Under the standing order the committee is required:

- to inquire into and report upon the arrangements made for the compilation, maintenance and accessibility of a *Register of Members' Interests*;
- to consider any proposals made by Members and others as to the form and content of the register;
- to consider any specific complaints made in relation to the registering or declaring of interests;
- to consider what changes to any code of conduct adopted by the House are necessary or desirable;
- to consider what classes of person (if any) other than Members ought to be required to register and declare their interests, and
- to make recommendations upon these and any other matters which are relevant.

The committee is required to prepare and present a report on its operations as soon as practicable after 31 December each year, and it also has power to report from time to time.⁹⁴

The substantive requirements insofar as Members are concerned were established by resolutions of 9 October 1984 a.m., and modified by the House on 21 March 1985, 13 February 1986, 22 October 1986 and 30 November 1988. The principal provisions are:

- Within 28 days of making an oath or affirmation, each Member is required to provide to the Registrar of Members' Interests a statement of the Member's registrable interests and the registrable interests of which the Member is aware of the Member's spouse and any children wholly or mainly dependent on the Member for support, in accordance with resolutions adopted by the House and in a form determined by the Committee of Members' Interests from time to time.
- Members are required to notify any alterations to those interests to the Registrar within 28 days of the alteration occurring.
- The registrable interests include—
 - shareholdings in public and private companies;
 - family and business trusts and nominee companies, subject to certain conditions;
 - real estate, including the location and the purpose for which it is owned;
 - registered directorships of companies;
 - partnerships, including the nature of the interests and the activities of the partnerships;
 - liabilities, indicating the nature of the liability and the creditor concerned;
 - the nature of any bonds, debentures and like investments;
 - savings or investment accounts, indicating their nature and the name of the bank or other institution concerned;
 - the nature of any other assets, excluding household and personal effects, each valued at over \$5 000;
 - the nature of any other substantial sources of income;
 - gifts valued at more than \$250 from official sources or more than \$100 from other sources provided that a gift from family members or personal friends in a purely personal capacity need not be registered unless the Member judges that an appearance of conflict of interest may be seen to exist;

94 VP 1983-84/943-4; H.R. Deb. (9.10.84) 1867-76.

- sponsored travel or hospitality received;
 - membership of any organisation, and
 - any other interests where a conflict of interest with a Member's public duties could foreseeably arise or be seen to arise.
 - At the commencement of each Parliament and at other times as necessary, the Speaker is required to appoint an officer of the Department of the House of Representatives as the Registrar of Members' Interests. That officer also serves as secretary to the Committee of Members' Interests.
 - The Registrar, in accordance with procedures adopted by the Committee of Members' Interests, is required to maintain a register of Members' interests in a form determined by the committee.
 - As soon as possible after the commencement of each Parliament, the Chairman of the Committee of Members' Interests is required to table a copy of the completed register, and to also table as required notifications by Members of alterations of interests.
 - The Register of Members' Interests is required to be available for inspection by any person under conditions laid down by the committee.⁹⁵
- On 13 February 1986 the House resolved that any Member who—
- knowingly fails to provide a statement of registrable interests to the Registrar of Members' Interests by the due date;
 - knowingly fails to notify any alteration of those interests to the Registrar of Members' Interests within 28 days of the change occurring, or
 - knowingly, provides false or misleading information to the Registrar of Members' Interests—

'shall be guilty of a serious contempt of the House of Representatives and shall be dealt with by the House accordingly'.

The Committee of Members' Interests was required to determine a form for the registration of interests by 10 April 1986, and current Members of the 34th Parliament were required to provide statements to the Registrar by 30 June 1986.⁹⁶ The first completed register was tabled on 19 August 1986 and on 27 November 1986 a copy of the first set of notifications of alterations of interests was presented to the House, covering the period 20 August–25 November 1986.⁹⁷ On 23 February 1987 the Committee of Members' Interests presented a report, and minutes of proceedings covering its activities in 1986.⁹⁸

The terms of the relevant resolutions of the House are reproduced as an attachment to this publication.

PAYMENT OF MEMBERS

As indicated earlier, the duties of a Member of Parliament are wide-ranging and demanding in terms of time and energy. Payment of Members therefore reflects not only the status and position of Members but the importance, responsibility, difficulty and constancy of their work. In this context it is recognised that Members are occupied full-time in their parliamentary duties and that most of them are virtually fully dependent on their parliamentary salary.⁹⁹

The first report of the Remuneration Tribunal in 1974 (reiterated in the 1977 Review) contains the following statement of principle in relation to the payment of Members:

95 VP 1983-84/945-6; H.R. Deb. (9.10.84)1876-9.

96 VP 1985-87/693-4; H.R. Deb. (13.2.86)425-48.

97 VP 1985-87/1053; H.R. Deb. (19.8.86)220-1.

98 VP 1985-87/1464. A report covering the operations of the committee in 1987 was presented on 18 February 1988; VP 1987-88/359.

99 'Salaries and allowances of Members of the Parliament of the Commonwealth', *Report of Inquiry*, PP 284(1971).

That the Parliamentary salary should not be so low as to constitute an entry barrier to gifted and highly-qualified persons is beyond argument. The salary level at which this barrier may be created for an increasing number of well-educated and experienced persons in the professions and in technological and business pursuits is a matter of judgment. We deem it of special importance that the Parliament attract as Members sufficient numbers of able persons to ensure in the ministries of the future the breadth of expertise and experience required to meet the demands of government.¹⁰⁰

The authority for payment of salaries and allowances to Members of Parliament and Ministers was expressly provided for in the Constitution¹⁰¹, which reflected the practice followed by various State Parliaments. Thus, while it was not an innovation, Australia nevertheless preceded in this regard the House of Commons which did not make permanent provision for the payment of Members until 1911.¹⁰²

Prior to 1973 the Parliament determined the salaries and allowances to be paid to Ministers and Members by means of legislation.¹⁰³ No set pattern was followed by the various Governments or the Parliament in arriving at the rates of salaries and allowances to be paid. Governments had either arrived at conclusions from their own investigatory sources or responded to pressure from party and political forces. On occasions, but not before 1952, adjustments of remuneration were preceded by a report of an independent committee of inquiry.¹⁰⁴

In 1952¹⁰⁵, 1955¹⁰⁶, 1959¹⁰⁷ and 1971¹⁰⁸ committees of inquiry made recommendations to the Government most of which were accepted and formed the basis of legislation.¹⁰⁹

Apart from recommending actual changes in allowances and entitlements of Members, the 1971 report recommended that consideration be given to the establishment, under legislation, of an independent three person tribunal to report and make recommendations on future adjustments of allowances to Members. It was emphasised however that the Parliament or the Government should not be prevented from rejecting recommendations or from taking action not in accordance with what is recommended by the tribunal.

As a result of the 1971 report the Remuneration Tribunal Act came into operation on 19 December 1973. The tribunal is required to make at the one time reports and determinations annually not only for Members of Parliament but also for judges and public office holders. The Act also established a second tribunal for academic salaries.¹¹⁰

The tribunal's reports and determinations¹¹¹ are made to the Minister who shall cause copies to be laid before each House within 15 sitting days after receipt. If within a further 15 sitting days, either House disapproves of a determination, the determination ceases to operate as from the date of disapproval.¹¹²

100 'Remuneration Tribunal Act', *Reports and Determinations*, PP 94(1974)8.

101 Constitution, ss. 48, 66; and see Ch. on 'House, Government and Opposition'.

102 May, p. 12.

103 *Ministers of State Act 1952 and Parliamentary Allowances Act 1952*.

104 The two exceptions since 1952 were 1964 and 1968.

105 'Salaries and allowances of Members of the national Parliament', *Report of Committee of Enquiry*, Govt. Pr., Canberra, 1952.

106 'Salaries and allowances of Members of the Commonwealth Parliament', *Report of Committee of Inquiry*, PP 7(1956-57).

107 'Salaries and allowances of Members of the Commonwealth Parliament', *Report of Committee of Inquiry*, PP 15(1959-60).

108 PP 284(1971).

109 For a brief history of allowances of Members since 1901 see PP 284(1971)6-11.

110 *Remuneration Tribunal Act 1973* (short title amended in 1974 to *Remuneration Tribunals Act*).

111 The Tribunal has made reports and determinations annually since 1974 usually in the form of an annual review.

112 For disallowance of determinations see Ch. on 'Legislation'.

Remuneration Tribunal determinations have been disapproved on two occasions¹¹³ and the Parliament has also passed legislation to change determinations which have already come into effect.¹¹⁴ In each case this action has served to reduce the entitlements determined by the Tribunal.

A Member is paid salary and allowances from and including the day of the election:

- to and including the day of dissolution, if not seeking re-election, or
- to and including the day before the election, if re-nominating but defeated at the election.

A Member who is re-elected is paid continuously.

Ministers and office holders receive an additional salary and in some cases an additional special allowance and travelling allowance as well as the basic parliamentary allowance payable to all Members.¹¹⁵ An additional salary and/or allowance is paid to holders of the following positions¹¹⁶:

Prime Minister
 Deputy Prime Minister
 President of the Senate
 Speaker of the House of Representatives
 Minister
 Treasurer
 Leader of the House
 Leader of the Government in the Senate
 Leader of the Opposition
 Deputy Leader of the Opposition
 Leader of the Opposition in the Senate
 Leader of the Third Party in the House of Representatives
 Leader of a recognised non-government party of at least five members not otherwise specified
 Leader of the National Party in the Senate
 Chairman of Committees in the Senate
 Chairman of Committees in the House of Representatives
 Deputy Leader of the Opposition in the Senate
 Government Whip in the House of Representatives
 Opposition Whip in the House of Representatives
 Government Whip in the Senate
 Opposition Whip in the Senate
 Third Party Whip in the House of Representatives
 Deputy Government Whip in the House of Representatives
 Whip in the Senate of a recognised non-government party of at least five members not otherwise specified
 Deputy Government Whip in the Senate
 Deputy Opposition Whip in the Senate
 Deputy Opposition Whip in the House of Representatives
 Deputy Chairman of Committees in the Senate
 Deputy Chairman of Committees in the House of Representatives
 Chairman of the Joint Parliamentary Committee of Public Accounts

113 J 1974-75/78-80; VP 1978-80/350.

114 *Remuneration and Allowances Alteration Act 1986* (Act No. 105 of 1986); and see H.R. Deb. (19.8.86)252-6.

115 See also Ch. on 'House, Government and Opposition'.

116 For details of rates see latest determinations of the Remuneration Tribunal. For details of certain statutory provisions see *Parliamentary Allowances Act 1952*.

Chairman of the Parliamentary Standing Committee on Public Works
 Chairman of the Joint Committee on Foreign Affairs, Defence and Trade
 Chairman of a parliamentary committee concerned with public affairs

If the Speaker is re-elected as a Member, the additional salary and allowance payable to the Speaker continue to be paid until and including the day before a new Speaker is elected. If the Speaker does not seek re-election as a Member (the case of Sir John McLeay), is defeated at the election (the case of Sir William Aston) or resigns (the case of Dr Jenkins), the additional salary and allowance continue to be paid until and including the day before a new Speaker is elected. These payments are continued because certain administrative functions continue to be performed by the Speaker between the date of dissolution or resignation and the election of a new Speaker. For the purposes of exercising any powers or functions under a law of the Commonwealth the incumbent Speaker is deemed to continue to be the Presiding Officer for this purpose under the terms of the *Parliamentary Presiding Officers Act 1965*.

In the case of the Chairman of Committees, entitlement to additional salary and allowance ceases:

- at the date of dissolution, if he or she does not seek re-election as a Member, or
- on the day before the election, if he or she is defeated at the election.

If the Chairman of Committees is re-elected as a Member, additional salary and allowance continue to be paid until and including the day before a successor is elected, as he or she too may have administrative functions to perform under the *Parliamentary Presiding Officers Act*.

The additional salary (and allowance, where applicable) payable to Deputy Chairmen of Committees and chairmen of parliamentary committees ceases at the date of dissolution.

Other allowances and entitlements

The Remuneration Tribunal also determines Members' electorate allowances, travelling allowances, and certain other entitlements.¹¹⁷ The electorate allowance is a special allowance for expenses necessarily incurred by a Member in the performance of parliamentary duties and is designed to cover, in particular, private vehicle running expenses, any accommodation expenses within the electorate in excess of existing entitlement, accommodation expenses when travelling within Australia on party committee business, entertainment expenses, and donations and subscriptions.

Three rates of electorate allowance are paid, one for electorates of less than 2000 square kilometres in area, one for electorates of 2000 or more and less than 5000 square kilometres and a third for electorates of 5000 square kilometres or more. The electorate allowance is taxable but expenditure incurred is deductible from taxable income if substantiated.

A travelling allowance is paid to cover expenses incurred in overnight stays away from the electorate on parliamentary business, which includes nights spent in Canberra during the sittings of the House, overnight stays in connection with meetings of parliamentary committees and a limited number of overnight stays within the electorate, the actual entitlement depending on the electorate. Travelling allowance is also payable, on a limited basis, for meetings of a Member's parliamentary party and for meetings of party committees.

¹¹⁷ For details of rates see latest determinations of the Remuneration Tribunal. For details of certain statutory provisions see *Parliamentary Allowances Act 1952*.

Members of Parliament are entitled to travel warrants and airline credit cards, first-class airline or train travel on parliamentary or electorate business and government car transport under certain conditions. Members who drive themselves when travelling to Canberra on parliamentary business receive a private car allowance at public service rates, up to a limit of the relevant airfare. Members whose electorates cover 10,000 square kilometres or more are entitled to a charter transport allowance for the service of the electorate, the amount depending on the size of the electorate.

After a Member has completed three years' service in the Parliament he or she is credited with the cost of one round-the-world first-class air ticket each Parliament which can be drawn on for one or more overseas study journeys. Certain travel entitlements are also available to a Member's spouse and dependent children.

Members are provided with a postal credit card for use on parliamentary or electorate business, for expenditure on postage up to a prescribed limit. The cost of non-international calls from a Member's home telephone and electorate office is met by the Government and Members are also issued with a Federal Member's Authority Card allowing them to make trunk calls within Australia at government expense.

Members are provided with office accommodation in Parliament House and in their electorate and are entitled to employ one electorate secretary and two other staff members who may be located either in Canberra or in the electorate. In some of the larger electorates a second office and electorate secretary are provided.

The Department of Administrative Services is responsible for co-ordinating the provision of entitlements and facilities outside Parliament House in accordance with Remuneration Tribunal determinations and government decisions. The payment of Members' salaries and allowances is administered by the Department of the House of Representatives. The number and level of Members' staff, the location and extent of office accommodation outside Parliament House and the nature of office furniture and equipment for these offices are determined by the Minister for Administrative Services.

Ministers, Parliamentary Secretaries, office holders and shadow Ministers have certain additional entitlements relating to the duties of their office.

A Member who retires after serving in the Parliament for 20 years or the life of seven Parliaments is eligible for a Life Gold Pass entitling the ex-Member to travel within Australia at government expense on airlines and by rail and bus at the class of travel applicable to serving Members. Members who have served one year as Prime Minister or six years as a Minister, Leader of the Opposition, President or Speaker are also eligible for Life Gold Passes. Members who do not qualify for a Life Gold Pass may travel within Australia at government expense for limited periods after their retirement, according to their length of service.

Compensation for Members in the event of death or injury while on official business is by means of ex gratia cover on the same basis as that provided for Commonwealth employees under the *Compensation (Commonwealth Government Employees) Act 1971*.

Parliamentary retiring allowances¹¹⁸

All Members contribute to a compulsory retirement benefits scheme¹¹⁹ under which benefits are paid to former Members, their widows or widowers, and orphan children.

¹¹⁸ For full details see *Parliamentary Contributory Superannuation Scheme Handbook*, Department of Finance, Canberra, 31 March 1984, on which the following text is based.

¹¹⁹ *Parliamentary Retiring Allowances Act 1948* (short title amended in 1978 to *Parliamentary Contributory Superannuation Act*).

The superannuation scheme is administered by the Department of Finance under the direction of the Parliamentary Retiring Allowances Trust which consists of five trustees, namely, the Minister for Finance (or a Minister authorised by the Minister for Finance) who is the presiding trustee, and two Senators and two Members of the House of Representatives who are appointed by their respective Houses (*see* p. 193). Contributions are a fixed percentage of the basic parliamentary salary and any additional salary, or allowance in the nature of salary, payable by reason of service as Prime Minister, Minister or office holder of the Parliament. The contributions are paid to the Consolidated Revenue Fund. The rate of contribution is 11½ per cent. On attaining maximum retiring allowance entitlements (that is, in respect of the basic parliamentary salary contribution, after 18 years of service) the contribution rate reduces to 5½ per cent.

A Member's period of parliamentary service may include any earlier period of service in the Commonwealth Parliament or a State Parliament or the Northern Territory Legislative Assembly or may be notionally extended by virtue of prior membership of another superannuation scheme.

On retirement from the Parliament, a Member is entitled to a retiring allowance:

- (a) if the Member has completed 12 or more years service; or
- (b) if the Member has on four occasions ceased to be a Member on the dissolution or expiration of the House or on the expiration of the term of office; or
- (c) if retirement is involuntary and the Member has completed not less than eight years service or has on three occasions ceased to be a Member on the dissolution or expiration of the House or on the expiration of the term of office; or
- (d) if the Member supplied a certificate of good health on entry and the Trust is satisfied that retirement from Parliament was due to ill health.

A Member with less than eight years service who qualifies for a retiring allowance under (b), (c) or (d) above is deemed to have had eight years service.

A Member who does not qualify for a retiring allowance is entitled to a lump sum payment consisting of a refund of contributions plus a supplement of 2½ times (if retirement is involuntary) or 1½ times (if retirement is voluntary) the contributions paid in respect of the last eight years of service.

The rates of retiring allowance payable to retired Members are expressed as a percentage of the basic parliamentary salary payable from time to time:

Complete years of service	Percentage of basic parliamentary salary
8	50
9	52.5
10	55
11	57.5
12	60
13	62.5
14	65
15	67.5
16	70
17	72.5
18 or more	75

Where a Member has received additional salary as Prime Minister, a Minister or an office holder in the Parliament, an additional retiring allowance is payable at the rate of 6.25 per cent of the current additional salary payable for each office

held per year of service in that office, up to a maximum additional entitlement of 75 per cent of the salary of the highest office held.

A maximum of 50 per cent of retiring allowance entitlement may be converted to a lump sum payment.

Annuities are payable to widows, widowers and orphaned children of former Members. For these purposes, if a sitting Member dies before completing eight years of service, he or she is deemed to have completed eight years of service.

Retiring allowances paid to former Members who take up an appointment to an office of profit under the Crown are reduced by the amount of the remuneration so received, or by one half of the retiring allowance (disregarding any commutation), whichever is the lesser. The same rule applies to annuities of widows and widowers if they take up such an appointment.

As retiring allowances and annuities are expressed as a percentage of the current parliamentary salary, the actual amount of the retiring allowance or annuity will increase each time the salary of serving Members is increased.

ATTENDANCE

The Clerk of the House keeps a Members' roll for each State which shows the name of the Member elected for each Division, the dates of his or her election, of making the oath or affirmation, and of ceasing to be a Member, and the reason for cessation of membership.¹²⁰ On each day of sitting the names of Members who attend in the Chamber are taken by the Serjeant-at-Arms and the names of absent Members are recorded in the Votes and Proceedings.¹²¹ A List of Members and Attendance Roll is published in each sessional volume of the Votes and Proceedings.

VACANCY

During the course of a Parliament a Member's place may become vacant by resignation, absence without leave, ineligibility or death. When a vacancy occurs the Speaker issues a writ for the election of a new Member.¹²² If the Speaker is absent from the Commonwealth, or there is no Speaker, the Governor-General in Council may issue the writ.¹²³ A by-election writ may be issued by the Acting Speaker performing the duties of the Speaker during the Speaker's absence within the Commonwealth.¹²⁴

Resignation

A Member may resign his or her seat in the House by writing to the Speaker or, if there is no Speaker or if the Speaker is absent from the Commonwealth, to the Governor-General.¹²⁵ The resignation takes effect and the Member's seat becomes vacant from the time the letter of resignation is received by the Speaker or the Governor-General.¹²⁶

To be effective a resignation must be in writing, signed by the Member who wishes to resign, and received by the Speaker.

¹²⁰ S.O. 30.

¹²¹ S.O. 31.

¹²² VP 1977/261.

¹²³ Constitution, s. 33; *see also* Ch. on 'Elections and the electoral system'.

¹²⁴ S.O. 14.

¹²⁵ Constitution, s. 37. *See* VP 1980-83/77 for examples of both methods.

¹²⁶ Advice of Attorney-General's Department, dated 19 May 1964.

The receipt by the Speaker of a vocadexed facsimile of a Member's letter of resignation, the Speaker having been satisfied as to the authenticity of the facsimile, has been held to comply with these requirements.¹²⁷ A resignation by telegram is not effective.¹²⁸

A resignation that is in writing signed by another person at the direction of the Member, where the Member is physically unable to sign the resignation personally but is mentally capable of understanding the nature of the resignation and of authorising that other person to sign it on his or her behalf, would meet the constitutional requirements regarding resignation, provided these facts are able to be established satisfactorily. However, strict signature should be insisted upon whenever possible in view of the importance of the question and legal advice should be sought in specific cases if the matter arises in practice.¹²⁹

Absence without leave

A Member's place becomes vacant if, without permission of the House, he or she does not attend the House for two consecutive months of any session of the Parliament.¹³⁰ It could be interpreted that the phrase **attend the House** means **attend the House when it is sitting**¹³¹, but in order that the position of Members is not placed in doubt it is normal practice at the end of a period of sittings for a Minister to move 'That leave of absence be given to every Member of the House of Representatives from the determination of this sitting of the House to the date of its next sitting'. This motion is moved to cover the absence of Members from the House between the Autumn and Budget period of sittings and the Budget and Autumn period of sittings. The motion is still moved even though it is known that there will be a dissolution of the House pending an election.¹³²

No Member's place has become vacant because of the Member being absent without leave but, in 1903, the seat of a Queensland Senator (Senator Ferguson) became vacant when he failed to attend the Senate for two consecutive months.¹³³ The Serjeant-at-Arms, who records the attendance of Members in the House, advises the whip of the relevant party when a Member has been absent for about six weeks. The whip informs the leader of the party who normally either moves for the House to grant the Member leave of absence or arranges for the Leader of the House to do so.

If an absent Member is an independent or has not kept the party whip informed of his or her intentions, then the Serjeant-at-Arms contacts the Member after a six weeks' absence to ensure that the Member is aware of the consequence of an absence from the House without leave for a period of two months. If a motion for leave was not moved by seven days before the two months had elapsed, it is probable that the Speaker or an officer of the House would then advise the Member by telegram or telephone of the situation.

A motion to grant leave of absence does not require notice, states the cause and period of leave, and has priority over all other business.¹³⁴ Such a motion is normally moved by the Leader of the House or by the leader of the party to which the Member belongs. Leave is usually granted for reasons such as parliamentary or

127 Advice of Attorney-General's Department, dated 4 March 1981.

128 Advice of Attorney-General's Department, dated 26 February and 9 March 1960.

129 Opinion of Attorney-General, dated 3 August 1977.

130 Constitution, s. 38.

131 Opinion of Solicitor-General, dated 13 September 1935.

132 VP 1978-80/1694.

133 J 1903/211.

134 S.O. 35.

public business overseas, or ill health. During both World Wars leave for long periods was granted to several Members who were serving in the Armed Forces. There have been a few occasions when Members have been granted leave without having been sworn in. The longest period of absence was in relation to the Member for the Northern Territory (Mr Blain) who was granted leave, without having been sworn in as a Member, from 8 October 1943 to 26 September 1945 while he was a prisoner of war.¹³⁵ A Member who has been granted leave of absence by the House is excused from service in the House and on any committee.¹³⁶ Another Member may be appointed to a committee to serve in the place of a Member granted leave of absence by the House.¹³⁷ A Member, who has been granted leave, forfeits it if he or she attends the House before the leave expires.¹³⁸

If a seat became vacant because a Member was absent for two consecutive months without the permission of the House, the appropriate procedure would appear to be for the Speaker to advise the House of the facts and to inform the House of his or her intention to issue a writ for the election of a Member for the relevant electoral Division.

Death

The death of a sitting Member is usually announced to the House at the first opportunity on the next day of sitting following the Member's death. The standing orders provide that precedence will be ordinarily given by courtesy to a motion of condolence¹³⁹, which is moved without notice. The motion of condolence is usually moved by the Prime Minister and seconded by the Leader of the Opposition, and may be supported by other Members.¹⁴⁰ Speech time limits do not apply. At the conclusion of the speeches the Speaker puts the question and asks Members to signify their approval of the motion by rising in their places. After a suitable period of silence, the Speaker thanks the House. The sitting of the House is then normally suspended for a few hours as a mark of respect.¹⁴¹ On the death of a Prime Minister or senior office holder of either House, for example, a Presiding Officer or party leader, the House traditionally adjourns until the next day of sitting. The House does not normally suspend the sitting after the condolence motion is agreed to in respect of a sitting Senator but may do so in respect of a Senate Minister.

The practice of the House also ensures that the death of a former Member or Senator is recorded. In cases where a condolence motion is not moved, the Speaker makes brief mention of the death of the former Member and then invites Members to rise in their places as a mark of respect to the memory of the deceased. It is usual for the Speaker to convey a message of sympathy from the House to the relatives of the deceased.

The Speaker normally accepts, as proof of the death of a Member, an announcement in the media or a statement from a source accepted as reliable, such as a member of the family or party. The Speaker has never called for the production of a death certificate before declaring a seat vacant.

In December 1967, Prime Minister Holt was presumed to have died by drowning although his body was never found. The Commonwealth and Victoria police investigated the disappearance of Mr Holt and their joint report satisfied both the

135 VP 1943-44/29; VP 1944-45/21; VP 1945-46/37; VP 1945-46/260.

136 S.O. 36.

137 VP 1948-49/13.

138 S.O. 37.

139 S.O. 157.

140 See also Ch. on 'Motions'.

141 VP 1980-83/77-8.

Attorney-General and the Secretary of his Department that there was overwhelming evidence that Mr Holt had died by drowning.¹⁴² The Speaker was satisfied beyond doubt that a vacancy had occurred, and consequently declared the seat vacant and issued a writ for the election of a new Member on 19 January 1968.¹⁴³

Expulsion

Section 8 of the *Parliamentary Privileges Act 1987* provides that the House does not have power to expel a Member. Before this provision was enacted the House had the power to expel Members derived from the privileges and practice of the House of Commons passed to the Australian Parliament under section 49 of the Constitution. Members have been expelled from the House of Commons for a range of reasons including forgery, perjury, fraud, open rebellion and corruption in the administration of justice.¹⁴⁴

The House of Representatives has expelled a Member on one occasion only. On 11 November 1920, the Prime Minister moved, as a matter of privilege:

That, in the opinion of this House, the honorable Member for Kalgoorlie, the Honorable Hugh Mahon, having, by seditious and disloyal utterances at a public meeting on Sunday last, been guilty of conduct unfitting him to remain a Member of this House and inconsistent with the oath of allegiance which he has taken as a Member of this House, be expelled this House.

The speech to which the motion referred was delivered at a public meeting in Melbourne, and concerned British policy in Ireland at that time. The Leader of the Opposition moved an amendment to omit all words after 'That' and substitute the following words:

this House, whilst being opposed to all sedition and disloyalty and the subversion of constitutional means for the redress of grievances, is of opinion that the allegations made against the honorable Member for Kalgoorlie, the Honorable Hugh Mahon, should not be dealt with by this House for the following reasons:

- (a) The allegations made against the honorable Member do not concern his conduct in Parliament or the discipline of Parliament.
- (b) That Parliament is not a proper tribunal to try a charge of sedition arising from the exercise of civilian rights of free speech at a public assembly of citizens.
- (c) That the judicature is especially established and equipped and has ample power under the law to bring any person to public trial for the offence of sedition alleged against the honorable Member.
- (d) That every citizen so charged is entitled to a public trial by a jury of his peers, where he would have the right to exclude by challenge biassed persons from the jury panel, and that this fundamental principle of British justice should not be departed from in this case.

The amendment was negatived and the original motion was agreed to on division.¹⁴⁵

Mr Mahon did not attend the House during the debate on his expulsion. He did however send the Prime Minister a letter which was read to the House during the course of the debate. In the letter he denied that anything he had said at the public meeting was seditious, or disloyal to the Sovereign, and indicated that his attack was directed against the British Government. Mr Mahon also stated that he knew the decision to expel him had already been made in the party room and that his presence in the House would not alter that decision.¹⁴⁶ After the motion of expulsion was agreed to, a further motion was moved declaring the seat vacant which was

142 Advice of Attorney-General's Department, dated 10 January 1968.

143 VP 1968-69/2.

144 *May*, pp. 139-40.

145 VP 1920-21/431-2.

146 H.R. Deb. (11.11.20)6382-3.

agreed to on division.¹⁴⁷ Mr Mahon stood for re-election in the resulting by-election but was defeated.

TITLES ACCORDED TO MEMBERS

M.P. (Member of Parliament)

Members of the House of Representatives are designated M.P. not M.H.R. This was the decision of the Federal Cabinet in 1901¹⁴⁸ a decision which has since been reaffirmed in 1951¹⁴⁹ and in 1965.¹⁵⁰

Honourable

All Members of the 1st Parliament of the Commonwealth of Australia were granted the privilege by the King to use the title 'Honourable' for life within the Commonwealth of Australia.¹⁵¹ Members subsequently elected do not hold this title except in the instances that follow.

It is established custom for a Member who is elected Speaker to use the title 'Honourable' during his period of office and to be granted the privilege of retaining the title for life if he serves in the office for three or more years. This privilege is granted by the Sovereign on the recommendation of the Governor-General. The following former Speakers have been granted the privilege:

G. J. Bell
J. S. Rosevear
Sir John McLeay
Sir William Aston
J. F. Cope
Dr H. A. Jenkins

The Hon. J. F. Cope and the Hon. Dr. H. A. Jenkins were granted the privilege even though they had served less than three years as Speaker.

A Member who becomes a Minister is appointed to the Executive Council. Members of the Executive Council have the title 'Honourable' while they remain Executive Councillors. It rests with the Governor-General to continue or terminate membership of the Executive Council and consequently the right to the title. With one exception, Ministers appointed to the Executive Council have not in the past had their appointment to the Council terminated upon termination of their commission and hence have retained the title 'Honourable' for life.¹⁵²

Members of the House of Representatives are referred to in the Chamber as 'honourable Members'. In order to guard against all appearance of personality in debate a Member must not refer to another Member by name, but only by the name of the electoral Division he or she represents.¹⁵³ A Member is therefore referred to in the Chamber as 'the honourable Member for . . .'. Ministers, the Leader and Deputy Leader of the Opposition, the Leader and the Deputy Leader of third parties, and the Speaker and Chairman of Committees are referred to by the name of their office.¹⁵⁴ The use of the term 'honourable' in the Chamber originates in House of Commons' practice. The question of using the name of a

147 VP 1920-21/433.

148 H.R. Deb. (24.7.01)2939.

149 H.R. Deb. (6.7.51)1134.

150 H.R. Deb. (21.10.65)2058.

151 *Members of 1st Parliament of the Commonwealth—Title of 'Honourable'*, PP 21(1904).

152 See also Ch. on 'House, Government and Opposition' (case of Senator Sheil).

153 S.O. 80.

154 H.R. Deb. (5.5.76)1946.

Member in the House instead of the electorate name was considered by the Standing Orders Committee in its 1972 report.¹⁵⁵ The committee recommended no change to the existing practice.

Right Honourable

The title 'Right Honourable' is granted to Members of the Sovereign's Privy Council. The Prime Minister of the day and other senior members of the Government have traditionally been appointed to the Council, and normally remained Privy Councillors for life. Prime Ministers Deakin, Whitlam and Hawke did not choose to become Privy Councillors. It is not appropriate to use the letters P.C. together with the title.

Academic and other titles

The use of academic and other titles, where appropriate, in House documents was also considered in the 1972 Standing Orders Committee report.¹⁵⁶ The House agreed with the recommendation of the committee that the title 'Doctor' or 'Reverend' or a substantive military, academic or professional title could be used by Members in House documents.¹⁵⁷

Father of the House

The longest continuous serving Member of the House is customarily designated 'Father of the House'. This is a completely informal designation and has no functions attached to it. The Father of the House in the House of Commons presides during the election of the Speaker. At the commencement of the 35th Parliament the Hon. T. Uren was the longest serving Member, having been elected in 1958. A record term of 51 years, from 1901 to 1952, was served by the Right Honourable W. M. Hughes.

DRESS AND CONDUCT

While the standard of dress in the Chamber is a matter for the individual judgment of each Member¹⁵⁸, the ultimate discretion rests with the Speaker. In 1983 Speaker Jenkins stated that his rule in the application of this discretion was 'neatness, cleanliness and decency'.¹⁵⁹ Male Members normally wear a jacket and tie and it has been ruled that a Member is not permitted to remove his jacket in the Chamber.¹⁶⁰ Members without a jacket are not prevented from entering the Chamber for a division, or for the purpose of forming a quorum, but are expected to put a jacket on if they wish to remain. In 1977 the Speaker indicated that it was acceptable for Members to wear tailored 'safari' suits without a tie¹⁶¹, and in more recent times a number of Members have not worn ties, whether wearing safari suits or not. Members may wear hats in the Chamber but not while entering or leaving¹⁶² or while speaking.¹⁶³

The conduct of Members in the Chamber is governed by the standing orders and practice and is interpreted with some discretion by the Chair. It has always

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

156 PP 20(1972).

157 VP 1970-72/1013.

158 H.R. Deb. (17.2.77)172; see also 'Senators' dress in the Senate Chamber', *Report of Senate House Committee*, PP 235(1971).

159 H.R. Deb. (8.9.83)573.

160 H.R. Deb. (26.2.59)318.

161 H.R. Deb. (17.2.77)172.

162 H.R. Deb. (23.3.50)1197-8.

163 H.R. Deb. (10.3.26)1476.

been the practice of the House not to permit the reading of newspapers in the Chamber, although latterly this has been accepted if done discreetly. It is in order for a Member to refer to books or newspapers when they are actually connected with the Member's speech.¹⁶⁴ Members may not smoke in the Chamber¹⁶⁵ and refreshments may not be brought into, or consumed in, the Chamber.¹⁶⁶

The Chair has also ruled that¹⁶⁷:

- a Member may keep his hands in his pockets while speaking¹⁶⁸;
- the kicking of Chamber desks is disorderly¹⁶⁹;
- a Member may distribute books to other Members in the Chamber¹⁷⁰;
- climbing over seats is not fitting behaviour¹⁷¹, and
- a Member should not sit on the arm of a seat.¹⁷²

(*And see* Chapter on 'Parliament House and the House of Representatives Chamber').

SERVICE ON NON-PARLIAMENTARY ORGANISATIONS

Two Members of the House, usually one government Member and one opposition Member, are appointed by motion in the House to serve on the following bodies for the periods indicated¹⁷³:

- Council of the Australian Institute of Aboriginal Studies—for a period determined in accordance with the resolution of the House¹⁷⁴;
- Council of the Australian National University—for a period as is fixed by the House, not exceeding three years¹⁷⁵;
- Advisory Council on Australian Archives (one Member only)—for a period as is fixed by the House, not exceeding three years¹⁷⁶;
- Council of the National Library of Australia (one Member only)—for a period as is fixed by the House, not exceeding three years¹⁷⁷, and
- Parliamentary Retiring Allowances Trust—while remaining a Member.¹⁷⁸

164 H.R. Deb. (6.11.73)2791.

165 H.R. Deb. (24.10.52)3742.

166 *May*, p. 442.

167 For general rules for Member's conduct in, and manner and right of, debate *see* Ch. on 'Control and conduct of debate'.

168 H.R. Deb. (8.6.39)1530.

169 H.R. Deb. (28.11.51)2832.

170 H.R. Deb. (4.5.50)2227-8.

171 H.R. Deb. (8.6.55)1561.

172 H.R. Deb. (25.7.74)695-6.

173 For details of membership *see* daily Notice Paper. The House may discharge or replace the Members it appoints to such bodies.

174 *Australian Institute of Aboriginal Studies Act 1964*; VP 1987-89/129.

175 *Australian National University Act 1946*; VP 1985-87/299.

176 *Archives Act 1983*; VP 1985-87/1644.

177 *National Library Act 1960*; VP 1985-87/1342.

178 *Parliamentary Contributory Superannuation Act 1948* (short title amended in 1978); VP 1983-84/106, 185-6. A trustee who has ceased to be a Member by reason of dissolution or expiration of the House does not thereby cease to be a trustee until he or she ceases to receive a parliamentary allowance.