

# *The Speaker, Deputy Speakers and Officers*

## THE OFFICE OF SPEAKER

### Origins

The office of Speaker is an essential feature of the parliamentary system, and of all the Westminster parliamentary traditions the Speakership has proved to be the most durable. The office is an ancient one with its beginnings going back to the origins of the British Parliament. The first Speaker to be so designated was Sir Thomas Hungerford, appointed in 1377, who became the first in a continuing line of identifiable Speakers. In early times Speakers were variously described as 'Parlour' (mouth), 'Prolocutor' (chairman) and 'Procurator' (agent). Essentially each acted as mouthpiece or spokesman and hence 'Speaker' on behalf of the House in communicating its resolutions to the sovereign.

The office of Speaker was central to the centuries long battle for supremacy between Parliament and the monarchy. Historically the role of the Speaker has been an unenviable one. The chequered history of the Speakership shows that a number of Speakers died violent deaths by way of execution or murder while others were imprisoned, impeached or expelled from office. This record is reflected in the custom of a newly elected Speaker showing a token resistance on being escorted to the Chair. As Laundy states in *The Office of Speaker*:

The custom had its origin in the genuine reluctance with which early Speakers accepted the office, for the rôle of spokesman for an emerging body of legislators bent on opposing the royal will was a dangerous occupation . . . Until discontinued by Speaker Onslow in 1728 it was the custom for the Speaker-elect to struggle with his proposer and seconder, resisting every inch of the way to the Chair with the result that he was literally dragged to it.<sup>1</sup>

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

The fascinating historical development of the Speakership has been well recorded by Laundy.<sup>2</sup> For the purposes of this text it is sufficient to say that it is an office of great importance not only in its significant and onerous duties but particularly for what it is held to represent. The following comments by modern day Speakers serve to illustrate this:

. . . it may fairly be said that as an institution Parliament has proved its enduring worth through the test of time; secondly, Parliament's past helps us to understand more fully its modern role and present-day organisation. To a large extent, the same holds true of the Speakership of the House of Commons, an office almost as old as Parliament itself.<sup>3</sup>

. . . the Speaker represents, in a very real sense, the right of freedom of speech in the Parliament, which was hard won from a monarchical Executive centuries ago. The Parliament must constantly be

1 Philip Laundy, *The Office of Speaker*, Cassell, London, 1964, p. 16.

2 Laundy, *The Office of Speaker*.

3 George Thomas, 'The Speakership, House of Commons, Westminster', *The Parliamentarian* LIX, 1, 1978, pp. 1-7.

prepared to maintain its right of freedom of speech. I regard the symbolism of the wig and the gown as reminding all honourable members of our purposes here—freedom of speech, without fear or favour.<sup>4</sup>

By the time of the election of the first Speaker of the House of Representatives the Speakership of the House of Commons, fundamentally the same as we know it today, had already evolved. However the Speakership in Australia differs in some respects from current Westminster practice as its continuing development during the 20th century has followed different lines.

### **The Speaker today**

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

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

The Speaker is a Member of the House and upon election to office becomes its principal officer.<sup>6</sup> He or she is supported and assisted by the elected Deputy Speaker and Second Deputy Speaker who act as Speaker in the Speaker's absence and relieve in the Chair as Deputy Speaker whenever requested to do so. The Speaker appoints a number of Members to the Speaker's panel and the Speaker or Deputy Speaker may call on any one of them to take the Chair as Deputy Speaker.

The Speaker has the constant support and advice of the principal permanent officers of the House, the Clerk of the House, the Deputy Clerk, the First Clerk Assistant, the Clerks Assistant and the Serjeant-at-Arms, who in turn have the support of officers in the areas for which they are responsible.

The Speaker is commonly referred to as the Presiding Officer, his or her counterpart in the Senate being the President. While Speaker, a Member is entitled to be termed 'Honourable'. In the Commonwealth order of precedence the Speaker is ranked directly after the Governor-General, State Governors, the Prime Minister, and a Premier within that Premier's State. If the President of the Senate has served in office an equal or greater period of time, then the President also precedes the Speaker. If the Speaker has served for a longer period in office, then he or she precedes the President.<sup>7</sup>

In the Chamber and for ceremonial occasions the Speaker may wear the formal Speaker's dress of a black Queen's Counsel gown, full bottomed judge's wig and lace accessories. Speakers from the non-Labor parties have traditionally worn the formal dress but Speakers from the Australian Labor Party have not worn wig or gown.<sup>8</sup> Speaker Halverson, elected in 1996, wore the gown of a Queen's Counsel, but did not wear the wig.

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

5 May, p. 179.

6 The Speaker, Deputy Speaker, Second Deputy Speaker and members of the Speaker's panel are correctly titled Officers of the House, not office holders, as they are elected by the House or nominated on behalf of the House to serve the interests of the whole House. The distinction is that Ministers, and office holders such as the Leader of the Opposition, whips, etc., may be seen as serving, in the first instance, the interests of a section of the House only. See Ch. on 'House, Government and Opposition'.

7 Gazette S21 (17.2.77).

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

The role the Speaker plays by virtue of the office requires the position to be filled by a dedicated, senior and experienced parliamentarian. The qualities required in a Speaker have been described in the following ways:

It is parliamentary rather than legal experience which is the first requirement of a Speaker. He must have an intimate understanding of parliamentary life, of the problems of Members collectively and individually, of the moods and foibles of the House; an experience which can be acquired only through many years spent on the benches of the House itself. He must have a deep-seated reverence for the institution of Parliament, an understanding of what lies behind the outward ceremony and a faith in democratic government . . .

'The office of Speaker does not demand rare qualities. It demands common qualities in a rare degree'

...  
A good Speaker is not necessarily an extraordinary person, therefore; he is an ordinary person, but an ordinary person of the highest calibre.<sup>9</sup>

Unlike the situation in the House of Commons there has been no tendency to appoint lawyers as Speakers in the House of Representatives and, since Federation, only three Speakers have been members of the legal profession, namely, Speakers Groom, Nairn and Snedden.<sup>10</sup>

Traditionally the Speaker in the House of Representatives has been a person of considerable parliamentary experience. Speakers have mostly come from the back bench without ministerial or party leadership experience. Speakers who had had prior ministerial experience in the House of Representatives were Speakers Watt, Groom, Cameron and Snedden. Due to the exceptional circumstances created by World War II Speaker Rosevear continued his duties as Controller of Leather and Footwear following his election as Speaker in 1943, and was Chairman of the Post-War Planning Committee of Leather and Footwear Industries between 1944 and 1945. These were not Cabinet appointments. Speaker Snedden had previously been a Minister, Leader of the House and Leader of the Opposition, experience he regarded as important in occupying the Speakership.<sup>11</sup> Speaker Makin became a Minister nine years after he ceased to be Speaker in 1932 and Speaker Scholes became a Minister in 1983, some seven years after ceasing to be Speaker. Speakers Salmon, McDonald, Bell, Scholes, Jenkins, Child and McLeay previously held the office of Chairman of Committees (Deputy Speaker).

## **Impartiality of the Chair**

One of the hallmarks of good Speakership is the requirement for a high degree of impartiality in the execution of the duties of the office. This important characteristic of office has been developed over the last two centuries to a point where in the House of Commons the Speaker abandons all party loyalties and is required to be impartial on all party issues both inside and outside the House. In concert with this requirement the principle has been well established that the Speaker continues in office until ceasing to be a Member of the House. According to *May*:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate either in the House or in committee. He votes only when the voices are equal, and then only in accordance with rules which preclude an expression of opinion upon the merits of a question.<sup>12</sup>

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

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

<sup>11</sup> Sir Billy M. Snedden, 'The Speaker of the Australian House of Representatives', *The Parliamentarian* LIX, 4, 1978, pp. 205-10.

<sup>12</sup> *May*, p. 181.

Practice in the House of Representatives has been to change the Speaker with a change of government. Historically, the Speaker has not been required to sever his or her connection with the governing party. Speakers have attended party meetings and have not, of necessity, refrained from election campaigning. As a rule, however, the Speaker does not participate in the actual debating and law-making processes of the House (*but see p. 191*).

Notwithstanding the foregoing and the fact that the Speakership has long been regarded as a political appointment, Australian Speakers have striven to discharge their duties with impartiality. The degree of impartiality achieved depends on the occupant but, as a rule, Speakers have been sufficiently detached from government activity to ensure what can be justly claimed to be a high degree of impartiality in the Chair.

During his term in office (1976–83) Speaker Snedden advocated the adoption in Australia of conventions applying to the Speakership in the House of Commons. On the first sitting day of the 33rd Parliament, when there had been a change of Government and after a new Speaker had been elected, in informing the House of his decision to resign as a Member, Sir Billy noted that as Speaker he had endeavoured to apply ‘such of the features of the conventions as were consistent with reality’, that he had rarely attended party meetings and that he had confined his attendance to occasions when major issues of principle were to be discussed. He went on:

I took no part in the development of day to day policies or in the examination of legislation, I knew nothing of the political tactics to be adopted in the House.

Sir Billy then said that the presence in the Chamber of a former Speaker would increase enormously the load that the new Speaker would have to bear, that he would not want to see that happen, that under the Westminster convention when the Speaker leaves the Chair he leaves the House, and that, pursuant to that practice, he would resign as a Member forthwith.<sup>13</sup>

The Speaker must show impartiality in the Chamber above all else. A Speaker should give a completely objective interpretation of standing orders and precedents, and should give the same reprimand for the same offence whether the Member is of the Government or the Opposition.

Experience has shown that the Speaker uses his or her discretion in such a manner as to ensure adequate opportunities for all sections to participate in the deliberations of the House. As a rule Speakers make themselves freely available outside the Chamber to give advice to or discuss matters with Members. Members are entitled to expect that, even though politically affiliated, the Speaker will carry out his or her functions impartially. Likewise a Speaker is entitled to expect support from all Members regardless of their party.

The Speaker (with the President of the Senate) embodies the dignity of the nation’s representative assembly. The office is above the individual and commands respect. The degree of respect depends to some extent on the occupant but it is fair to say that the office, despite isolated incidents, has been shown to be respected on both sides of the House.

In recognition of the need to show respect for the office, certain conventions are observed in the practices and procedures of the House:

- on entering or leaving the Chamber Members acknowledge the Chair by a bow (S.O. 56);
- no Member may pass between the Member speaking and the Chair (S.O. 57);

<sup>13</sup> H.R. Deb. (21.4.83) 5–6.

- Members addressing the House do so through the Chair (S.O. 59);
- Members resume their seats immediately the Speaker stands and he or she is heard without interruption (S.O. 53); and
- when the House has been adjourned, no Member should leave the House before the Speaker.

(See also Chapter on 'Control and conduct of debate').

It is unquestionably of great importance that, as a contribution towards upholding the impartiality of the office, the House chooses a candidate who has the qualities necessary for a good Speaker.

## **Period in office**

As stated earlier the Speaker of the House of Commons once elected is always re-elected by the House until such time as he or she resigns or retires. This principle, sometimes referred to as the continuity principle, derives from and is a recognition of the special status of the Speaker and the acknowledged impartiality of occupants of the office and has not been seriously threatened since the 18th century.

When it comes to a general election, the Speaker in the United Kingdom is unable to fight on a party ticket if this neutrality is to be preserved and therefore faces the electorate as 'Mr Speaker seeking re-election'. It has become part of the tradition that major parties in the House do not normally oppose the return of the Speaker, although this custom has been broken from time to time. It is significant that no Speaker wishing to continue in office has failed to be re-elected in the last 100 years.

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

The Australian practice of changing the Speaker with a change of government does not provide a Speaker who is both independent and seen to be independent; it provides a Speaker who is politically affiliated but is required to be impartial in the Chair. The reasons for this are in part historical and partly electoral and political. The comparatively small size of the House of Representatives means that any one seat may be vital in determining a governing majority in the House.<sup>14</sup>

In the early years after Federation, and in other special circumstances, the situation was sometimes different in various ways. On 9 May 1901 Mr Frederick Holder, formerly Premier of South Australia, was unanimously elected as the first Speaker of the House of Representatives. Mr Holder was the only candidate for the Speakership at that time and on the two subsequent occasions he was re-elected as Speaker.<sup>15</sup> Speaker Holder remained in office until his death on 23 July 1909. During the period of his Speakership, there were six changes of Prime Minister and five changes in the governing party.

At the general elections held on 31 May 1913 the Cook Liberal Government was elected to office. Speaker McDonald had been Speaker in the previous Fisher Labor Government and Prime Minister Cook invited him to remain as Speaker. Filling the Speaker's position was significant for both parties due to the almost equal numbers in

<sup>14</sup> After the 1961 general election the Government had a floor majority of only one.

<sup>15</sup> VP 1901-02/8; VP 1904/6; VP 1907/4. It appears that a second prospective candidate for the Speakership in the 1st Parliament withdrew before the time for the election of Speaker, H.R. Deb. (9.5.01) 21-2.

the House. Mr McDonald declined<sup>16</sup> and, when the 5th Parliament met on 9 July 1913, Mr Johnson, a candidate from the government party, was elected Speaker.<sup>17</sup> Mr McDonald returned to office following the election of 5 September 1914 which had resulted in a change of Government.<sup>18</sup>

From 1909 to 1941, with the exception of a short period, the Speaker was a member of the governing party, a change in the Government bringing a change in the Speaker. The exception was Speaker McDonald, during the period November 1916 to March 1917, who remained in office until the House was dissolved after a group, led by Mr Hughes, broke away from the governing party to form a coalition Government with those who had been in opposition. Speaker Watt who was elected Speaker in 1923, was not a member of the governing coalition parties, but was a member of a party which supported the Government and was the governing parties' nominee for the position of Speaker.<sup>19</sup>

On 20 November 1940 Mr Nairn was elected, unopposed, as Speaker<sup>20</sup> during the term of the Menzies United Australia Party–Country Party coalition Government. On 8 October 1941 Prime Minister Curtin informed the House of the formation of a new Australian Labor Party Government<sup>21</sup> but Speaker Nairn remained in office until he resigned on 21 June 1943. On 22 June 1943 Mr John Rosevear, a member of the governing Labor Party, was elected Speaker, unopposed.<sup>22</sup> Since then the Speaker has always been a member of the governing party or parties.

On 11 November 1975 the Governor-General withdrew the commission of Prime Minister Whitlam (Australian Labor Party) and commissioned Leader of the Opposition Fraser (Liberal–Country Party coalition) to form a 'caretaker' Government. Speaker Scholes continued in the Chair for the remainder of the sitting under the new Government<sup>23</sup>, and remained as *Presiding Officer*, under the *Presiding Officers Act*, until Speaker Snedden, who was a member of the governing coalition parties, was elected when the next Parliament met on 17 February 1976.<sup>24</sup>

Speaker John (later Sir John) McLeay (1956–1966) holds the record term of office of ten years.

## ELECTION OF SPEAKER

The Constitution expressly provides that the House shall, before proceeding to the despatch of any other business, choose a Member to be the Speaker of the House who 'shall cease to hold his office if he ceases to be a Member'.<sup>25</sup> The procedure for electing the Speaker is laid down in detail in the standing orders.<sup>26</sup>

A prospective Speaker is proposed by a Member, who is traditionally a private Member of the government party or parties, addressing the Clerk as chair of the House<sup>27</sup>

<sup>16</sup> PP 2 (1914–17) 3.

<sup>17</sup> VP 1913/4.

<sup>18</sup> VP 1914–17/4–5.

<sup>19</sup> H.R. Deb. (28.2.23) 17–23.

<sup>20</sup> VP 1940–43/4.

<sup>21</sup> VP 1940–43/195.

<sup>22</sup> VP 1940–43/549.

<sup>23</sup> VP 1974–75/1123–7.

<sup>24</sup> VP 1976–77/6.

<sup>25</sup> Constitution, s. 35.

<sup>26</sup> S.O. 12.

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

and moving that the Member proposed 'do take the Chair of this House as Speaker'. The motion is required to be seconded, again traditionally by a private Member, and then the Member proposed is required to inform the House whether the nomination is accepted.<sup>28</sup>

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

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

After debate concludes, the division bells are rung for four minutes and the House proceeds to a ballot whereby Members write on ballot papers the name of the candidate for whom they wish to vote. The votes are counted by the Clerks at the Table and, if there are only two candidates, the candidate with the greater number of votes is declared by the Clerk to have been elected.<sup>29</sup>

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

The Clerk's duties under the standing orders<sup>30</sup> during the election are to deal only with what might be described as the 'mechanical' aspects. The standing orders include the obligation to draw attention to the fact that a Member's speech time has expired and to put the question if the closure is moved. The Clerk calls on a Member to speak by using the name of the Member's electorate, for example, 'the honourable Member for . . .'. There is no instance of the Clerk having intervened in debate on the ground of irrelevancy. However the Clerk has been called on to rule on a point of order that a Member's remarks were not relevant.<sup>31</sup> Points of order on such matters place the Clerk in a difficult position.

It is considered that the Clerk would be obliged to accept a **motion** for some **relevant purpose**, and should put a question and declare what, in the Clerk's opinion, the result is, but it is doubtful if the Clerk has the power to name a Member. For instance, the Clerk would probably have a duty to ask for the withdrawal of an unduly offensive expression

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

29 VP 1974-75/509; VP 1976-77/6; VP 1978-80/6; 1993-95/7.

30 S.O. 12.

31 The ruling was that the Member could continue. H. R. Deb. (29.8.89) 471.

but, if the request were denied by the Member, the Clerk could only look to the House, by means of an appropriate motion, for support.

Some questions as to the role of the Clerk remain undetermined but in the case of grave disorder the Clerk would probably have to appeal to the House to act to preserve order and its own dignity. If the disorder were to continue, the Clerk may have no alternative but to suspend the sitting for a period.

On 27 July 1909 the Clerk announced to the House that Speaker Holder had died at Parliament House on 23 July. Prime Minister Deakin moved a condolence motion which was put by the Clerk, by direction of the House. The Clerk then, again by direction of the House, put the question for the adjournment of the House, proposed by the Prime Minister.<sup>32</sup>

The House met the next day for the election of a new Speaker. Four candidates were proposed, but one of them declined. Debate continued on the proposals until a Member moved that the debate be adjourned. The House divided and the motion was negatived 36 votes to 32.<sup>33</sup> The debate continued until another Member moved that the debate be adjourned. The House divided and the result of the division was 'Ayes' 31, 'Noes' 31:

And the numbers being equal the Clerk stated that he would not take the responsibility of stopping the debate, and therefore gave a casting vote with the 'Noes'—

And a point of order being raised that the Clerk could not vote, the Clerk, as Chairman, ruled that if he had not a casting vote as Chairman, nevertheless the motion for adjournment, not having received a majority of votes, had not been agreed to.<sup>34</sup>

In explanation the Clerk said that he was acting under the authority of standing order 6 (now S.O. 2(f)) which, prior to the election of the Speaker, enabled the Clerk to act as chair of the House.<sup>35</sup> The important point was that the motion had not been carried and it was with hindsight unnecessary for the Clerk to have purported to give a casting vote which clearly he did not have. The debate continued and Speaker Salmon was eventually elected by 37 votes to 29.<sup>36</sup> During the adjournment debate the Prime Minister on behalf of all Members thanked the Clerk for 'the able manner in which he discharged his duties under extremely trying conditions, which it was impossible for him to foresee, and prepare for'.<sup>37</sup>

On the next day a Member moved as a matter of privilege that the Votes and Proceedings of the House of Representatives, page 62, dated 28 July 1909, be amended by the omission of the entries quoted above.<sup>38</sup> The motion was debated for two hours and most speakers acknowledged that the Clerk had been placed in an extremely difficult situation.<sup>39</sup> The motion was negatived, on division, 32 votes to 20.<sup>40</sup>

In 1934, while the motion that Mr Bell take the Chair of the House as Speaker was being debated<sup>41</sup>, a Member moved the closure of the Member addressing the House (Mr Gander). The Clerk ruled that the motion was in order, as during the election of Speaker the House was operating under its standing orders. The Clerk put the question on the closure and a division being called for, the bells were rung. When the Clerk appointed tellers, a Member objected that he had no authority to order a division and appoint

32 VP 1909/59.

33 VP 1909/61.

34 VP 1909/62.

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

36 VP 1909/62.

37 H.R. Deb. (28.7.09) 1727–8.

38 VP 1909/67.

39 H.R. Deb. (29.7.09) 1808–22.

40 VP 1909/67.

41 Under present standing orders no debate can take place if only one Member is proposed, S.O. 12 (b).



tellers. Mr Gander then nominated himself for the position of Speaker. The tellers for the 'Noes' refused to act and so the Clerk immediately declared the question on the closure of the Member resolved in the affirmative. As Mr Bell was the only Member proposed, he was then conducted to the Chair by his proposer and seconder without question being put.<sup>42</sup> Mr Gander also approached the Chair but despite interruption and interjection Mr Bell was able to express his acknowledgments and accept congratulations.<sup>43</sup>

The present standing orders provide that the closure can only be moved by a Minister<sup>44</sup>, and it has been successfully moved on several occasions.<sup>45</sup>

On 15 February 1956 a ballot being held to decide between two candidates for the Speakership, a Member said:

Mr Clerk, I would like a ruling. Would it be in order to nominate scrutineers while the ballot is in progress. I think each candidate should have a scrutineer.

The Clerk, in effect, gave a ruling by saying 'There is no provision in the standing orders for the appointment of scrutineers'.<sup>46</sup>

The Procedure Committee has recommended that the Member with the longest continuous service (not being a Minister, Assistant Minister, Parliamentary Secretary, party leader or deputy leader, or a party whip) take the Chair during the election of the Speaker, in place of the Clerk, but at the time of publication the House had not adopted this recommendation.<sup>47</sup>

Following his or her election, and being escorted to the Chair, the Speaker thanks the House for the high honour it has conferred.<sup>48</sup> The Speaker then takes the Chair, and the Mace, which prior to this time has been placed under the Table, is placed in the brackets on the Table. The Prime Minister, the Leader of the Opposition, other party leaders (where appropriate) and other Members then formally congratulate the Speaker. A Minister, usually the Prime Minister, informs the House of the time at which the Governor-General will receive the Speaker and the sitting of the House is suspended until that time when the Speaker, accompanied by other Members, proceeds to meet the Governor-General. On return to the House the Speaker reports to the House that he or she has presented himself or herself to the Governor-General and received the Governor-General's congratulations on election to the office.<sup>49</sup> In the event of the Governor-General being absent from Australia or unable to attend the Parliament, the Speaker presents himself or herself to the Administrator.<sup>50</sup>

In 1909 the newly elected Speaker did not immediately present himself to the Governor-General. The Prime Minister informed the House that the Governor-General would fix a time for receiving the Speaker.<sup>51</sup> In 1946 the newly elected Speaker did not suspend the sitting but left the Chamber to present himself to the Governor-General immediately.<sup>52</sup> In 1934 Speaker Bell ruled that no business could be transacted until the Speaker had been presented to the Governor-General.<sup>53</sup>

42 S.O. 12(b)—(S.O. 7 in 1934).

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

44 S.O. 12(f).

45 VP 1946–48/5; VP 1951–53/5; VP 1956–57/5; VP 1976–77/6.

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

47 Standing Committee on Procedure. *Procedures for the Opening of Parliament*. PP 159 (1995) 8.

48 H.R. Deb. (30.4.96) 5; S.O. 12(n).

49 H.R. Deb. (30.4.96) 15–16; VP 1996/12; S.O. 12(p).

50 VP 1956–57/259.

51 VP 1909/62.

52 VP 1946–48/5.

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

## POWERS, FUNCTIONS AND DUTIES

The Speaker's powers, functions and duties may be categorised as constitutional, traditional and ceremonial, statutory, procedural and administrative. In addition the Speaker has certain *ex officio* functions.

As a general point of principle the Speaker's authority is that which is derived from the House, and the foremost duty is to the House and its Members in upholding its dignity and protecting its rights and privileges. Accordingly, the authority of the House and the Speaker have been described as indivisible. The Speaker acts as the House might direct<sup>54</sup>, being the servant not the master. Just as the House elects a Speaker it may likewise vote a Speaker out of office.<sup>55</sup>

### Constitutional

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

- he or she is responsible for the issue of a writ for the election of a new Member whenever a vacancy occurs in the House of Representatives, that is, between general elections<sup>57</sup>;
- at the commencement of a new Parliament the Speaker is commissioned by the Governor-General to administer the oath or affirmation of allegiance to any Member not present at the opening of Parliament and to new Members elected during the course of a Parliament<sup>58</sup>;
- if the number of votes on a question before the House is equal, he or she exercises a casting vote<sup>59</sup>; and
- a Member who wishes to resign his or her place does so in writing addressed to the Speaker.<sup>60</sup>

The Constitution also makes provision for the procedure to be followed in the event of a vacancy in the office of Speaker and in the absence of the Speaker<sup>61</sup> (see p. 197).

### Ceremonial and traditional

The most traditional of the Speaker's duties is as the sole representative of the House in its relations with the Crown's representative, the Governor-General. The Speaker is likewise the House's representative in communications with the Senate and outside persons in the transmission and receipt of messages, documents or addresses.

In the House of Commons, the Speaker elect is not considered to be fully in office until the Royal approbation has been received. This is symbolised by the practice that the Speaker is not preceded by the Mace when leaving the House during the interval between election and the receipt of the Royal approval. In the House of Representatives, once the Speaker is elected, he or she is required by standing orders, before business is

54 VP 1974–75/1125–7. A practice reflected in the famous statement of Speaker Lenthall who said to Charles I who had entered the House of Commons Chamber in 1642: 'May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here; and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is pleased to demand of me'. (A. Wright & P. Smith, *Parliaments Past and Present*, London, 1903, p. 40, and Wilding and Laundry, p. 430, punctuation taken from the latter.)

55 Constitution, s. 35.

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

57 Constitution, s. 33.

58 In accordance with the Constitution, s. 42.

59 Constitution, s. 40.

60 Constitution, s. 37.

61 Constitution, ss. 35, 36.

proceeded with, to present himself or herself to the Governor-General in order to inform the Governor-General that he or she is the choice of the House as its Speaker.<sup>62</sup> Since 1904, when the 2nd Parliament met, the Speaker has not been required to seek the Governor-General's approval; the presentation is merely a courtesy. Likewise on presentation to the Governor-General the Speaker is not required to petition for the continuance of the privileges of the House as in the United Kingdom<sup>63</sup>, there being specific constitutional and legislative provisions dealing with the powers, privileges and immunities of the House.<sup>64</sup>

When the House first meets in a new Parliament or a new session, the Governor-General summons Members of the House to hear the opening speech.<sup>65</sup> This summons has been traditionally transmitted to the House by the Usher of the Black Rod. Upon receipt of the message, the Speaker calls on Members to accompany him or her and preceded by the Serjeant-at-Arms, accompanied by the Clerk, the Deputy Clerk and the First Clerk Assistant, and followed by the party leaders and Members, proceeds to the appointed venue (traditionally the Senate Chamber).<sup>66</sup> The Speaker is invited by the Governor-General to be seated. On conclusion of the Governor-General's speech, the Speaker is formally presented with a copy of the speech by the Governor-General's Official Secretary. The Speaker, in procession, then returns to the House of Representatives Chamber but, before the Speaker reports the Governor-General's speech to the House, it is necessary for the House to transact some formal business<sup>67</sup>, usually the introduction of a bill. This bill is known as the 'formal' bill or 'privilege' bill. Its presentation is taken to express the House's traditional right to conduct its own business without reference to the immediate cause of summons.

Later on during the sitting period, when the Address in Reply to the Governor-General's speech<sup>68</sup> is to be presented to the Governor-General, the Speaker suspends the sitting of the House and, accompanied by the Serjeant-at-Arms bearing the Mace, the Clerk, the Deputy Clerk and Members of the House, is driven to Government House.<sup>69</sup> The Address in Reply is presented to the Governor-General and, on return to the House, the Speaker informs Members of that fact and reads the Governor-General's acknowledgment to the House.<sup>70</sup>

At the commencement of each sitting day the Serjeant-at-Arms, bearing the Mace on his or her right shoulder, precedes the Speaker into the Chamber and announces the Speaker to the House. As the Speaker takes the Chair, the Serjeant-at-Arms places the Mace on the Table. The Mace remains in the Chamber during any meal breaks and other suspensions of the House, and is carried out of the Chamber by the Serjeant-at-Arms only when the House adjourns. During the times when the Mace was not used (*see* p. 197), the Serjeant-at-Arms continued to precede the Speaker into the Chamber and announced him, and preceded him out of the Chamber on adjournment.

In the absence of the Speaker, the Serjeant-at-Arms, preceded by the Speaker's attendant, carries the Mace from the Speaker's suite to the Chamber 'cradled' in the left

62 S.O. 12(p).

63 *May*, p. 227.

64 Constitution, s. 49 and specific legislation such as the *Parliamentary Privileges Act 1987*.

65 S.O. 4.

66 At the opening of the 30th Parliament on 17 February 1976 opposition Members did not attend the Senate Chamber to hear the Governor-General's speech.

67 S.O. 7.

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

69 S.O. 9.

70 VP 1996/288.

arm. The Serjeant-at-Arms enters the Chamber through the back door to the left of the Speaker's Chair and walks past the opposition benches to the foot of the Table. The Clerk then announces the unavoidable absence of the Speaker and the Deputy Speaker (or in his or her absence the Second Deputy Speaker) as Acting Speaker takes the Chair.<sup>71</sup> As the Acting Speaker takes the Chair, the Serjeant-at-Arms places the Mace in its brackets on the Table.<sup>72</sup>

The Speaker on taking the Chair reads the Prayers laid down in the standing orders, thereby commencing the day's proceedings.<sup>73</sup>

## Statutory

In addition to constitutional functions the Speaker has specific functions and duties laid down in a number of Commonwealth Acts, some of the functions being exercised in an indirect or secondary manner. Acts in which the Speaker is given particular responsibilities or a particular role include the Commonwealth Electoral Act, the Parliamentary Allowances Act, the Parliamentary Papers Act, the Parliamentary Privileges Act, the Parliamentary Precincts Act, the Parliamentary Proceedings Broadcasting Act and the Public Service Act.

Any question regarding the qualifications of a Member of the House of Representatives, or a vacancy in the House, may be referred by the House to the Court of Disputed Returns.<sup>74</sup> The Speaker is responsible for sending to the court a statement of the question the House wishes to have determined and any associated papers which the House possesses relating to the question.<sup>75</sup>

The Reserve Bank Board<sup>76</sup> must send a copy of its annual report together with a report of the Auditor-General on its financial statements to the Speaker and President to be laid before the House of Representatives and the Senate respectively. The Audit Act provides that reports of the Auditor-General must be forwarded to the Speaker for presentation to the House, and this is illustrative of the position of the Auditor-General as an officer responsible to Parliament, rather than to Government.

If, in an action for publishing parliamentary papers, the Speaker or the Deputy Speaker (or the Clerk of the House) certifies that a document or evidence has been published under the authority of section 2 of the Parliamentary Papers Act, the court or judge must stay the action or prosecution.<sup>77</sup>

The Speaker is by statute a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings<sup>78</sup> which is appointed at the beginning of each Parliament. Any Member of the House of Representatives who is appointed to the committee, except the Speaker, may resign his or her seat on the committee by writing to the Speaker.<sup>79</sup> The Speaker has been elected chairman of the committee in all Parliaments except for the initial election in 1946.

The Speaker also has statutory responsibilities in connection with the administration of Parliament, and these are described at pages 193 to 195. The responsibilities of the

<sup>71</sup> S.O. 14.

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

<sup>73</sup> S.O.s 43, 101.

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

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

<sup>76</sup> *Reserve Bank Act 1959*, s. 81(3).

<sup>77</sup> *Parliamentary Papers Act 1908*, s. 4(2); see also Ch. on 'Papers and documents'.

<sup>78</sup> *Parliamentary Proceedings Broadcasting Act 1946*, s. 5(2); see also Ch. on 'Parliament and the citizen'.

<sup>79</sup> *Parliamentary Proceedings Broadcasting Act 1946*, s. 7.

Speaker in so far as electoral matters are concerned are described in detail in the Chapter on 'Elections and the electoral system'.

## **Procedural**

The sources of procedural authority are described at pages 202 to 203.

The Speaker presides over the debates of the House and ensures that they are conducted according to the formal procedures, but does not normally participate in debates (*but see* p. 191).

The duties performed in the Chair are probably the Speaker's most important and onerous. One of the duties is to ensure that the rules of parliamentary procedure as embodied in the standing orders and practice are accurately and correctly interpreted and applied. The Speaker interprets the standing orders, deals with points of order when they are raised and gives rulings when called upon to do so (*see* p. 204). He or she calls upon Members wishing to speak. The standing orders provide a graduated code of disciplinary powers to enable the Speaker to maintain order. These powers are progressive in their severity and allow the Speaker to deal with various breaches of order in the most appropriate manner. The Speaker does not vote in the House except in the event of the numbers being equal, in which case he or she has a casting vote (*see* p. 199). The Speaker may make statements or announcements to the House when necessary.<sup>80</sup>

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

At the commencement of each day's sitting, the Speaker, being satisfied that a quorum is present, reads the prayers set out in the standing orders. Having read prayers, the Speaker then calls on the various items of business in the order set down in the standing or sessional orders in force at the time.

### *Powers and functions under the standing orders*

In addition to generally maintaining order in the Chamber and interpreting standing orders, the Speaker has many powers and functions under the standing orders. These matters are described in detail elsewhere in the text.

It is considered that where the standing orders or practice of the House are silent on a matter, the Speaker may assume the authority to make a ruling or decision he or she thinks is appropriate. Naturally Members have the right to question such rulings or decisions, and the House itself is the ultimate authority in such matters.

### *Discretionary powers*

The Speaker's powers are augmented by a number of discretionary powers, which include<sup>81</sup>:

- providing access to records of the House (S.O. 39);
- determining, when there is a need for a quorum to be formed, a time the Chair will be taken if it is likely a quorum will be formed (S.O.s 41, 44, 45, 46);
- allocating the call to the Member who in his or her opinion first rose in his or her place (S.O. 61);
- determining whether words used are offensive or disorderly (S.O. 78);
- determining whether discussion is out of order on ground of anticipation (S.O. 82);

<sup>80</sup> VP 1996/378.

<sup>81</sup> All of these powers are discussed in detail elsewhere in the text.

- determining if a Member's arguments are irrelevant or tediously repetitive (S.O. 85);
- determining if a motion is an abuse of the orders and forms of the House, or is moved for the purpose of obstructing business (S.O. 86);
- determining whether a *prima facie* case of breach of privilege has been made out (S.O. 96);
- referring a matter to the Committee of Privileges, having determined that a *prima facie* case has been made out and that urgent action is required, when the House is not expected to meet within two weeks (actions which are subject to subsequent decisions by the House) (S.O. 97A);
- determining which is the most urgent and important matter of public importance, if more than one is proposed (S.O. 107);
- instructing a notice of motion to be divided (S.O. 136);
- amending notices (S.O. 137);
- directing the wording of a question to be altered if it seems to be unbecoming or not in conformity with the standing orders (S.O. 147);
- giving an opinion as to whether notice of a question has been given in time to be printed (S.O. 148);
- allowing a supplementary question to be asked during Question Time (S.O. 151);
- giving an opinion as to whether the majority of voices were 'Aye' or 'No' (S.O.s 168, 192);
- disallowing any motion or amendment which is substantially the same as any question which has already been resolved in that session (S.O. 169); and
- giving permission for non-Members to inspect and copy papers presented to the House but not printed (S.O. 320).

The Speaker's power to call the House together after a period of adjournment is derived from the resolution of the House which must be agreed to prior to the adjournment of the House.<sup>82</sup> The motion traditionally takes one of the following forms:

- That the House, at its rising, adjourn until [day, date, time], unless otherwise called together by the Speaker or, in the event of the Speaker being unavailable, by the Deputy Speaker.<sup>83</sup>
- That the House, at its rising, adjourn until a date and hour to be fixed by the Speaker, which time of meeting shall be notified by the Speaker to each Member.<sup>84</sup>
- That the House, at its rising, adjourn until [day, date, time], unless the Speaker fixes an alternative day or hour of meeting.<sup>85</sup>

Although such resolutions give the Speaker power to fix the time of the next meeting, it is the invariable practice for the Speaker not to act on his or her own initiative but to await a request from the Government. If the House has adjourned to a date and hour to be fixed, a Gazette notice is published when the day of meeting is determined, indicating the date and hour of meeting.<sup>86</sup> If the Speaker is absent from Australia when the Government requests that the House be reconvened, and the adjournment resolution has not empowered the Deputy Speaker to act on behalf of the Speaker, the Clerk informs

<sup>82</sup> See also Ch. on 'Routine of business and the sitting day'.

<sup>83</sup> VP 1993–95/2704. Most commonly used for a long adjournment.

<sup>84</sup> VP 1987–89/1682. Sometimes used for a long adjournment.

<sup>85</sup> VP 1996/359. Used for a short adjournment.

<sup>86</sup> Gazette S 8 (18.1.91).

the Speaker of the Government's request and seeks concurrence. If there was not time to seek the Speaker's concurrence, the Clerk would notify all Members and subsequently inform the Speaker of the action taken.

Normally the House can only be adjourned by its own resolution<sup>87</sup> and the motion for the adjournment can only be moved by a Minister.<sup>88</sup> However the Speaker may adjourn the House on his or her own initiative if there is no quorum or no quorum can be formed<sup>89</sup>, if grave disorder arises in the House<sup>90</sup>, or under the automatic adjournment procedures.<sup>91</sup>

The Speaker may suspend the sitting:

- for a meal break or in order to obtain a quorum;
- in the case of grave disorder<sup>92</sup>;
- after election while he or she presents himself or herself to the Governor-General<sup>93</sup>;
- at the opening of a new Parliament, after the presentation of the Speaker to the Governor-General, until the time when the Governor-General will declare the causes of calling the Parliament together<sup>94</sup>;
- during the election of the Deputy Speaker and Second Deputy Speaker if there is an equality of votes in the special ballot procedures<sup>95</sup>;
- if requested to do so by the Leader of the Government because no further business is available at that time<sup>96</sup>;
- if requested to do so while the House is waiting for a bill or message from the Senate (not uncommon towards the end of a sitting period)<sup>97</sup>;
- for the formal presentation of the Address in Reply to the Governor-General's speech<sup>98</sup>;
- for special ceremonial occasions<sup>99</sup>; or
- on instruction by the House.<sup>100</sup>

Subject to certain conditions the Speaker is authorised by resolutions of the House to permit access to evidence taken by, or documents of, committees, and resolutions of each House confer such authority on the Speaker and the President in respect of records of joint committees.<sup>101</sup>

### *Participation in debate*

It is unusual for a Speaker to participate in a debate. Although there is no standing order which prohibits such participation and there have been instances where this has happened, such action in the modern House would be regarded as out of character with the status and role of the Speaker unless the matter under debate is of a peculiarly parliamentary nature falling within the responsibilities of the Speaker.

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<sup>87</sup> S.O. 49.

<sup>88</sup> S.O. 50.

<sup>89</sup> S.O.s 41, 44, 45, 46.

<sup>90</sup> S.O. 308.

<sup>91</sup> S.O. 48A.

<sup>92</sup> S.O. 308.

<sup>93</sup> S.O. 12(o).

<sup>94</sup> S.O. 2(g).

<sup>95</sup> S.O. 13(k).

<sup>96</sup> H.R. Deb. (17.3.31) 279–80.

<sup>97</sup> VP 1990–92/1625.

<sup>98</sup> VP 1996/288.

<sup>99</sup> VP 1974–75/25.

<sup>100</sup> VP 1974–75/1127.

<sup>101</sup> VP 1978–80/1539–40; VP 1983–84/988–9; VP 1985–87/667.

In the past, when the consideration in detail stage of bills was taken in the committee of the whole, Speakers occasionally spoke on bills in the committee stage. On 4 June 1942 Speaker Nairn participated in debate in committee on the Australian Broadcasting Bill and moved an amendment.<sup>102</sup> On 1 October 1947 Speaker Rosevear participated in debate in committee on the 1947–48 Estimates.<sup>103</sup>

Speaker Cameron took a different view of the Speaker's entitlement to participate in debate when he stated on 4 March 1953:

As soon as a bill is put before a committee of the whole House, it is open to any honourable member, the Speaker alone excepted, in my view, to attend and put before the committee any amendment that he wishes.<sup>104</sup>

There have been cases when the Speaker has participated in debate when the matter before the House concerned the Parliament or the Speaker's administration.<sup>105</sup> On 29 March 1944 the Deputy Speaker ruled that Speaker Rosevear was in order in requesting the Chairman of Committees to take the Chair to enable Speaker Rosevear to address the House from the floor. The matter before the House was a motion to discharge Members from attendance on the Joint Committee on Social Security. Speaker Rosevear spoke in connection with the Speaker's administration. In making this ruling the Deputy Speaker stated:

. . . there are precedents in this House for the Speaker taking his place on the floor when the Estimates of Parliament are before honourable members.<sup>106</sup>

The Deputy Speaker also ruled that it was in order for Speaker Rosevear to address the House from the Table.<sup>107</sup>

Special circumstances applied in 1987 and 1988 when Speaker Child moved, and spoke to, the second readings of the Parliamentary Privileges Bill and the Public Service (Parliamentary Departments) Bill. She had sponsored the bills jointly with the President of the Senate. Madam Speaker spoke from the Table of the House, on the government side.<sup>108</sup> Similarly, Speaker Martin introduced, and moved and spoke to the second reading of, the Public Service (Parliamentary Departments) Amendment Bill 1993.<sup>109</sup>

When the Speaker participated in debate in the former committee of the whole he was called and addressed as the 'honourable Member for . . .', not as 'Mr Speaker'.<sup>110</sup> Following the introduction of estimates committees in 1979, the Speaker played an active part in the consideration of the estimates for the Parliament. The chairman of the 1979 estimates committee which considered the appropriation for Parliament took the view 'that Mr Speaker represents the ministerial position for Parliament'.<sup>111</sup> Questions by Members regarding the estimates were put to the Speaker and answered by him. He was called and addressed as 'Mr Speaker' in these circumstances. The Speaker has never spoken in the Main Committee.

102 VP 1940–43/365; H.R. Deb. (4.6.42) 2125–6.

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

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

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

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

107 VP 1943–44/119.

108 H.R. Deb. (19.3.87) 1154–6; H.R. Deb. (19.5.88) 2692–4.

109 H.R. Deb. (24.11.93) 3507–10.

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

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



In the House of Commons the Speaker is entitled to speak in the committee of the whole but no Speaker has exercised the right since 1870 and for all practical purposes such action may be regarded as obsolete.<sup>112</sup>

The Speaker frequently makes statements to the House<sup>113</sup> and may intervene in debate in special circumstances. For example, Speaker Snedden spoke from the Chair on a condolence motion following the death of a former Prime Minister, Sir Robert Menzies.<sup>114</sup> It is usual for the Speaker to take part in valedictory remarks at the end of each year.

### *Questions*

Standing order 152 provides that Members may direct questions without notice to the Speaker on any matter of administration for which he or she is responsible. There are also arrangements which permit, in effect, questions on notice to the Speaker. (See Chapter on 'Questions').

## **Administrative**

### *Control over Parliament House*

Section 6 of the *Parliamentary Precincts Act 1988* provides that the parliamentary precincts are under the control and management of the Presiding Officers. It further provides that they may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts. In respect of the ministerial wing these powers are subject to any limitations and conditions agreed between the Presiding Officers and a particular Minister. Prior to the enactment of this provision, however, the authority of the Presiding Officers had become well established in practice. The Speaker exercises singular authority over the House of Representatives area in Parliament House. In 1901 Speaker Holder said:

Before the order of the day is called on, I have to inform the House that I have made a careful examination of that part of the building which is at the disposal of Members of the House of Representatives. I may mention at once that, in my opinion, the accommodation for members, officers, and the press is extremely limited . . . Honourable members may rest assured that I shall do all in my power to study their convenience and comfort in every possible way, and I am sure that the Right Honourable the Prime Minister will assist me in that direction.<sup>115</sup>

In 1931 Speaker Makin ruled out of order an amendment relating to his action in excluding a journalist from the press gallery on the ground that it infringed the authority vested in the Speaker.<sup>116</sup>

On 24 October 1919 Speaker Johnson in a statement to the House noted that it appeared the Economies Royal Commission, appointed by Governor-General's warrant, intended to investigate certain parliamentary services. The Votes and Proceedings record Speaker Johnson informing the House:

As this Royal Commission had no authority from this Parliament, so far as he was aware, to interfere in any way with the various services of Parliament, it was his duty to call the attention of honourable Members to this proposed serious encroachment on the rights and privileges of Parliament by the appointment of a tribunal unauthorised by Parliament to inquire into matters over which the Legislature had absolute and sole control. . . . He did not propose, unless he was so directed by the

112 Wilding and Laundry, p. 704.

113 H.R. Deb. (21.8.96) 3346–7.

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

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

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

House, whose mouth-piece he was, to sanction any inquiry of the kind which was not authorized by Parliament itself.<sup>117</sup>

On 27 August 1952 Speaker Cameron informed the House that it appeared that a Member had engaged in a campaign of deliberate opposition to the Chair and the authority which he exercised in Parliament House. The Member later in a statement to the House assured Mr Speaker that at no time had he any thought of such a campaign. He expressed his regret and made an unqualified withdrawal of the text of telegrams he had sent to Mr Speaker and certain newspapers concerning the removal of the title Parliamentary Under-Secretary from the door of his office.<sup>118</sup> Speaker Cameron said:

I want to make it perfectly clear that this building is public property, and that the Speaker of the House of Representatives is the custodian—the only custodian—of that property. He is the only authority who has the right, in this part of the building, to allot a room, to arrange for furniture, and to command the staff as to what they shall or shall not do.<sup>119</sup>

In 1968 Prime Minister Gorton supported this view:

The Houses of Parliament, their arrangements, their furnishings and what is placed in them are under the control of the Presiding Officers and are not a field, I think, in which the Executive as such should seek to intrude.<sup>120</sup>

In 1980, during a strike by journalists, Speaker Snedden was asked whether steps had been taken to see that no 'unauthorised person' was using the facilities of the Press Gallery. Speaker Snedden replied that a resolution had been passed by the Federal Parliamentary Press Gallery asking, *inter alia*, that the passes of two named persons be withdrawn and that no new members be admitted without consultation with the Gallery Committee. The Speaker stated that the Presiding Officers retained, absolutely and solely, the right to determine admission to the Gallery, and that although he had and would, in normal circumstances, consult with the Gallery Committee, under no circumstances would he take action to prevent any media representative whom he judged to be qualified and competent to report proceedings from coming to the Gallery to report them.<sup>121</sup>

### *Staffing and financial arrangements*

For many purposes the Speaker is in effect 'Minister' for the Department of the House of Representatives and jointly with the President of the Senate is 'Minister' for the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Staff and the Joint House Department. Certain Acts refer to the Minister administering the department concerned. For the purposes of the Audit Act the Speaker is considered to be the Minister administering the Department of the House of Representatives.<sup>122</sup> The regulations under this Act specify the Speaker of the House of Representatives or the President of the Senate, or both, as the approving officer for requisitions for supplies for parliamentary departments.<sup>123</sup>

The Public Service Act contains detailed and comprehensive provisions insofar as staff of the parliamentary departments are concerned. In particular, the Act confers on the President and the Speaker powers in the creation, reclassification and abolition of positions, and in the appointment and promotion of officers to positions, in the Department of the Senate and of the House of Representatives, respectively. The Act

117 VP 1917–19/587.

118 VP 1951–53/387, 393.

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

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

121 H.R. Deb. (14.5.80) 2693–4.

122 *Audit Act 1901*, s. 34(5).

123 *Treasury Regulations 49(a)*.

also provides for the delegation of such powers. The Speaker and the President jointly hold these powers in so far as the three joint departments of the Parliament are concerned. The Act also provides that reports on the operations of the departments must be prepared and presented each year. Regulations made under the Act provide for a range of matters concerning the operation of the parliamentary departments, such as the conditions of service of employees.

Since 1982–83 funding for the parliamentary departments has been provided through Appropriation (Parliamentary Departments) Acts. From 1989–90, funding for the Department of the House of Representatives has been provided on a ‘running costs’ basis with decisions being made as to the apportionment of available funds. The Department of Finance is involved, on occasions, principally in respect of funding for new policy proposals. The Appropriation (Parliamentary Departments) Acts contain appropriations for each department, under running costs and other items.

### *Services to Members*

It is a recognised responsibility of the Speaker to ensure that Members are provided with the necessary facilities and resources within Parliament House for the proper execution of their duties. The departmental heads of the parliamentary departments are responsible for the services provided by their departments and for all correspondence issuing from them, all administrative actions taken by them, all public expenditure and, where applicable, accountability for revenue collected. However, the Presiding Officers, as Parliamentary Heads, have ultimate responsibility in so far as matters of policy are concerned, and sensitive matters—where, for instance, a Member feels that a service has not been provided or has been provided inadequately—may be referred to the Speaker. Some government departments also provide services to Members, principally electorate and travel entitlements.

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

Besides the statutory appointment to the Joint Committee on the Broadcasting of Parliamentary Proceedings, of which the Speaker is customarily appointed chair, the Speaker is, ex officio, a member of a number of other parliamentary committees.<sup>124</sup> The Speaker is a member of the House Committee and the Library Committee, which are also appointed under standing orders.<sup>125</sup> These two committees usually sit jointly with the corresponding committees of the Senate and the Speaker is normally chair of one of these joint committees and deputy chair of the other. In the 29th to the 35th Parliaments the Speaker was, by resolution of the House, a member and joint chair of the Joint Standing Committee on the New Parliament House. The Speaker and Deputy Speaker can only be chosen to serve on select committees if they consent to do so.<sup>126</sup> Speaker Cameron agreed to be a member of the Select Committee on Hansard<sup>127</sup> provided he was not a party nomination.

The Speaker is, ex officio, a member of the (non-parliamentary) Historic Memorials Committee. With the President of the Senate, the Speaker is joint president of the Commonwealth of Australia Branch of the Commonwealth Parliamentary Association (CPA), of the Australian Group of the Inter-Parliamentary Union (IPU) and of the Australian National Group of the Asia Pacific Parliamentary Forum.

<sup>124</sup> See also Ch. on ‘Parliamentary committees’.

<sup>125</sup> S.O. 27.

<sup>126</sup> S.O. 325.

<sup>127</sup> VP 1954–55/75; H.R. Deb. (23.9.54) 1534–45.

## THE MACE AND THE SPEAKER

A mace was originally a weapon of war similar to a club. During the 12th century the Serjeants-at-Arms of the King's bodyguard were equipped with maces, and over time the Serjeants' maces, stamped on the butt with the Royal Arms, developed from their original function as weapons to being symbols of the King's authority. Towards the end of the 14th century Royal Serjeants-at-Arms were assigned to duties in the House of Commons. The powers of arrest of the Royal Serjeants came to be identified as the powers of arrest of the House of Commons.

This authority may be said to have formed the basis of the power of enforcement of parliamentary privilege and as its exercise had depended in the first instance on the powers vested in a Royal Serjeant-at-Arms, the Mace, which was his emblem of office, became identified with the growing privileges of the House of Commons and was recognised as the symbol of the authority of the House and hence the authority of the Speaker.

In 1543 the House of Commons, vindicating its privilege of freedom from arrest for the first time, used the Mace as its symbol of authority to demand and obtain the release of an arrested Member. As the privileges of the House of Commons were, up until that time, dependent on the protection of the House of Lords, the Lord Chancellor offered to grant a writ for the release of George Ferrers, the arrested Member. The House of Commons refused this offer 'being of a clear opinion, that all commandments and other acts of the Neather House, were to be done and executed by their Serjeant without writ, only by shew of his mace, which was his warrant'.<sup>128</sup>

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

The House of Representatives adopted the House of Commons' practice of using a Mace on the first sitting day of the Commonwealth Parliament on 9 May 1901. In accordance with the standing orders operating at the time the Mace was placed on the Table following the election of Speaker and this was recorded in the Votes and Proceedings.<sup>129</sup> Current standing orders still require that, once the newly elected Speaker has taken the Chair, the Mace, which until then remains under the Table, is laid on the Table.<sup>130</sup> This is the only mention of the Mace in the standing orders. In practice the Mace is placed on the Table by the Serjeant-at-Arms when the Speaker takes the Chair at the commencement of each sitting and it remains there until the Speaker leaves the Chair at the adjournment of the sitting.

The Mace used by the House of Representatives from 1901 to 1951 was lent to the House of Representatives by the Victorian Legislative Assembly. The current Mace was presented to the House of Representatives, at the direction of King George VI, by a delegation from the House of Commons on 29 November 1951 to mark the Jubilee of the Commonwealth Parliament<sup>131</sup>, and was, by Australian request, designed to resemble the Mace in use in the House of Commons.<sup>132</sup>

<sup>128</sup> Hatsell, vol. I, p. 54.

<sup>129</sup> VP 1901-02/89.

<sup>130</sup> S.O. 12(n).

<sup>131</sup> H.R. Deb. (29.11.51) 3091.

<sup>132</sup> For a detailed description of the House of Representatives' Mace and the history of its use see A. R. Browning, *The Mace*, AGPS, Canberra, 1970.

The Mace traditionally accompanies the Speaker on formal occasions, such as his or her presentation to the Governor-General after election, when the House goes to hear the Governor-General's speech opening Parliament, and on the presentation of the Address in Reply to the Governor-General at Government House. As the Mace is also a symbol of royal authority, it is not taken into the presence of the Crown's representative on these occasions but is left outside and covered with a green cloth, the symbol being considered unnecessary in the presence of the actual authority. When the Queen arrived to open Parliament in 1954, 1974 and 1977 she was met on the front steps of the provisional Parliament House by the Speaker. The Serjeant-at-Arms, accompanying the Speaker, did not carry the Mace on these occasions.<sup>133</sup>

It is normal practice for the Mace to be used when the House of Representatives is sitting. However it was not considered essential for the Mace to be on the Table for the House to be properly constituted during the period when the Mace lent by the Victorian Legislative Assembly was in use, and during this time there were periods (1911–13, 1914–17, 1929–31) when the Mace was removed from the Chamber completely (on the instructions of the Speaker).

## VACANCY IN OFFICE OF SPEAKER

At the first meeting of a newly elected House of Representatives, before the despatch of any other business, the House must choose a Member to be Speaker. The House must also choose a Speaker at any other time when the office becomes vacant.<sup>134</sup>

If the office of Speaker becomes vacant during a session, the Clerk reports the vacancy to the House at its next sitting and the House either at that time or on the next sitting day elects a new Speaker.<sup>135</sup>

If a vacancy occurs between two sessions, the Clerk reports the vacancy to the House when it returns after either hearing the Governor-General's speech or after the commission authorising the Governor-General's Deputy to open Parliament has been read.<sup>136</sup> The House then elects a new Speaker.<sup>137</sup> In all cases, until a Speaker has been elected, the Clerk acts as chair of the House<sup>138</sup> and conducts the election of the Speaker.

A vacancy in the office of Speaker may occur for the following reasons:<sup>139</sup>

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

A Speaker who is resigning his seat as well as his office does so in writing to the Governor-General.<sup>140</sup>

Continuing authority for certain administrative actions of the Speaker is provided for in the Parliamentary Presiding Officers Act.<sup>141</sup> When the office of Speaker becomes

<sup>133</sup> Browning, *The Mace*, p. 12.

<sup>134</sup> Constitution, s. 35.

<sup>135</sup> S.O. 20.

<sup>136</sup> See also Ch. on 'The parliamentary calendar'.

<sup>137</sup> S.O. 21.

<sup>138</sup> S.O. 2(f).

<sup>139</sup> See Constitution, s. 35.

<sup>140</sup> Constitution, s. 35; this was the case with Speaker Jenkins, VP 1985–87/665–6.

<sup>141</sup> *Parliamentary Presiding Officers Act 1965*.

vacant due to resignation, the person who was Speaker, is deemed to continue to be Speaker for the purposes of the exercise of any powers or functions of the Speaker under a law of the Commonwealth, until a new Speaker is chosen. Again, when the House has been dissolved, the Speaker at the time of dissolution is deemed to continue as Speaker for the purpose of exercising statutory powers or functions until a Speaker is chosen by the House. If the Speaker or the person deemed to be Speaker dies, or is unable through ill health to exercise any powers or functions under a law of the Commonwealth, or is absent from Australia, the Deputy Speaker is deemed to be Speaker, for the purposes of the exercise of any powers or functions of the Speaker under a law of the Commonwealth, until the House chooses a new Speaker or the absence or incapacity of the elected Speaker ends. This does not extend to the exercise of the Speaker's constitutional functions as provision is made in the Constitution for the Governor-General to exercise these powers in the Speaker's absence.<sup>142</sup> If there is no Deputy Speaker, then the person who last held that office is deemed to continue as Deputy Speaker until a new Deputy Speaker is appointed by the House, and such a person can be deemed to be the Speaker.

## ABSENCE OF SPEAKER

The Constitution provides that before or during any absence of the Speaker, the House may choose a Member to perform his duties in his absence.<sup>143</sup> The House has therefore provided in its standing orders that when the House is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, or if the Deputy Speaker is also absent the Second Deputy Speaker, shall, as Acting Speaker and subject to any other order of the House, perform the duties of the Speaker during the absence. The Deputy Speaker (or Second Deputy Speaker) continues to act without any formal announcement on subsequent days.<sup>144</sup> The Clerk normally informs the House, if the Speaker is absent through illness or parliamentary duties overseas, immediately the House meets.

Before 1963 the relevant standing order specified that, unless the House otherwise ordered, the Clerk should inform the House of the Speaker's absence and that the Chairman of Committees as Deputy Speaker should take the Chair from day to day to perform the duties and exercise the authority of the Speaker in relation to all proceedings of the House.<sup>145</sup> This standing order was seen by the Standing Orders Committee in 1962 as imposing a restriction not possible under the Constitution<sup>146</sup>, and the present standing order 14 authorises the Deputy Speaker, or if he or she is also absent the Second Deputy Speaker, as **Acting Speaker** to perform the duties of Speaker, without restriction.

Pursuant to this authority Acting Speakers have received commissions from the Governor-General to administer the oath or affirmation of allegiance to Members, announced the return to writs issued by the Speaker for a by-election and administered the oath of allegiance to the newly elected Members.<sup>147</sup>

If the Speaker and both the Deputy Speaker and the Second Deputy Speaker are absent, the Clerk informs the House and the House then either elects one of the Members present to perform the duties of Speaker or adjourns to the next sitting day. Again the

<sup>142</sup> Constitution, ss. 33, 37.

<sup>143</sup> Constitution, s. 36.

<sup>144</sup> S.O. 14.

<sup>145</sup> S.O. 22 (temporary standing orders adopted 1901); later S.O. 13.

<sup>146</sup> *Standing Orders Committee Report*, HR 1 (1962-63) 12. For further information on the previous situation see p. 217 of the first edition.

<sup>147</sup> VP 1978-80/422-3, 433; VP 1987-89/773, 1143.

Clerk acts as chair of the House until a Member is elected to perform the duties of Speaker.<sup>148</sup> On 25 May 1921 the Clerk announced that both the Speaker (previously absent) and Deputy Speaker were absent and the House then elected one of its Members to act as Speaker during the Deputy Speaker's absence.<sup>149</sup>

In summary, a Member chosen by the House as Acting Speaker, in accordance with section 36 of the Constitution (proceeding under standing order 14 or 15), has all the powers of the Speaker including constitutional powers and ex officio functions such as membership of committees. A Member deemed to be Speaker by virtue of the Presiding Officers Act does not have the constitutional powers extended to him or her but has authority 'for the purposes of the exercise of any powers or functions . . . under a law of the Commonwealth'.

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

Before the creation of the position of Second Deputy Speaker in 1994 the standing orders provided for the appointment by the House of another Member to be Acting Deputy Speaker during the Speaker's continuing absence, while the Deputy Speaker was Acting Speaker.<sup>150</sup> There have been occasions of lengthy acting appointments during absences of the Speaker due to illness or parliamentary duties overseas.<sup>151</sup>

## THE SPEAKER'S VOTE

### Exercise of the casting vote

The Speaker cannot vote in a division in the House unless the numbers are equal, and then he or she has a casting vote.<sup>152</sup> The Speaker and the Deputy Speaker, Second Deputy Speaker or Acting Speaker when occupying the Speaker's Chair, can exercise a casting vote in a division in the House. Should however an equality of votes arise in a division in the House with a member of the Speaker's panel in the Chair as Deputy Speaker, he or she would have no casting vote. It has been considered that the standing orders providing for the nomination and duties of the members of the Speaker's panel do not fulfil the requirements of s. 36 of the Constitution, which refers to the House choosing a Member to perform the duties of an absent Speaker.<sup>153</sup> Any reasons stated by the Chair when exercising a casting vote are recorded in the Votes and Proceedings.<sup>154</sup>

The occasion has arisen in the House where there has been an equality of votes but the Speaker has not needed to exercise a casting vote. On 19 March 1969 the House divided on an opposition motion without notice for the suspension of standing orders. There was an equality of votes cast (42), but, as the number of votes needed for the 'Ayes' to form the absolute majority was 63 (needed to carry a motion for the suspension

148 S.O. 15.

149 VP 1920-21/537.

150 S.O. 16 (now deleted).

151 VP 1948-49/5, 289; VP 1950-51/195.

152 Constitution, s. 40.

153 Opinion of the Solicitor-General, 22 February 1962.

154 S.O.s 210, 276.

of standing orders without notice), Speaker Aston did not exercise a casting vote as his vote would have had no effect on the result.<sup>155</sup>

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

- that the Speaker should always vote for further discussion, where this is possible;
- that, where no further discussion is possible, decisions should not be taken except by a majority; and
- that a casting vote on an amendment to a bill should leave the bill in its existing form.<sup>156</sup>

There had been 21 occasions in the House, up to the dissolution of the 37th Parliament, when the Speaker or Deputy Speaker had exercised a casting vote in a division in the House. These instances are outlined below.

*To enable a further decision of the House*

- On 12 June 1902, the numbers being equal on a second reading amendment to the Bonuses for Manufactures Bill, Speaker Holder stated that, as the House would have an immediate opportunity for another vote, he gave his casting vote with the 'Ayes' which had the effect of negating the amendment. The subsequent question on the second reading was agreed to by a majority of 6.<sup>157</sup>

*To enable debate to continue*

- On 21–23 May 1914, the numbers being equal on a motion for the closure, Speaker Johnson gave his casting vote with the 'Noes'.<sup>158</sup> Speaker Bell on 3 December 1935<sup>159</sup>, Deputy Speaker Lucock on 10 October 1963<sup>160</sup> and Deputy Speaker Edwards on 29 April 1992<sup>161</sup> took the same course. On 30 May 1991 Speaker McLeay gave his casting vote with the 'Ayes' on a closure moved on the mover of a motion to suspend standing orders and with the 'Noes' on a closure moved on the seconder of the motion.<sup>162</sup>
- On 13 February 1929, the House debated certain determinations by the Public Service Arbitrator on a motion that the paper be printed, which was the method used at that time to initiate debate on tabled papers. When the numbers were equal on the division, Speaker Groom declared himself with the 'Noes' in order to give an opportunity for further consideration of the matter in the House.<sup>163</sup>
- On 11 December 1942, Speaker Nairn declared himself with the 'Noes' when the numbers were equal on a motion that the debate on the war situation be adjourned. He stated 'My casting vote goes in the direction of obtaining a determination of the question during the present sittings of Parliament'.<sup>164</sup>

<sup>155</sup> VP 1968–69/375; H.R. Deb. (19.3.68) 698.

<sup>156</sup> *May*, pp. 350–53.

<sup>157</sup> VP 1901–02/455–6.

<sup>158</sup> VP 1914/53.

<sup>159</sup> VP 1934–37/480.

<sup>160</sup> VP 1962–63/580.

<sup>161</sup> VP 1990–92/1439.

<sup>162</sup> VP 1990–92/803–805.

<sup>163</sup> VP 1929/17–18.

<sup>164</sup> VP 1940–43/450; H.R. Deb. (11.12.42) 1824.



*To decide a matter before the House*

On several occasions, the Speaker's casting vote has decided the matter before the House:

- On 4 September 1913, when the vote was taken on an amendment to add words to the Address in Reply, the numbers were equal. Speaker Johnson then made the following statement:

There being an equality of votes, as shown by the division lists, it becomes necessary for me to give the casting vote. I take this opportunity of saying that, notwithstanding anything that has appeared in the press or elsewhere about the Speaker's casting vote, I have not been approached in any way either by members of the House or the press outside or anybody else in regard to how my vote is to go, with the exception of one occasion when it was done on the floor of the House. In giving my casting vote on the amendment to the Address in Reply moved by the Leader of the Opposition, the Right Honourable Member for Wide Bay, without offering any opinion or comment upon the debate just concluded, I desire to point out certain facts. This is a Parliament met for the first time fresh from a general election. As the result of the election the Government in office at the time, finding itself in a minority in the House of Representatives and unable to carry on the business of the country, resigned. A new Government was formed which, on presenting a memorandum of its policy to the House, was met with a no-confidence amendment to the Address in Reply. The new Government has so far not been afforded an opportunity to submit any of its proposed legislative measures for the consideration and judgment of the House, whilst several honourable Members opposed to the Government have expressed the view that some of the proposed measures should be proceeded with. Guided by these and other public considerations, and supported by abundant authority, I give my vote with the Noes, and declare the amendment resolved in the negative.

The Address was immediately agreed to, without a division.<sup>165</sup>

- On 7 November 1913, a motion was moved that the resumption of the debate on the Government Preference Prohibition Bill be made an order of the day for the following Tuesday. An amendment was moved to omit 'Tuesday' and substitute 'Wednesday'. The numbers being equal on the amendment, Speaker Johnson voted against it.<sup>166</sup>
- On 11 November 1913, Speaker Johnson named a Member for disregarding the authority of the Chair. On the motion that the Member be suspended from the service of the House the numbers were equal and the Speaker gave his casting vote with the 'Ayes'.<sup>167</sup>
- On 6 May 1914, the numbers were equal on an amendment to add words to the Address in Reply. The amendment was negatived on the casting vote of Speaker Johnson. The Address was immediately agreed to, without a division.<sup>168</sup>
- On 13–14 May 1914, debate resumed on the motion of a Minister 'That he have leave to bring in . . .' the Government Preference Prohibition Bill. An amendment was moved to insert certain words after 'That'. Upon division on the amendment the numbers were equal, and Speaker Johnson gave his casting vote with the 'Noes'.<sup>169</sup> The main question was then put and the numbers again being equal, the Speaker gave his casting vote with the 'Ayes'.<sup>170</sup> On the motion for the first reading the Speaker was again required to exercise his casting vote which he gave with the

<sup>165</sup> VP 1913/43–4.

<sup>166</sup> VP 1913/149–50.

<sup>167</sup> VP 1913/151.

<sup>168</sup> VP 1914/31.

<sup>169</sup> VP 1914/39–40.

<sup>170</sup> VP 1914/41.

'Ayes'<sup>171</sup>, and he took similar action in respect of the second reading on 21–23 May 1914<sup>172</sup>, and the third reading on 28 May 1914.<sup>173</sup>

- On a motion on 10 May 1938 that a report of the Munitions Supply Board be printed, Speaker Bell gave his casting vote with the 'Noes'.<sup>174</sup>
- On 24 April 1931, on a question of privilege being raised and a motion being moved that the expulsion of a member of the press from the press gallery or precincts of the House was a question for the House to decide, and not a matter for decision by the Speaker, the numbers were equal. Speaker Makin declared himself with the 'Noes'.<sup>175</sup>
- On 19 April 1972, in relation to an amendment to a proposed amendment to the standing orders, Deputy Speaker Lucock gave his casting vote with the 'Noes' 'in order to retain the status quo and in view of the undertaking given by the Deputy Leader of the House that he would refer the matter to the Standing Orders Committee'.<sup>176</sup>

In a ballot for the election of Deputy Speaker or Second Deputy Speaker, when there are only two candidates, with each receiving the same number of votes, the Speaker then exercises a casting vote.<sup>177</sup> There is no instance of the Speaker exercising a casting vote in these circumstances.

### Speaker voting in committee

In the days of the operation of the committee of the whole several Speakers exercised their right to vote in committee (for details *see* p. 222 of the second edition).

## SOURCES OF PROCEDURAL AUTHORITY

The operation of the House is governed by various rules and conventions which in turn are sources for the procedural authority exercised by the Speaker. There are three main sources of procedural authority:

- the Constitution;
- the standing orders; and
- traditional practice.

In many ways the provisions of the Constitution and the standing orders reflect traditional parliamentary practice which applied in the House of Commons in the years before Federation, and which was also followed in various ways in Parliaments in the Australian colonies prior to Federation.

### *Constitution*

The Constitution contains a number of detailed provisions dealing with the actual operations of the House. Amongst the provisions are:

- the requirement that the House, before proceeding to any other business, must choose a Member to be the Speaker, and must also choose a Member to be Speaker whenever the office becomes vacant, and the related provision that the Speaker

<sup>171</sup> VP 1914/41–2.

<sup>172</sup> VP 1914/48.

<sup>173</sup> VP 1914/61.

<sup>174</sup> VP 1937–40/87.

<sup>175</sup> VP 1929–31/593.

<sup>176</sup> VP 1970–72/1018–19.

<sup>177</sup> S.O.s 13(h), 22B(j).

ceases to hold office if he or she ceases to be a Member, and may be removed from office by a vote of the House or may resign by writing addressed to the Governor-General;

- the provision that before or during an absence of the Speaker the House may choose a Member to perform the Speaker's duties during the absence; and
- the provision that questions arising shall be determined by a majority of votes other than that of the Speaker who only has a casting vote.

### *Standing orders*

Acting under the power conferred by section 50 of the Constitution, the House has adopted comprehensive standing orders to govern the conduct of its business, and also to govern related matters such as the operation of committees and communication between the Houses. The standing orders are rules the House has adopted by resolution, and they are considered to have continuing, or standing, effect. They are thus binding at all stages, unless they are suspended (the standing orders themselves contain special provision for their suspension), or unless there is unanimous agreement—that is, leave—for something to be done which would otherwise be inconsistent with the standing orders.

The House adopted temporary standing orders in 1901, and these were largely based on rules and standing orders followed in the colonial legislative assemblies. These temporary standing orders were amended from time to time until 1950, when permanent standing orders were adopted. A number of changes have taken place since then, and in 1963 a major revision was agreed to. Significant changes were made during the 37th Parliament, and gender-specific language was also then removed. The House has often adopted sessional orders, which are temporary standing orders or temporary changes to the standing orders, in order, for example, to enable experimentation with a new procedure or arrangement before a permanent change is made to the standing orders.

The standing orders:

- reflect traditional parliamentary practice in the conduct of business, for example, in the consideration of legislation; and
- reflect and complement constitutional provisions, for example, in the detailed rules laid down in the standing orders for the consideration of 'money' bills.

### *Traditional practice*

A number of practices and conventions are observed in the House which are not imposed either by the Constitution or by the standing orders, but which are traditional parliamentary rules, often also followed in other parliaments operating in the Westminster tradition. An example of such a convention is the sub judice convention. Another is the practice that a charge against a Member should only be made by means of a substantive motion which admits of a distinct vote of the House. Other practices have evolved locally, for example, the convention of alternating the call between Government and Opposition during Question Time.

Standing order 1 provides that in all cases not provided for in the standing orders or by sessional or other order or by practice of the House, resort shall be had to the practice of the United Kingdom House of Commons 'in force for the time being, which shall be followed as far as it can be applied'. With the development of the House's own body of practice, reference to House of Commons practice has become very rare.

## SPEAKER'S RULINGS

A ruling is a decision or determination made by the Chair on a matter to do with the business or operation of the House. Usually a ruling will be given in response to a point of order, that is, when a Member queries or challenges in some way an aspect of proceedings or debate. In some circumstances, however, a ruling may be given without a point of order having been taken, for example, a Member may propose to move a motion or an amendment, and the Chair may intervene immediately of its own volition and rule the proposed motion or amendment out of order. The question of what decisions constitute rulings assumes particular importance in the House of Representatives because of the opportunity for motions of dissent to be moved to **rulings**, but not ordinary decisions, a change in the standing orders in 1950 having removed the word 'decisions' from the standing order. Many decisions are made in the course of proceedings which are not rulings, although they are sometimes described and even treated as such. Examples include a direction to a Member on a straightforward matter of order, the naming of a Member, and a direction to a Member to return to the subject under discussion. In these cases, however, proceedings sometimes take such a course that a ruling on a related or consequential matter is soon given. In 1984 Speaker Jenkins named a Member, and an attempt was made to dissent from his 'ruling' in naming the Member. The Speaker then ruled that the proposed motion of dissent was not in order as he had not made a ruling. A motion dissenting from that ruling was then moved.<sup>178</sup>

Apart from more routine matters, other important decisions are made by the Chair which are not rulings. When more than one proposed matter of public importance is submitted, the Speaker is required to select one as the preferred matter. However, it is incorrect to say that in making such a selection the Speaker 'rules' in favour of one or 'rules' against the other.<sup>179</sup> When a complaint of breach of privilege or contempt is made, precedence is not given to a motion in connection with the matter unless, in the opinion of the Speaker, the matter has been raised at the earliest opportunity and a *prima facie* case has been made out. Although it is often said that the Speaker rules on these matters, such comments are inaccurate; these are not decisions on matters of procedure or order involving the interpretation of the standing orders or procedures governing the conduct of the business of the House.<sup>180</sup>

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

The Speaker must preserve order in the Chamber to enable business to be properly conducted. In order to do this the Speaker must rule fairly on points of order and be very familiar with the standing orders and the practices of the House. The Speaker's statements and rulings must be sufficiently clear and authoritative for Members to accept them. In accordance with House of Commons practice a point of order must be raised immediately and the Speaker's ruling given forthwith. It is not acceptable to raise points

<sup>178</sup> VP 1983-84/664-6. And see VP 1993-95/2345-7.

<sup>179</sup> VP 1951-53/283-4; VP 1954-55/221. A motion of dissent from the Speaker's 'determination that the matter [preferred] was in order' has however been moved, VP 1985-87/548-9.

<sup>180</sup> *Report from the Select Committee on Parliamentary Privilege*, HC 34 (1966-67) 108. There is however a precedent for a motion of dissent from such a decision, described as a 'ruling', VP 1985-87/203.

of order concerning proceedings earlier in the day or concerning proceedings of a previous day.

The question sometimes arises as to whether rulings are 'binding' and, in a literal sense, the answer is 'no', but the question is more complex than it may appear. There have been many rulings given over the years which are consistent with one another, consistent with the standing orders and conventions of the House, and which are supported, implicitly or explicitly, by the House. Such rulings form part of the body of practice which continues to govern the operations of the House and rulings with that status are, in effect, regarded as binding, although even then Speakers are able to give rulings which take account of new factors or considerations. In this way rulings and interpretations may be developed and adapted over time. From time to time rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow any opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.

The situation in the House of Representatives is in contrast with that in the United Kingdom House of Commons, where many rulings are given after the Speaker has been forewarned of the subject by a Member who may advise that he or she will take a point of order on it, and the Speaker thus has an opportunity to take account of any relevant precedents and of all the considerations involved. 'Such a ruling forms a precedent, often fitting into its place in a series of precedents from which a general rule may be eventually drawn for all future practice in a particular range of procedure'.<sup>181</sup> In the House of Commons rulings are of course also given in response to points of order taken without any warning. The situation is also different in the Senate where a President's ruling which has not been dissented from is considered to have a standing equivalent to a resolution of the Senate.<sup>182</sup>

The Speaker may also make private rulings, that is, when not in the Chair. Such rulings may not be related to the actual proceedings in the House. This may occur for instance when a Member seeks the Speaker's guidance on a point of procedure relating to future proceedings in the House. Private rulings in effect serve to clarify points of practice and procedure and have the same authority as rulings from the Chair and may be supplemented by rulings from the Chair.

## **Dissent from rulings**

Standing order 100 provides that, if any objection is taken to any ruling of the Speaker it must be taken at once, and a motion of dissent may be submitted in writing, moved, and, if seconded, proposed and debated forthwith.

Any motion of dissent must be moved at the time the ruling is made<sup>183</sup>, and no amendment may be moved to the motion as a ruling must be either accepted without qualification or rejected.<sup>184</sup> A Member cannot move dissent from a ruling which has just been supported by a vote of the House.<sup>185</sup> Conversely, once a dissent from the Speaker's ruling has been carried then the Chair cannot repeat the ruling until the House reverses its decision on the ruling.<sup>186</sup>

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<sup>181</sup> *May*, p. 215.

<sup>182</sup> *Odgers*, 7th edn, p. 144.

<sup>183</sup> VP 1950-51/27; VP 1951-53/65-6.

<sup>184</sup> VP 1951-53/505.

<sup>185</sup> H.R. Deb. (30.9.54) 1774.

<sup>186</sup> H.R. Deb. (25.11.53) 530; H.R. Deb. (26.11.53) 553-4.

A dissent motion has lapsed for want of a seconder<sup>187</sup>, and a dissent motion has been withdrawn by leave.<sup>188</sup> A proposed dissent motion has been ruled out of order when it referred to a matter that had happened two days before.<sup>189</sup> The Speaker has refused to accept a motion that a Member be heard and the Member has then attempted to move dissent, but the Speaker stated that there was nothing to dissent from.<sup>190</sup> When two proposed matters of public importance have been submitted and the Speaker has selected one, it has been held that a motion of dissent was out of order as no ruling had been given.<sup>191</sup>

The following table shows the number of motions of dissent from rulings moved from 1901 to 1996, and their result:

**TABLE 5 MOTIONS OF DISSENT FROM RULINGS IN THE HOUSE 1901–96 (a)**

	<i>Moved</i>	<i>Negated</i>	<i>Agreed to</i>	<i>Withdrawn, lapsed, etc.</i>
Speaker	101	74 <sup>80</sup>	6	21
Acting Speaker	12	10	—	2
Deputy Speaker	37	31 <sup>32</sup>	1	5
Total	150 <sup>160</sup>	115 <sup>125</sup>	7	28

(a) Does not include dissent motions ruled out of order, or dissent in the Main Committee or former committee of the whole.

There have been several occasions when the House has agreed to a motion dissenting from the Speaker's ruling.<sup>192</sup> Any dissent from the Speaker's ruling is not necessarily interpreted as a censure of the Speaker.<sup>193</sup>

In 1931 a motion of dissent was moved against a ruling given by Speaker Makin. During the debate on the motion, which was subsequently negated, Speaker Makin participated and stated:

It has been the invariable rule, when a motion has been submitted inviting the House to disagree with Mr Speaker's ruling, for the Speaker to reply from the Chair . . . I shall make my statement from the Chair . . .<sup>194</sup>

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

In 1962 a Member moved dissent from a ruling by the Deputy Speaker. The Speaker took the Chair and in the division on the motion of dissent the Deputy Speaker voted against the dissent, which was negated.<sup>195</sup> The Speaker ruled that it was in order for the Deputy Speaker to vote in the division.<sup>196</sup>

The procedure of dissenting from a ruling of the Speaker is not shared in the practice of the lower Houses of other major Commonwealth countries, namely, the United

187 VP 1912/13; VP 1974–75/441–2.

188 VP 1971/543. Leave to withdraw a motion has however been refused, VP 1954–55/330.

189 H.R. Deb. (9.3.50) 585.

190 H.R. Deb. (1.6.77) 2281.

191 VP 1954–55/221, 265–6.

192 VP 1920–21/218, 221–2; H.R. Deb. (28.6.20) 3018–23; VP 1937/106–7; H.R. Deb. (10.9.37) 954; VP 1951–53/595; H.R. Deb. (6.3.53) 669–74; VP 1951–53/714; H.R. Deb. (8.10.53) 1169–70; VP 1953–54/65; H.R. Deb. (2.12.53) 769–80; VP 1954–55/184–5; H.R. Deb. (4.5.55) 362–73; VP 1954–55/201; H.R. Deb. (12.5.55) 671–3.

193 H.R. Deb. (13.5.14) 895–6.

194 VP 1929–31/492; H.R. Deb. (12.3.31) 279.

195 VP 1962–63/55.

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

Kingdom, Canada and India. Before the dissent provision was abolished in the Canadian House of Commons, Laundry stated:

In practice, the rule tends to encourage Members to challenge Speakers' rulings, and when carried to extreme lengths . . . its use can seriously undermine the authority of the Chair and lead to a serious disruption of business. It is also open to criticism on the ground that a Speaker, in order to avoid the damage to his prestige and authority which the rejection of one of his rulings by the House would inevitably involve, might tend to rule as a matter of course in favour of the majority in order to ensure that his rulings will be sustained. Thus, whatever advantages may be claimed for such a rule, there can be no question that its disadvantages are of a very serious nature indeed.<sup>197</sup>

In 1986 the Procedure Committee recommended that the House should abolish the dissent procedure, but the recommendation was not adopted.<sup>198</sup>

### **Interpretation of the Constitution, or the law**

Speakers have generally taken the view that, with the exception of determination of points of procedure between the two Houses, the obligation to interpret the Constitution does not rest with the Chair and that the only body fully entitled to do so is the High Court. Not even the House has the power finally to interpret the terms of the Constitution.<sup>199</sup>

The most frequent determination of points of procedure between the two Houses has occurred in relation to requests for amendments to bills or pressed requests for amendments, where the rights or responsibilities of the House were considered to be affected. Typically, the Speaker has directed the attention of the House to the constitutional question which the message transmitting the purported amendment or the pressed request has involved, and referred to the requirements of section 53 of the Constitution. The decision as to whether the House would receive and entertain the message has been left with the House. It is felt that the Speaker is not acting as an interpreter of the Constitution in these cases but acting as the custodian of the privileges of the House.<sup>200</sup>

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

- a question of law should be asked of the Attorney-General, not the Speaker<sup>201</sup>;
- it is not the duty of the Speaker to give a decision on (to interpret) a question of law<sup>202</sup>; and
- a very heavy tax would be imposed if the Speaker, as soon as any motion or bill were introduced, were expected to put the whole of the Crown Law Offices into operation in order to see whether what was proposed to be done was in accordance with the law.<sup>203</sup>

### **CRITICISM OF SPEAKER'S ACTIONS AND CONDUCT**

Except in moving dissent from a ruling, the Speaker's actions can only be criticised by a substantive motion, usually in the form of censure or want of confidence. It is not acceptable for the Speaker to be criticised incidentally in debate.<sup>204</sup> On 25 May 1950, a

197 Laundry, *The Office of Speaker*, p. 36.

198 'The standing orders and practices which govern the conduct of Question Time', *Third report, Standing Committee on Procedure*, PP 354 (1986).

199 VP 1907-08/384-5; H.R. Deb. (22.4.08) 10485-7.

200 See Ch. on 'Legislation'.

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

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

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

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

Member, during the adjournment debate, questioned the way in which Speaker Cameron had called Members during Question Time. The Speaker in reply said that the Member 'will come to my office in due course, examine the figures, and next week he will state the correct position'. He then gave figures showing the number of questions asked during the preceding weeks.<sup>205</sup> On subsequent sitting days, the Member sought to catch the Speaker's eye at Question Time. The Speaker said on one occasion 'I have decided that I shall not call the honourable member . . . for another question until he corrects the unjustified and inaccurate charges that he made against me . . .' and on another 'I cannot see the honourable member'. When the Member was the only one on the opposition side to rise for the call, the Speaker ignored him and gave the call to the government side. The incident was finally closed when the Member stated that he had not wished to cast any reflection on the Chair relating to the call or the Speaker's impartiality.<sup>206</sup>

Traditionally, a reflection on the character or actions of the Speaker inside or outside the House has been regarded as punishable as a breach of privilege<sup>207</sup>, although with the enactment of the Parliamentary Privileges Act, proposed actions in such circumstances need to be considered in light of the provisions of the Act.

On 11 November 1913 the Prime Minister drew attention to a statement, reported to have been made by the Member for Ballarat (Mr McGrath) outside the House, which reflected on Speaker Johnson. Mr McGrath was alleged to have said:

The Speaker has lost the confidence of Members. We have absolute proof that the Speaker has altered a Hansard proof. The proof showed that the third reading of the Loan Bill was not carried, according to its own words, and he altered the proof to make it appear in Hansard that it was carried. The Speaker was acting in a biased manner, and was proving himself a bitter partisan.

Mr McGrath was asked by the Speaker to state whether the newspaper report of his speech was correct. Mr McGrath spoke but did not avail himself of the opportunity to admit or deny the correctness of the report. The Prime Minister then moved:

That the honourable Member for Ballarat be suspended from the service of this House for the remainder of the Session unless he sooner unreservedly retracts the words uttered by him at Ballarat on Sunday, the 9th October [later amended to November], and reflecting on Mr Speaker, and apologises to the House.

Mr McGrath was again asked by the Speaker if the report was correct and spoke on a second occasion without admitting or denying the correctness of the report. The motion was agreed to.<sup>208</sup> On 29 April 1915 Mr McGrath expressed his regret in respect of the incident and the House agreed that the resolution of 11 November 1913 should be expunged from the Votes and Proceedings.<sup>209</sup>

On 15 May 1964, a journalist during a report over 17 radio stations inferred that Speaker McLeay had given doubtful rulings and suggested that he 'might analyse the word "impartiality" before the next sittings'. It was considered by the Speaker that these remarks were a grave reflection on his character and accused him of partiality in the discharge of his duties. As the House proposed to rise for the winter adjournment that day, it was agreed that a reference to the Privileges Committee would be unsatisfactory. Thus, it was decided that other more immediate action should be taken, namely, that, unless a complete and full apology and retraction were made over the same broadcasting stations, the journalist's press pass should be withdrawn and, with the concurrence of the President of the Senate, the journalist should be denied admittance to Parliament House.

205 H.R. Deb. (25.5.50) 3279–80.

206 See H.R. Deb. (31.5.50) 3454–62; H.R. Deb. (1.6.50) 3577–87, 3653–5.

207 May, pp. 180–81.

208 VP 1913/151–3; H.R. Deb. (11.11.13) 2982–3053.

209 H.R. Deb. (29.4.15) 2729–49; VP 1914–17/181.



The journalist was summoned by the Speaker and admitted his mistake and the seriousness of his offence. On being informed that a breach of privilege could have also been committed by each of the broadcasting stations, the journalist requested the Speaker not to press the matter in relation to the broadcasting stations and emphasised that he alone was to blame. The journalist agreed to make amends by broadcasting a suitable retraction and apology that night, to be repeated on the following morning, following the clearance of the script with the Speaker.

On 22 August 1986 Speaker Child advised the House that her attention had been drawn to reported remarks critical of her attributed to the Rt Hon. I. M. Sinclair, MP, Leader of the National Party, in connection with the custody of documents in possession of the Parliamentary Commission of Inquiry which were to be placed in the custody of the Presiding Officers. Madam Speaker called on Mr Sinclair to withdraw the allegations and apologise to the Chair. Mr Sinclair, explaining his remarks, said that they were not meant to be about the Speaker but about Parliament and he did not believe that Parliament was a suitable repository for documents containing unresolved allegations. He withdrew and apologised. Later, on 16 September the Speaker again referred to the matter and said that, having examined the transcript of the reported remarks and having compared it to the statement in the House, she could only conclude that Mr Sinclair had misled the House and that in her opinion the transcript contained serious personal reflections on the Chair which constituted a 'breach of the privileges' of the House and that the subsequent apology constituted a contempt. Mr Sinclair addressed the House, followed by the Deputy Speaker who moved a motion of censure of Mr Sinclair. The motion was withdrawn, by leave, after Mr Sinclair had acknowledged his remarks, withdrawn them and again apologised.<sup>210</sup>

On 24 February 1987 Speaker Child advised the House that she had become aware of certain remarks critical of the Speaker made outside the House by a Member (Mr Tuckey) following his suspension on the previous day. The Speaker alluded to the remarks and stated that she had received a letter from Mr Tuckey in which he apologised and unreservedly withdrew and sought leave to make a personal explanation at the first opportunity. Madam Speaker, however, granted precedence to a motion under standing order 96 and the Leader of the House moved a motion to the effect that the House found the remarks a serious reflection on the character of the Speaker, that they contained an accusation of partiality in the discharge of her duty and therefore constituted a contempt, and that Mr Tuckey be suspended for seven sitting days. The motion was debated and agreed to.<sup>211</sup>

On 28 April 1987, Speaker Child mentioned in the House media reports of comments critical of her made by a Member (Mr Spender) in a private paper circulated to party colleagues. The Speaker said that, although it had been leaked, the paper was originally written as a private document, that it would be totally ludicrous now to ask a Member to reject his own writings, that she raised the matter only because of the wide media speculation the paper evoked, and that she rejected the criticism.<sup>212</sup>

On 9 October 1990 Speaker McLeay made a statement to the House referring to remarks reportedly made by a Member outside the House which amounted to a

210 H.R. Deb. (22.8.86) 529, 558-9; H.R. Deb. (16.9.86) 701-5; VP 1985-87/1089, 1090, 1102.

211 VP 1985-87/1467-8; H.R. Deb. (24.2.87) 573, 580-7.

212 VP 1985-87/1591; H.R. Deb. (28.4.87) 2059. On 26 April 1988 Speaker Child mentioned criticisms attributed to a Member (Mr Downer). She rejected the criticisms and said such comments did harm to the institution but said she did not intend to take the matter further.—H.R. Deb. (26.4.88) 2045.

reflection on the Chair. The Member concerned then unreservedly withdrew the reflection and apologised to the Chair.<sup>213</sup>

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

**TABLE 6** MOTIONS OF CENSURE OF OR WANT OF CONFIDENCE IN THE SPEAKER, THE ACTING SPEAKER OR DEPUTY SPEAKER, AND RELATED MOTIONS 1901–95<sup>214</sup>

<i>Occupant of the Chair</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
Speaker Rosevear	28.9.44	That so much of the standing orders be suspended as would prevent the moving of a motion of no confidence in the Speaker (moved by Mr Fadden). VP 1944–45/58; H.R. Deb. (28.9.44) 1676–82.	Negated 22 to 39
Speaker Rosevear	26.7.46	That Mr Speaker does not possess the confidence of this House (moved by Mr Menzies, pursuant to notice). VP 1945–46/429–30; H.R. Deb. (26.7.46) 3196–203.	Negated 23 to 36
Deputy Speaker Clark	Moved 24.2.49; resolved 8.9.49.	That this House has no further confidence in Mr Deputy Speaker on the grounds: (a) That in the discharge of his duties he has revealed serious partiality in favour of Government Members, (b) That he regards himself merely as the instrument of the Labor Party and not as the custodian of the rights and privileges of elected Members of this Parliament; (c) That he constantly fails to interpret correctly the Standing Orders of the House; and (d) Of gross incompetency in his administration of Parliamentary procedure (moved by Mr Harrison, pursuant to notice). Amendment moved (Mr Dedman)—That all words after ‘That’ be omitted with a view to inserting the following words in place thereof ‘this House declares its determination to uphold the dignity and authority of the Chair, and deplores the fact that the Deputy Speaker while carrying out his duties with ability and impartiality, has not at all times received the support from all Members which he is entitled to expect in maintaining that dignity and authority’. VP 1948–49/236, 381–4; H.R. Deb. (24.2.49) 655–61; H.R. Deb. (8.9.49) 110–39, 147–61.	Amendment agreed to; motion, as amended, agreed to 34 to 23

<sup>213</sup> VP 1990–92/223–4.

<sup>214</sup> Table does not include motions moved in respect of the former Chairman of Committees (3, all negative)—see p. 237 of the second edition.

<i>Occupant of the Chair</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
Speaker Cameron	20.4.50	That this House, having taken into consideration the statement made by Mr Speaker from the Chair on the 30th March last referring to his relationships with His Excellency the Governor-General, is of opinion that Mr Speaker merits its censure (moved by Mr Chifley, pursuant to notice). VP 1950-51/55-6; H.R. Deb. (20.4.50) 1691-702.	Negated 38 to 67
Speaker Cameron	10.5.55	That this House has no confidence in Mr Speaker for the reasons: (1) That, in the discharge of his duties, he has acted in a partisan way by displaying bias against Members of Her Majesty's Opposition; (2) Many of his decisions have been arbitrary and unjust; and (3) That he fails to interpret or apply correctly the Standing Orders of the House (moved by Mr Calwell, pursuant to notice). VP 1954-55/193-4; H.R. Deb. (10.5.55) 543-62.	Negated 36 to 57
Speaker Aston	21.4.71	That the Speaker no longer has the confidence of the House (moved by Mr Barnard, pursuant to notice). VP 1970-72/524-5; H.R. Deb. (21.4.71) 1763-81.	Negated 47 to 51
Speaker Cope	8.4.74	That the House has no confidence in Mr Speaker (moved by Mr Snedden, standing orders having been suspended). VP 1974/90-1; H.R. Deb. (8.4.74) 1117-26.	Negated 49 to 61
Deputy Speaker McLeay	24.9.86	That the Deputy Speaker no longer enjoys the confidence of the House (moved by Mr Sinclair, standing orders having been suspended). VP 1985-87/1152-3; H.R. Deb. (24.9.86) 1319-28.	Negated 58 to 67
Acting Speaker McLeay	19.10.88	That the Acting Speaker no longer possesses the confidence of the House (moved by Mr Sinclair, standing orders having been suspended). VP 1987-89/786-8; H.R. Deb. (19.10.88) 1900-12.	Negated 55 to 74
Acting Speaker McLeay	3.11.88	That the Acting Speaker no longer enjoys the confidence of the House (motion moved by Mr Sinclair, standing orders having been suspended). VP 1987-89/826-28; H. R. Deb. (3.11.88) 2362-74.	Negated 54 to 73
Speaker Child	8.3.89	That this House censures the Speaker for her failure to act impartially in the exercise of her office (moved by Mr Howard, standing orders having been suspended). VP 1987-89/1063; H.R. Deb. (8.3.89) 634-52.	Negated 55 to 79

<i>Occupant of the Chair</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
Speaker McLeay	2.4.92	That the Speaker no longer possesses the confidence of this House (moved by Dr Hewson, standing orders having been suspended). VP 1990-92/1419-20; H.R. Deb. (2.4.92) 1733-47.	Negated 59 to 66
Speaker McLeay	17.12.92	That so much of the standing orders be suspended as would prevent the Member for Bass moving forthwith—That the Speaker no longer possesses the confidence of the House for the following reasons: (1) that in the discharge of his duties as joint administrator of the Joint House Department he did knowingly sign an official report of that Department to the Parliament which included an anonymous reference to a public liability compensation settlement to himself without giving any personal explanation to the Parliament; and (2) that the Speaker has failed to protect the dignity of the Parliament by consistently seeking to hide the facts surrounding his compensation claim and subsequent settlement from the Parliament and the people of Australia. VP 1990-92/1976-7; H.R. Deb. (17.12.92) 4071-77.	Negated 71 to 65

On 10 April 1973 a notice of motion 'That Mr Speaker ought to be ashamed of himself' was placed on the Notice Paper under general business. On 12 April 1973 the motion was moved but lapsed for want of a seconder.<sup>215</sup> The mover described his motion as 'something stronger than dissent . . . not as strong as a censure . . .'.<sup>216</sup>

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

Amid prolonged scenes of uproar in the House on 27 February 1975<sup>217</sup>, Speaker Cope announced his resignation after the House failed to support his action in naming a Minister. The series of incidents that led to his resignation began after Question Time when Mr C. R. Cameron, Minister for Immigration, rose to make a personal explanation. Mr Cameron stated that Mr MacKellar, the opposition spokesman on immigration, had been asked if he wanted to look at a certain file but had declined. Another Member, Dr Forbes, said 'Mr Speaker, is the Minister entitled under the privilege of Parliament to tell a monstrous lie?' Mr Cameron asked for a withdrawal and Dr Forbes amended it to 'a monstrous untruth' when ordered to withdraw by the Speaker. Mr Cameron protested again and the Speaker suggested to Dr Forbes that he make an unqualified withdrawal but added 'If it is an untruth, say it is an untruth, without the adjective'. Dr Forbes said 'I withdraw it and substitute "an untruth"'. When Mr Cameron rose to protest again, the Speaker called him to order. Mr Cameron then said, 'Look I don't give a damn what you say' and the remainder of his utterance was lost amid opposition uproar. Speaker Cope

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

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

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

asked Mr Cameron to apologise to the Chair. Mr Cameron remained silent. Speaker Cope then named Mr Cameron. As no Minister proceeded to move for Mr Cameron's suspension, the motion was moved by Mr Sinclair, Deputy Leader of the Australian Country Party. Government Members crossed the floor to vote against the suspension (although a small number of government Members left the Chamber), and the motion was defeated by 59 votes to 55. After announcing the result of the division, Speaker Cope rose and said 'Gentlemen, I hereby tender my resignation . . . I intend to do it by writing to the Governor-General'. Before he left the Chamber, Speaker Cope asked Mr Scholes, the Chairman of Committees, to take the Chair as Deputy Speaker. Speaker Cope resigned as Speaker later that day<sup>218</sup> and, following formal communication of the resignation to the House, Mr Scholes was elected Speaker.<sup>219</sup> Soon after Speaker Cope left the Chamber the Leader of the Opposition stated 'We have just witnessed a matter the like of which has never occurred in the lifetime of this Parliament. I would think that it has never occurred in the lifetime of any other Westminster parliamentary system'.<sup>220</sup>

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

## DEPUTY SPEAKER

The Deputy Speaker's former title of 'Chairman of Committees' was dropped with the abolition of the committee of the whole in 1994. For a description of the origin and former functions of the position *see* pp. 233–39 of the second edition.

In addition to the function of Speaker's deputy, the Deputy Speaker has specific responsibility for chairing the Main Committee.<sup>221</sup> In the absence of the Speaker the Deputy Speaker serves as Acting Speaker (*see* p. 198).

## Appointment of Deputy Speaker

At the beginning of each Parliament or whenever the office becomes vacant, the House appoints a Member to be Deputy Speaker.<sup>222</sup>

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

If there is more than one motion for the appointment, there may be debate which must be relevant to the election. During this debate no Member may speak for more than five minutes and at any time a Minister may move the closure motion. At the end of the debate the bells are rung for four minutes, a ballot is held, and the Member with the greater number of votes is elected Deputy Speaker and the Member with the next greatest number of votes Second Deputy Speaker. If there is an equality of votes the Speaker has a casting vote.

218 VP 1974–75/502–3; Constitution, s. 35.

219 VP 1974–75/508–9.

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

221 S.O. 13A.

222 S.O. 13. For a list of Chairmen of Committees/Deputy Speakers since 1901 *see* Appendix 3.

A separate standing order governs an election when there is only a single vacancy for either Deputy Speaker or Second Deputy Speaker. The standing order provides that in the case of an appointment to the office of Second Deputy Speaker only a non-government Member may be named in the motion.<sup>223</sup> In such elections the essential difference to the procedure described above occurs when there are more than two candidates. In this situation the Member with the greatest number of votes is elected, provided he or she has a majority of the votes of the Members present. If no Member has a majority, the name of the Member with the smallest number of votes is excluded and balloting continues to take place in this way until one Member has a majority. If, after a ballot in which the names of only two Members are submitted, there is an equality of votes, the Speaker must give a casting vote and the Member for whom the Speaker votes is appointed. If, after a ballot in which the names of more than two Members are submitted, there is an equality of votes for two Members, making it impossible to determine which name shall be excluded, then the Speaker shall give a casting vote to determine who shall **not** be excluded; for more than two Members then a special ballot is held at which only the names of Members with an equality of votes are submitted, so as to determine who should be excluded, and if the equality persists and a name is not withdrawn, the sitting is suspended for 30 minutes, after which a vote is again taken unless there is a withdrawal. Where a withdrawal leaves only one Member, then he or she shall be declared to have been appointed Deputy Speaker.<sup>224</sup>

There has been no occasion when there have been more than two candidates for the office of Deputy Speaker (or formerly, Chairman of Committees).

The office of Deputy Speaker is usually filled by the nominee of the government party or parties. In recent years in the case of a Liberal–National Party coalition Government, the practice has been for the National Party to nominate the Government's candidate for Deputy Speaker and for the Liberal Party to nominate the candidate for Speaker.<sup>225</sup>

In the early years after Federation, when party lines were not clearly drawn, the incumbent of the then office of Chairman of Committees did not always change with a change in the Government. In 1941, when the Curtin Ministry succeeded the Fadden Ministry without an election, Chairman Prowse remained in office. He resigned on 21 June 1943 at the same time as Speaker Nairn.<sup>226</sup> In divisions in the House in the period from 1941 to 1943, Chairman Prowse frequently voted against the Government<sup>227</sup> and immediately following his resignation he voted in support of a motion of no confidence in the Government.<sup>228</sup>

### **Powers and duties of Deputy Speaker as Chair of Main Committee**

In the Main Committee the Deputy Speaker has similar power to regulate the conduct of business, and authority to preserve order, as the Speaker has in the House.<sup>229</sup>

However, on the occurrence of disorder the powers of the Chair of the Main Committee are less than those of the Speaker in the House. The standing orders do not

<sup>223</sup> S.O. 22B.

<sup>224</sup> S.O. 22B.

<sup>225</sup> In 1978 a former Chairman and a government Member, Mr Lucock, was nominated by the Opposition. Mr Lucock was not present at the time, but signified his availability by telegram—the standing orders not requiring acceptance of nomination to be given, VP 1978–80/10.

<sup>226</sup> VP 1940–43/549.

<sup>227</sup> VP 1940–43/308, 313, 349, 473, 478.

<sup>228</sup> VP 1940–43/551.

<sup>229</sup> S.O.s 52, 280.

provide for the naming of a Member in the Main Committee or for the lesser penalty available in the Chamber of the Chair being able to order a Member to withdraw for one hour. The standing orders provide that if disorder arises in the Main Committee the Chair may, or on motion without notice by any Member shall, forthwith suspend the sitting and report the disorder to the House.<sup>230</sup> In practice there are several factors which minimise the likelihood of disorder in the Main Committee—the general ethos of co-operation in respect of the Committee's proceedings, the ability of any Member to cause further proceedings on a matter before the Committee to be taken in the House, the ability of any Member to move the adjournment of the Committee, and the unresolved question mechanism whereby opposed votes are referred to the House for decision. Disorder has arisen in the Main Committee<sup>231</sup> when these factors have not operated, following the suspension of standing orders to allow debate in the Main Committee to continue regardless of any resolved questions.<sup>232</sup>

In other respects, the Deputy Speaker's functions in the Main Committee are basically the same as those of the Speaker in the House. He or she calls Members to speak, proposes and puts questions and declares the decision, enforces the rules of debate, rules on points of order and ensures that the provisions of the standing orders in their application to the Main Committee are applied.

While the standing orders make no specific provision for a Member to move dissent to a ruling of the Chair in the Main Committee (as they used to in relation to the committee of the whole)<sup>233</sup>, a dissent motion may occur. However, the factors referred to above which work to minimise disorder in the Committee, would also work to minimise both the likelihood of dissent and the likelihood of a ruling which might lead to dissent. A dissent motion has been moved in the Main Committee. This followed (and was in relation to) the suspension of the unresolved question procedure noted above.<sup>234</sup>

The Chair of the Main Committee has no casting vote (the unresolved question procedure makes this unnecessary). The Deputy Speaker is not required to serve on any committee without his or her consent.<sup>235</sup>

## **Resignation and vacancy**

If the Deputy Speaker wishes to resign from office, he or she may do so by means of a personal announcement, or by notifying the Speaker, in writing, who will make an announcement to the House.<sup>236</sup>

The practice following the resignation of a Chairman of Committees was formerly for a motion to be moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'.<sup>237</sup> More recent practice has been not to have motions accepting a Chairman's resignation.

On 14 July 1975 Chairman Berinson resigned from office, by letter to the Speaker, as he had been appointed to the Ministry. As the House was not sitting a new Chairman could not be elected and Mr Berinson was deemed to continue to be Chairman of

230 S.O. 282.

231 VP 1996/765.

232 VP 1996/551–5. The context was the referral to the Main Committee of a bill (the Euthanasia Laws Bill 1996) which many Members wished to debate in the House.

233 See pp. 236–7 of the 2nd edition.

234 VP 1996/765. Because of disorder the proceedings were suspended by the Chair pursuant to S.O. 282; on resumption the dissent motion was not proceeded with by the Member who had moved it, H.R. Deb. (6.11.96) 6467P.

235 S.O. 325.

236 *May*, p. 187. The Constitution and the standing orders of the House contain no specific provision on the matter.

237 VP 1940–43/549–50; VP 1961/9.

Committees until a new Chairman was elected by the House on 19 August 1975.<sup>238</sup> In addition, as the Speaker was absent overseas, Mr Berinson was deemed to be Presiding Officer for the purposes of the exercise of any powers or functions by the Presiding Officer under a law of the Commonwealth.<sup>239</sup>

## Deputy Speaker as Chair of House

When the House is informed by the Clerk of the absence of the Speaker, the Deputy Speaker takes the Chair as Acting Speaker<sup>240</sup> (see p. 198). The Deputy Speaker may take the Chair of the House during any sitting of the House whenever requested to do so by the Speaker.<sup>241</sup>

As it would be impossible for the Speaker to take the Chair for the whole of the time the House is sitting, the standing orders make the necessary relief provisions. It is not necessary to inform the House when such relief arrangements are about to take place.<sup>242</sup>

While in the Chair, the Deputy Speaker has the same procedural powers and functions as the Speaker. In 1906 the Chairman of Committees, as Deputy Speaker, signed a message to the President of the Senate. After consideration the President accepted the message.<sup>243</sup> It is now the practice for the Deputy Speaker to sign messages to the Senate whenever the Speaker is unavailable.

If the Deputy Speaker is absent, the Speaker may ask the Second Deputy Speaker or any member of the Speaker's panel to take the Chair as Deputy Speaker but the Deputy Speaker, in practice, ensures that an unofficial roster is maintained to provide occupants for the Chair throughout a sitting.<sup>244</sup> 'Deputy Speaker' is the correct address to be used when the Deputy Speaker, Second Deputy Speaker or a member of the Speaker's panel is relieving the Speaker in the Chair.

If the House is informed by the Clerk of the absence of the Speaker, and the Deputy Speaker is also absent, the Second Deputy Speaker performs the duties of the Speaker as Acting Speaker. In the absence of the Deputy Speaker the Second Deputy Speaker acts as Deputy Speaker.<sup>245</sup> The Acting Deputy Speaker has all the powers and functions of the Deputy Speaker.<sup>246</sup>

## SECOND DEPUTY SPEAKER

The office of Second Deputy Speaker was created in 1994 with the establishment of the Main Committee. The function of the Second Deputy Speaker is to assist the Deputy Speaker in the Main Committee and, in the absence of the Deputy Speaker, to act as Deputy Speaker.<sup>247</sup> In the absence of both the Speaker and the Deputy Speaker the Second Deputy Speaker may perform the duties of Speaker, as Acting Speaker.<sup>248</sup> At the request of the Speaker, he or she may take the Chair of the House (as Deputy Speaker) without formal communication to the House.<sup>249</sup>

238 VP 1974-75/821.

239 *Parliamentary Presiding Officers Act 1965*.

240 S.O. 14.

241 S.O. 17.

242 S.O.s 17, 19.

243 S. Deb. (24.9.06) 5165.

244 S.O. 19.

245 S.O. 13B, 14.

246 See VP 1951-53/367 (before present offices were created).

247 S.O. 13B.

248 S.O. 14; e.g. VP 1993-95/2189; VP 1996/929.

249 S.O. 17.



## Appointment

In proposing the new office the Procedure Committee recommended that it be filled by a non-government Member.<sup>250</sup> The recommendation was accepted by the Government<sup>251</sup>, and the first Second Deputy Speaker was an opposition Member, nominated by the Opposition and elected unopposed.<sup>252</sup> Although the non-government status of the office was not made a formal requirement of standing order 13, the method of election of the Second Deputy Speaker set out in the Standing Orders ensures in practice that the Member then elected is an opposition nominee. In addition, when a vacancy occurs in the office and it is filled under the provisions of Standing Order 22B, only a non-government Member may be nominated.

At the beginning of a Parliament the Deputy Speaker and Second Deputy Speaker are elected in the ballot for the Deputy Speakership, with the Member with the highest number of votes becoming the Deputy Speaker and the Member with the next highest number of votes becoming the Second Deputy Speaker.<sup>253</sup> When a vacancy in the position of Second Deputy Speaker occurs later in a Parliament, or if there is only one nomination for the position of Deputy Speaker at the beginning of a Parliament, a separate ballot for Second Deputy Speaker is taken, in the same manner as a single ballot for the position of Deputy Speaker.<sup>254</sup> In the 37th Parliament the Second Deputy Speaker was an opposition Member when elected. He became an independent during the later stages of the Parliament's life, but retained the office.

## SPEAKER'S PANEL

At the commencement of every Parliament the Speaker nominates a panel of not less than four Members to assist the Chair. At any time during the Parliament the Speaker may nominate additional Members or revoke the nomination of any Member.<sup>255</sup> The Speaker nominates the members of the panel by warrant which he or she tables in the House early in a new Parliament. Sometimes nominations may be spread over some days, if, for instance, there are delays in persons being proposed by their parties.

The role of a member of the Speaker's panel is:

- to take the Chair of the Main Committee (as Deputy Speaker) when requested to do so by the Deputy Speaker, or in the absence of the Deputy Speaker, the Second Deputy Speaker; and
- to take the Chair of the House as Deputy Speaker when requested to do so by the Speaker or, more usually, by the Deputy Speaker.<sup>256</sup>

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

On occasion, when neither the Speaker, the Deputy Speaker, nor any Member entitled to serve as Deputy Speaker has been available to take the Chair (or in the past to take the

250 Standing Committee on Procedure. *About time: bills, questions and working hours*. PP 194 (1993) 19–20.

251 H. R. Deb. (8.2.94) 541.

252 VP 1993–95/842.

253 S.O. 13.

254 S.O. 22B.

255 S.O. 18.

256 S.O. 19.

Chair in committee as Deputy Chairman) other Members have taken the Chair with the concurrence of the House so that business could proceed.<sup>257</sup> On 18 September 1986 when neither the Deputy Speaker nor any of the Deputy Chairmen were available to take the Chair at 8 p.m., the Member for Hindmarsh (Mr Scott) took the Chair with the concurrence of the House so that business could proceed.<sup>258</sup>

The number of Members nominated by the Speaker varies. Formerly, Members were nominated as Deputy Chairmen, or earlier, as Temporary Chairmen. In the 18th Parliament, 13 Temporary Chairmen were nominated and in the 19th Parliament only six. In the 32nd and 33rd Parliaments eight Deputy Chairmen were nominated, but in the 34th to 38th Parliaments 10 Members served (since February 1994 as members of the Speaker's panel).<sup>259</sup>

It is the practice for the Speaker to appoint some opposition and some government Members to the Speaker's panel. In 1951 Speaker Cameron nominated three government and three opposition Members as Temporary Chairmen. The three opposition Members declined nomination.<sup>260</sup> The Speaker did not vary the warrant nominating them, and all six names were shown on the Notice Paper although the opposition Members did not take the Chair. The names of the opposition nominees were omitted from the first Notice Paper following the announcement that they would decline to serve but were inserted in the subsequent Notice Papers on the Speaker's instructions.<sup>261</sup>

In 1954 after nominating government and opposition Members as Temporary Chairmen of Committees, Speaker Cameron told the Deputy Leader of the Opposition that he was not obliged to ask the Opposition about who he intended to nominate, and did not intend to do so.<sup>262</sup> In 1956 Speaker Cameron did not nominate any opposition Members as Deputy Chairmen of Committees. In reply to a question without notice the Speaker said that he understood that Members of the Opposition did not intend acting as Temporary Chairmen unless they were able to select their own Members. In view of this he had selected only Members who were prepared to act. The Speaker stated 'the right to select the Temporary Chairmen is entirely the prerogative of Mr. Speaker and nobody else'.<sup>263</sup>

Speaker Cameron died on 9 August 1956 and Speaker McLeay was elected on 29 August 1956, it then being necessary to issue a new warrant.<sup>264</sup> Speaker McLeay's first warrant nominated only government Members as Temporary Chairmen.<sup>265</sup> However after the Leader of the Opposition had discussed the matter with him, Speaker McLeay later nominated four opposition Members as Temporary Chairmen.<sup>266</sup>

In 1962 no opposition Members were nominated as Temporary Chairmen of Committees<sup>267</sup>, due to the fact that the margin in numbers between government and opposition Members was only one, and the Opposition preferred not to have any of its Members act as Temporary Chairmen.

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

258 *And see* H.R. Deb. (14.3.91) 2054.

259 VP 1993-95/785; 1996/46-7, 64.

260 VP 1951-53/29.

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

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

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

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

265 VP 1956-57/263.

266 VP 1956-57/281.

267 VP 1962-63/17.

Recent practice has been for the Clerk or a senior officer, on behalf of the Speaker, to approach both the government and opposition parties and request a list of nominees for the Speaker's panel.

It is usual for the Speaker to nominate Members who are not in the Ministry or the opposition executive. A member of the panel who becomes a Minister is normally removed from the panel without any announcement being made to the House.<sup>268</sup> However, in 1958 Speaker McLeay nominated a member of the opposition executive (Mr Webb) as a Temporary Chairman.<sup>269</sup>

## PRINCIPAL PERMANENT OFFICERS OF THE HOUSE

### The Clerk of the House

The Clerk of the House of Representatives is responsible for administering the Department of the House of Representatives and advising the Speaker and Members on parliamentary procedure. Since 1901 there have been 13 Clerks of the House of Representatives.<sup>270</sup>

The office of Clerk of the House had its origins in the early English Parliament but the first record of the appointment of a Clerk was in 1363. The records kept by Clerks of the House of Commons date from the 16th century. The word 'Clerk' simply meant a person who could read and write. Since many Members could then do neither, one of the Clerk's main functions was to read out petitions, and later bills and other documents, to the House.

In the 16th century the Clerks began to undertake a wider range of functions. The first of this new generation, John Seymour, began to record the proceedings of the House in an unofficial journal. At first mainly a record of motions and bills, it was later expanded to include such things as the election of the Speaker, records of attendance, divisions and decisions on matters of privilege. Today the responsibility for recording all proceedings and decisions of the House is vested in the Clerk, and they are recorded in the official record, the Votes and Proceedings.<sup>271</sup>

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

Clerk Duffy's successor Walter Augustus Gale served as Clerk for 10 years until he died in office in July 1927 following the Parliament's first meeting at Canberra on 9 May. His successor John Robert McGregor also died in office, two months later on 28 September, only 27 days after his appointment, on the night of his first sitting day as Clerk and of the second meeting of the House in Canberra. Earlier that day the House had agreed to a motion of the Prime Minister:

That this House records its sincere regret at the death of Walter Augustus Gale, C.M.G., who was an officer of the House of Representatives since the inauguration of the Commonwealth, and Clerk of the House from the 1st February, 1917, until his death, and this House expresses its appreciation of the loyalty and ability with which he devoted himself to his official duties, and tenders its profound sympathy to his wife and family in their great bereavement.<sup>272</sup>

268 Mr White, 8 March 1933.

269 VP 1958/13.

270 See Appendix 5.

271 S.O.s 38, 39.

272 VP 1926-28/354.

At 8.12 p.m. Clerk McGregor's death was announced by the Speaker and as a mark of respect the House immediately adjourned.<sup>273</sup>

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

Without exception, an officer who is appointed as Clerk has been in the service of the House and has served at the Table for a long period. The parliamentary experience thus gained is important to the required understanding of parliamentary law and procedure and its application to varying circumstances.

The title Clerk of the Parliaments was used by the first Clerk of the Senate but in 1908, for statutory reasons, his successor was appointed Clerk of the Senate, and the title Clerk of the Parliaments<sup>274</sup> has not been used since in the Australian Parliament. This reflects the distinctive nature of the bicameral legislature. The title owes its origin to early English Parliaments before the Lords and Commons were formed into two distinct and separate Houses. In some bicameral Parliaments either the Clerk of the Upper House or the senior Clerk of the two Houses carries, in addition to his or her own title, that of Clerk of the Parliaments.

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

The staff which serve the Commons within the Palace of Westminster . . . are not answerable in any way to the Government of the day. Nor are they appointed by politicians or political organisations; if they were, their usefulness would disappear overnight. They are the servants only of the House, and it is this long-preserved independence from political control that has endowed them with their own special value to the smooth running of the machinery of government. Within the Palace precincts they are rigidly, almost religiously, non-political. Whatever the complexion of the Government in office the House can be certain of receiving that completely impartial and professionally expert service for which its Officers enjoy a reputation second to none, and upon which all Members can, and do, rely unhesitatingly, regardless of party affiliations, religious distinctions or personal differences of temperament.

Because these officials *are* servants of the House, and have not to rely on political patronage either for their appointments or for their continuation in office, they are able to devote the whole of their lives to their task and to develop their individual capacities to a very high standard of professionalism.<sup>275</sup>

These principles apply in Australia, although in practice the Clerk of the House of Representatives is appointed by the Governor-General on the recommendation of the Speaker.<sup>276</sup> While in effect they are employed under the Public Service Act, the Clerk and the officers come under the overall authority of the Speaker of the House of Representatives, not the Executive Government<sup>277</sup>, in order that they may carry out their duties as independent officers of the Parliament free from executive control. The Clerk's appointment is not subject to the approval of the House although the House is always advised of the appointment by the Speaker and in practice, party leaders are consulted in respect of a proposed appointment.

273 VP 1926-28/359.

274 See J 1908/2. The question of title later became an issue in respect of the Clerk of the House in 1920 when a recommendation by the Speaker for him to use the title was not pursued as it met with some opposition.

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

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

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

While the House is in session the Clerk and the Deputy Clerk sit at the Table in front of the Speaker's Chair. The Clerk sits to the right of the Speaker and the Deputy Clerk to the left. It is the practice in the House of Representatives for the Clerks at the Table to wear a black gown, white shirt and barrister's bands. Until January 1995 when the practice was discontinued at the Speaker's direction<sup>278</sup>, wigs were also worn by Clerks at the Table except for two periods, 1911–13 and 1914–17, when Speaker McDonald directed that the Clerks should not wear wigs. In 1929 Speaker Makin left it to the Clerk to decide whether he would continue to wear the wig and gown. Clerk E.W. Parkes decided to continue the practice of wearing the formal dress.

### **Role and functions of the Clerk**

The Clerk has an administrative role as well as being a specialist in the rules of parliamentary procedure and practice. As departmental head the Clerk administers the Department of the House of Representatives under the general oversight of the Speaker in the same way as the secretary of an executive department administers his or her department under a Minister. However, the exercise of this responsibility is qualitatively different to the exercise of normal administrative functions and decisions made or advice given may often be subject to the scrutiny of all Members of the House.

The Clerk administers a department of about 260 staff members responsible for providing services to the Speaker and the House including the Prime Minister, Ministers, party leaders, 'shadow' ministers and private Members. The management role of the Clerk covers the usual range of departmental functions including appointments, dismissals, financial management and so on.

The Clerk is responsible for procedural matters both inside and outside the Chamber.<sup>279</sup> In this capacity the Clerk has numerous responsibilities laid down in the standing orders which include the recording of the Votes and Proceedings of the House (the official record), the safe keeping of all records and papers of the House, the printing and distribution of bills and the Notice Papers, the signing of all Addresses agreed to by the House, votes of thanks and orders of the House.

The Clerk also performs essential functions in the legislative process. As each bill is passed by the House, before it is sent or returned to the Senate the Clerk must certify on the bill that it has passed the House. In whatever way and whenever the House deals with an amendment to a bill or disposes of a bill the Clerk is required to certify accordingly the action taken by the House. Every bill originating in the House and passed by both Houses must be certified by the Clerk to that effect before it can be forwarded to the Governor-General for Royal Assent.

When the House proceeds to elect a new Speaker the Clerk assumes the role of chair of the House, calling on the proposer and seconder and putting such questions as are necessary until the Speaker's Chair is filled (*see* p. 183).

The Clerk and the staff must also assist the smooth running of the Chamber by the provision of routine support services, documentation and advice. To do this adequately the Clerk must have extensive knowledge and experience in the interpretation of the standing orders, in parliamentary practice and precedent, and in the requirements of the Constitution in so far as they affect the role of the House and its relationship with the Senate. He or she is also required to be informed on the law and practice of other

<sup>278</sup> VP 1993–95/1759; H.R. Deb. (31.1.95) 1.

<sup>279</sup> The Clerk's role in these matters is discussed in detail throughout the text.

Parliaments and in particular of that of the United Kingdom House of Commons from which much of House of Representatives practice is derived.<sup>280</sup>

The Clerk's advice is offered to the Chair, to Governments, Oppositions, individual Members of the House, the Committee of Privileges, the Procedure Committee and other committees. Advice is given to Members on a wide range of subjects relating to their work and to their participation in proceedings. In 1988 a request from a Member that the Clerk obtain a private legal opinion on the legal status of certain executive activities was not met. While sitting at the Table the Clerk must always keep an ear to the debate as he or she may be called upon to give immediate advice to the Chair or others in relation to a procedural matter suddenly arising.

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

### **Deputy Clerk**

The Deputy Clerk is the second most senior officer of the House of Representatives. In the absence of the Clerk the Deputy Clerk performs the duties of the office.<sup>281</sup> During any vacancy in the office of Clerk, the Deputy Clerk exercises all the Clerk's powers and performs all his or her functions and duties.<sup>282</sup> The Clerk and Deputy Clerk are relieved when necessary in their Chamber duties by the First Clerk Assistant, the Clerks Assistant and, if necessary, by a Senior Parliamentary Officer. The Deputy Clerk is the Clerk of the Main Committee.

### **Serjeant-at-Arms**

The Serjeant-at-Arms is another office having its origins in early English parliamentary history. About the end of the 14th century the office assumed a form recognisable in its descendant of today. Early concepts of the role of the Serjeant-at-Arms as 'attendant upon the Speaker' and acting only 'on the instruction of the Speaker' still characterise the functions of the Serjeant-at-Arms today. Over the centuries the Serjeant-at-Arms as bearer of the Mace (*see* p. 196) became identified with protecting the privileges of the Commons, the Speaker being the guardian, the Serjeant-at-Arms the enforcer.

The Serjeant-at-Arms' functions in the Chamber are associated mainly with the ceremony of Parliament and the preservation of order. Bearing the Mace on the right shoulder, the Serjeant-at-Arms precedes the Speaker into the Chamber and announces the Speaker to Members. The Serjeant-at-Arms, the Deputy Serjeant or Assistant Serjeant attends in the Chamber at all times when the House is sitting. The duties of the Serjeant in the Chamber include the recording of Members' attendance and delivering messages to the Senate. On the Speaker's instruction, he or she escorts suspended Members from the Chamber.<sup>283</sup> The Serjeant announces to the Speaker any visitor seeking formal entrance to the Chamber, such as the Usher of the Black Rod. The

<sup>280</sup> Constitution, s. 49; S.O. 1.

<sup>281</sup> S.O. 23.

<sup>282</sup> S.O. 24.

<sup>283</sup> S.O. 306.

Serjeant-at-Arms is responsible for maintaining order in the galleries and may take into custody any stranger who is guilty of misconduct in the gallery or House.<sup>284</sup> Outside the Chamber the Serjeant's responsibilities include the provision of a range of support services and the security of that part of the parliamentary precincts occupied by the House of Representatives.

On ceremonial occasions a male Serjeant-at-Arms wears the traditional Court dress of knee breeches, buckled shoes, lace jabot and cuffs, gloves, and sword and carries a cocked hat. A female Serjeant-at-Arms wears a specially designed skirt in place of the knee breeches.

### **The Department of the House of Representatives**

The Department of the House of Representatives has an important role in the parliamentary process. Officers of the House bear the responsibility for the presentation and recording of business as it progresses and finally for the enactment of legislative proposals originating in the House. The House's officers are also the custodians of the records of the House which form an important part of the archives of the nation, and co-ordinate, with the Senate officers, the publication of parliamentary documents. The department has another responsibility, less tangible but not less important: that is, to help preserve a recognition of the value and role of Parliament in the modern state and to help ensure the continuing development of the methods of operation of the House for the purpose of securing more efficient government.

The central function of the Department of the House of Representatives is to provide the administrative machinery for the efficient conduct of the business of the House and its committees. In summary, the principal responsibilities of the department include:

- Chamber and office functions in respect of bills, amendments, tariff proposals, Crown proposals for expenditure and recommendations for appropriations, grievance and private Members' procedures of the House, arrangements for opening of new Parliaments and sessions, for the swearing-in of Members, and arrangements for parliamentary proceedings generally, including ceremonial;
- provision of advice to the Speaker, the Deputy Speaker, Second Deputy Speaker and members of the Speaker's panel, Ministers and individual Members on parliamentary practice and procedure;
- servicing of committees of the House and joint committees falling within the department's secretariat responsibilities;
- preparation of the daily Notice Paper, program of business, and the official record of proceedings of the House (Votes and Proceedings);
- maintenance of House records, recording of Speaker's rulings, revision of standing orders as necessary;
- documentation, research and development of parliamentary practices and procedures;
- editing and recording of questions on notice, receipt and distribution of answers;
- payment of Members' salaries and other entitlements;
- servicing of Members' requirements, for example, travel arrangements and secretarial services in Canberra;
- administration of accommodation and office services in House areas of the Parliament building;

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284 S.O. 310.

- provision of educational material and programs on the role and functions of the Parliament (joint responsibility with the Department of the Senate);
- inter-parliamentary relations, including liaison, secretariat and administrative arrangements for parliamentary delegations and conferences (joint responsibility with the Department of the Senate);
- the physical security of Parliament House and parliamentary precincts (joint responsibility with the Department of the Senate); and
- personnel, finance, and staff development and training functions.

## THE OTHER PARLIAMENTARY DEPARTMENTS

The Parliamentary Service comprises five departments, namely, the Department of the House of Representatives, the Department of the Senate, the Department of the Parliamentary Library, the Department of the Parliamentary Reporting Service and the Joint House Department. The Presiding Officers are the parliamentary heads of these departments, their authority and administrative responsibility being acknowledged by the Public Service Act.<sup>285</sup> The Speaker has ultimate responsibility for the Department of the House of Representatives, and the President for the Department of the Senate. The two Presiding Officers are jointly responsible for the three departments which provide joint support to Senators and Members. The Clerk of each House is the head of his or her department. The other departments have their own departmental heads. The role and functions of the Department of the Senate are equivalent to those of the Department of the House of Representatives. The Public Service (Parliamentary Departments) Bill 1988 sought to create a Department of Parliamentary Services to encompass the three 'joint' departments. The Public Service (Parliamentary Departments) Amendment Bill 1993 sought to create a combined Department of the Parliamentary Library and Reporting Services. Both bills (introduced by the Speaker) were passed by the House but not by the Senate.

### Parliamentary Reporting Staff<sup>286</sup>

The Department of the Parliamentary Reporting Staff is administered by the Secretary of the department. The department's Hansard Program produces reports of debates in the House of Representatives, the Senate and the Main Committee of the House of Representatives, transcripts of proceedings of parliamentary committees and transcripts of some ministerial and other conferences. The Parliamentary Information Systems Office (PISO) is responsible for Parliament's central information technology and communications systems and infrastructure. These central services include the parliamentary information systems network, which connects Parliament House and 250 electorate offices across Australia, corporate databases and telecommunications facilities. The Sound and Vision Office (SAVO) provides broadcast-quality radio and television broadcasting of proceedings of the Senate, House of Representatives and committees and maintains television and sound systems and related electronic equipment within Parliament House.

<sup>285</sup> *Public Service Act 1922*, s. 9.

<sup>286</sup> For a history of Hansard see *Commonwealth Hansard—Its Establishment and Development 1901 to 1972*, PP 286 (1972).



## **Parliamentary Library**

The Department of the Parliamentary Library is administered by the Secretary of the department who is the Parliamentary Librarian. The Presiding Officers are assisted in policy-making and other matters by the Library Committees of the Senate and of the House of Representatives, generally sitting together as the Joint Library Committee<sup>287</sup>, which like the Joint House Committee, does not normally submit reports nor have executive power; it pursues a purely advisory role.

The Parliamentary Library Information Service (PLIS) provides a wide range of information and reader services to Senators, Members, parliamentary committees and other clients. The program is responsible for building the Library's collections and databases which are used as information resources directly by clients, by PLIS Information Specialists and by Parliamentary Research Service (PRS) staff.

The Parliamentary Research Service (PRS) provides analysis, advice and briefings to Members and Senators on national and international issues; and produces publications on issues before the Parliament and analysis of proposed legislation (Bills Digests).

## **The Joint House Department**

The Joint House Department, administered by the Secretary of the department, is responsible for the maintenance of Parliament House and surrounding gardens and for the provision of a range of services and amenities in the building, including first aid, health and recreational facilities; the Guide Service; the Parliament Shop; and the Parliament House Art Collection. The department is also responsible for the management of catering and cleaning contracts and retail service licences.

In the administration of these services the Presiding Officers take advice from the Joint House Committee.<sup>288</sup> The committee does not report to either House and does not have any executive power over the Joint House Department.<sup>289</sup>

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287 See also Ch. on 'Parliamentary committees'.

288 See also Ch. on 'Parliamentary committees'.

289 VP 1926–28/385.

