

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.¹

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

The fascinating historical development of the Speakership has been well recorded by Laundy.² 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.³

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

2 Laundy, *The office of Speaker*.

3 George Thomas, ‘The Speakership, House of Commons, Westminster’, *The Parliamentarian* LIX, 1, 1978, pp. 1–7.

. . . the Speaker represents, in a very real sense, the right of freedom of speech in the Parliament, which was hard won from a monarchical Executive centuries ago. The Parliament must constantly be prepared to maintain its right of . . . freedom of speech, without fear or favour.⁴

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 development during the 20th century 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 . . . is the representative of the House itself in its powers, proceedings and dignity. The Speaker's functions fall into three main categories. First, the Speaker 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. Second, the Speaker presides over the debates of the House . . . and enforces the observance of all rules for preserving order in its proceedings. Third, the Speaker has administrative responsibilities . . .⁵

The Speaker is a Member of the House and upon election to office becomes its principal officer.⁶ 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 staff of the House, the Clerk of the House, the Deputy Clerk, the Clerks Assistant and the Serjeant-at-Arms, who in turn have the support of staff 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.⁷

In the Chamber and for ceremonial occasions the formal Speaker's dress was traditionally a black Queen's Counsel gown, full bottomed judge's wig and lace accessories. Speakers from the non-Labor parties used to wear the full formal dress. However, Speaker Halverson, elected in 1996, wore the gown of a Queen's Counsel but did not wear the wig, and subsequent Speakers have worn an academic gown only, without accessories. Speakers from the Australian Labor Party have not worn wig or gown.⁸

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

⁵ May, 23rd edn, p. 218.

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); S206 (5.10.82).

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,⁹ an understanding of what lies behind the outward ceremony and a faith in democratic government.

A newspaper writer once commented . . . ‘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.¹⁰

There has been no general tendency to appoint lawyers as Speakers in the House of Representatives and, since Federation, only four Speakers have been members of the legal profession, namely, Speakers Groom, Nairn, Snedden and Sinclair.¹¹

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, Snedden and Sinclair. 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.¹² 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. Speaker Sinclair had previously been a Minister, a party leader and Leader of the House. Speaker Martin had previously been a Parliamentary Secretary. 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

9 Philip Laundy, *The office of Speaker*, Cassell, London, 1964, p. 26.

10 Ibid. p. 30.

11 For a list of Speakers since 1901 see Appendix 2.

12 Sir Billy M. Snedden, ‘The Speaker of the Australian House of Representatives’, *The Parliamentarian* LIX, 4, 1978, pp. 205–10.

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.¹³

Practice in the House of Representatives has been to change the Speaker with a change of government. This provides a Speaker who is politically affiliated but who is required to be impartial in the Chair, rather than a Speaker who is both independent and seen to be independent. 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. 176).

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 to say that, consistent with House of Commons practice, he would resign as a Member forthwith.¹⁴

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 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 Speaker by a bow (S.O. 62(b));
- a Member must not pass between the Speaker and any Member who is speaking (S.O. 62(d));

¹³ *May*, 23rd edn, p. 220.

¹⁴ H.R. Deb. (21.4.83) 5–6.

- Members addressing the House do so through the Speaker (S.O. 65(a));
- Members resume their seats immediately the Speaker stands and the House shall be silent so that the Speaker may be heard without interruption (S.O. 61(a));
- when the Speaker is putting a question no Member may walk out of or across the Chamber (S.O. 61(b)); 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

In both the House of Commons and the House of Representatives the Speaker is elected by vote of the House and must be re-elected after each general election. However, 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 under what is known as the continuity principle, regardless of political majorities, until he or she resigns or retires (usually during the Parliament).

The reasons for the Australian practice of changing the Speaker with a change of government 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.¹⁵

In the early years after Federation, and in other special circumstances, the situation was sometimes different. 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.¹⁶ 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 the House. Mr McDonald declined¹⁷ and, when the 5th Parliament met on 9 July 1913, Mr Johnson, a candidate from the government party, was elected Speaker.¹⁸ Mr McDonald returned to office following the election of 5 September 1914 which had resulted in a change of Government.¹⁹

¹⁵ After the 1961 general election the Government had a floor majority of only one.

¹⁶ 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.

¹⁷ PP 2 (1914–17) 3.

¹⁸ VP 1913/4.

¹⁹ VP 1914–17/4–5.

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.²⁰

On 20 November 1940 Mr Nairn was elected, unopposed, as Speaker²¹ 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 Government²² 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.²³ 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,²⁴ and remained as ‘deemed’ 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 1976.²⁵

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’.²⁶ The procedure for electing the Speaker is laid down in detail in the standing orders.²⁷

The election is conducted by the Clerk acting as chair.²⁸ A prospective Speaker is proposed by a Member, who is traditionally a private Member of the government party or parties, moving that the Member proposed ‘do take the Chair of this House as Speaker’. It is not in order for a proposer or seconder to speak in favour of a nominee at this stage.²⁹ The motion is required to be seconded, again traditionally by a private Member, and then

²⁰ H.R. Deb. (28.2.23) 17–23.

²¹ VP 1940–43/4.

²² VP 1940–43/195.

²³ VP 1940–43/549.

²⁴ VP 1974–75/1123–7.

²⁵ VP 1976–77/6.

²⁶ Constitution, s. 35.

²⁷ S.O.s 10–12.

²⁸ S.O. 10(b). 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.

²⁹ *But see* H.R. Deb. (16.11.2004) 6.

the Member nominated, who must be present, is required to inform the House whether he or she accepts the nomination.³⁰

After each proposal the Clerk asks if there is any further proposal. If there are no further proposals, the Clerk informs the House that the time for proposals has expired and no further nominations may be made. If a nominee is unopposed, the Clerk immediately, without putting the question, declares the Member so proposed and seconded to have been elected. The Speaker-elect is then conducted to the Chair by the proposer and seconder.

If there is more than one nomination, Members may speak on the election, but debate must be relevant to the election. 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 without notice ‘That the question be now put’. The question on the closure is put immediately and must be resolved without amendment or debate.³¹ If on division the numbers are equal, the question is negated and debate may continue.

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 nominee for whom they wish to vote. The votes are counted by the Clerks at the Table and, if there are only two nominees, the one with the greater number of votes is declared by the Clerk to have been elected.³²

Since the ballot procedure was introduced in 1937 there has been no instance of there being more than two nominees. Ballots continue if there are more than two nominees and no nominee has a majority of votes. In this case the name of the Member with the smallest number of votes is excluded and a fresh ballot taken. This process continues until a nominee has the required majority. Procedures are provided to meet the situation when, by reason of an equality of votes, a ballot is inconclusive. A nominee 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 nominee, that person is immediately declared elected.

The Clerk’s duties 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 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,³³ and has drawn attention to the correct procedure after a Member had finished speaking immediately following his nomination of a candidate.³⁴ 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 was. A motion concerning an unrelated matter (including a motion to suspend standing orders) could not be considered. It is doubtful if the Clerk has the power to name a Member. For

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

31 E.g. VP 1996–98/2754 (division held).

32 VP 1974–75/509; VP 1976–77/6; VP 1978–80/6; VP 1993–95/7.

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

34 H.R. Deb. (16.11.2004) 5.

instance, the Clerk would probably have a duty to ask for the withdrawal of an unduly offensive expression but, if the request were denied by the Member, any further action would be a matter for the House after the election of a Speaker.

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.³⁵

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 32.³⁶ 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.³⁷

In explanation the Clerk said that he was acting under the authority of the standing order which, prior to the election of the Speaker, enabled the Clerk to act as chair of the House.³⁸ 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 29.³⁹ 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’.⁴⁰

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.⁴¹ The motion was debated for two hours and most speakers acknowledged that the Clerk had been placed in an extremely difficult situation.⁴² The motion was negatived, on division, 32 votes to 20.⁴³

In 1934, while the motion that Mr Bell take the Chair of the House as Speaker was being debated,⁴⁴ 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

³⁵ VP 1909/59.

³⁶ VP 1909/61.

³⁷ VP 1909/62.

³⁸ Then S.O. 6. H.R. Deb. (28.7.09) 1704.

³⁹ VP 1909/62.

⁴⁰ H.R. Deb. (28.7.09) 1727–8.

⁴¹ VP 1909/67.

⁴² H.R. Deb. (29.7.09) 1808–22.

⁴³ VP 1909/67.

⁴⁴ Under present standing orders no debate can take place if only one Member is proposed, S.O. 11(f).

and a division being called for, the bells were rung. When the Clerk appointed tellers, a Member objected that he had no authority to order a division and appoint tellers. Mr Gander then nominated himself for the position of Speaker. The tellers for the ‘Noes’ refused to act and so the Clerk immediately declared the question on the closure of the Member resolved in the affirmative. As Mr Bell was the only Member proposed, he was then conducted to the Chair by his proposer and seconder without question being put. Mr Gander also approached the Chair but despite interruption and interjection Mr Bell was able to express his acknowledgments and accept congratulations.⁴⁵ The present standing orders provide that the closure in this situation can only be moved by a Minister,⁴⁶ and it has been successfully moved on several occasions.⁴⁷

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’.⁴⁸

In 1995 the Procedure Committee 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 the House did not adopt this recommendation.⁴⁹

Following his or her election, and having been conducted to the Chair, the Speaker thanks the House for the honour it has conferred.⁵⁰ 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. 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.⁵¹

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.⁵² In 1946 the newly elected Speaker did not suspend the sitting but left the Chamber to present himself to the Governor-General immediately.⁵³ In

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

46 S.O. 11(h).

47 VP 1946–48/5; VP 1951–53/5; VP 1956–57/5; VP 1976–77/6; VP 1996–98/2754.

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

49 Standing Committee on Procedure, *Procedures for the opening of Parliament*. PP 159 (1995) 8.

50 E.g. H.R. Deb. (10.11.98) 4; S.O. 12.

51 VP 1956–57/259.

52 VP 1909/62.

53 VP 1946–48/5.

1934 Speaker Bell ruled that no business could be transacted until the Speaker had been presented to the Governor-General.⁵⁴

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,⁵⁵ being the servant not the master. Just as the House elects a Speaker it may likewise vote a Speaker out of office.⁵⁶

Consistent with the view that the Speaker is answerable only to the House, the Speaker has declined an invitation to make a submission to the Senate Committee of Privileges to which the Senate had referred issues arising from joint meetings of the Houses in October 2003.⁵⁷

Constitutional

As well as providing for the election of the Speaker, the Constitution prescribes certain powers and duties exercisable by the Speaker.⁵⁸

- 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;⁵⁹
- 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;⁶⁰
- if the number of votes on a question before the House is equal, he or she exercises a casting vote;⁶¹ and
- a Member who wishes to resign his or her place does so in writing addressed to the Speaker.⁶²

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 Speaker⁶³ (see p. 180).

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

55 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 N. Wilding and P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 430, punctuation taken from the latter.)

56 Constitution, s. 35.

57 VP 2002–04/1403.

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

59 Constitution, s. 33.

60 In accordance with the Constitution, s. 42.

61 Constitution, s. 40.

62 Constitution, s. 37.

63 Constitution, ss. 35, 36.

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.⁶⁴ In the House of Representatives, once the Speaker is elected at the beginning of a Parliament, he or she is required by standing orders, before business is 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.⁶⁵ However, 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,⁶⁶ there being specific constitutional and legislative provisions dealing with the powers, privileges and immunities of the House.⁶⁷

On the first sitting day of a new Parliament or a new session, the Governor-General summons Members of the House to hear the opening speech.⁶⁸ This summons is 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 bearing the Mace,⁶⁹ accompanied by the Clerk, the Deputy Clerk and a Clerk Assistant, and followed by the party leaders and Members, proceeds to the appointed venue (traditionally the Senate Chamber).⁷⁰ 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,⁷¹ 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. The Prime Minister may also announce the Ministry at this time.

Later on during the sitting period, when the Address in Reply to the Governor-General's speech⁷² 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. The Address in Reply is

64 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, *see May*, 23rd edn, p. 281.

65 S.O. 4(h). The Speaker is preceded by the Serjeant-at-Arms bearing the Mace (at the start of the procession—the Mace is not brought into the presence of the Governor-General).

66 *May*, 23rd edn, p. 282.

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

68 S.O. 5.

69 The Mace is left, covered, outside the Senate Chamber during the Governor-General's speech.

70 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.

71 S.O. 6(a).

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

presented to the Governor-General and, on return to the House, the Speaker reports the Governor-General's reply to the Address.⁷³

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 shorter suspensions of the sitting, and is carried out of the Chamber by the Serjeant-at-Arms when the House adjourns. During the times when the Mace was not used, 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 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.⁷⁴ As the Acting Speaker takes the Chair, the Serjeant-at-Arms places the Mace in its brackets on the Table.⁷⁵

The Speaker on taking the Chair reads the Prayers laid down in the standing orders, thereby commencing the day's proceedings.⁷⁶

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 Parliamentary 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.⁷⁷ The Speaker is responsible for sending to the court a statement of the question the House wishes to have determined and any associated documents which the House possesses relating to the question.⁷⁸

The Auditor-General Act requires the Auditor-General to cause a copy of reports prepared under the Act to be presented to each House of the Parliament.⁷⁹ The reports are forwarded to the Speaker for presentation to the House. This is illustrative of the position of the Auditor-General as an officer responsible to Parliament, rather than to Government.

If, in an action concerning a publication, the Speaker or the Deputy Speaker (or the Clerk of the House) certifies that a document or evidence has been published under the

⁷³ S.O. 7. E.g. VP 1998–2001/220.

⁷⁴ S.O. 18.

⁷⁵ This procedure was followed on 8 November 2000, for example.

⁷⁶ S.O. 38.

⁷⁷ See also Ch. on 'Members'.

⁷⁸ Commonwealth Electoral Act 1918, s. 204.

⁷⁹ Auditor-General Act 1997, ss. 15, 16, 17, 18, 25, 28.

authority of section 2 of the Parliamentary Papers Act, the court or judge must stay the action or prosecution.⁸⁰ Certificates given by the Speaker under section 17 of the Parliamentary Privileges Act in respect of certain matters relating to proceedings, are taken as evidence of these matters.

The Speaker is by statute a member of the Joint Committee on the Broadcasting of Parliamentary Proceedings⁸¹ 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.⁸² 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 177 to 179. The responsibilities of the 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 185 to 187.

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. 176).

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. 187). 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. 182). The Speaker may make statements or announcements to the House when necessary.⁸³

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 the Clerk to call 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 specific powers and functions under the standing orders. These matters are described where appropriate elsewhere in the text.

⁸⁰ Parliamentary Papers Act 1908, s. 4(2); *see also* Ch. on ‘Documents’.

⁸¹ Parliamentary Proceedings Broadcasting Act 1946, s. 5(2).

⁸² Parliamentary Proceedings Broadcasting Act 1946, s. 7.

⁸³ E.g. VP 1996–98/378.

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:⁸⁴

- determining which is the most urgent and important matter of public importance, if more than one is proposed (S.O. 46);
- determining whether a *prima facie* case of breach of privilege has been made out (S.O. 51(d));
- 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. 52);
- determining, when there is a need for a quorum to be formed, a time he or she will resume the Chair (S.O. 57);
- allocating the call to the Member who in his or her opinion first rose in his or her place (S.O. 65(c));
- determining if a Member's arguments are irrelevant or tediously repetitive (S.O. 75);
- determining whether discussion is out of order on ground of anticipation (S.O. 77);
- 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. 78);
- determining whether words used are offensive or disorderly (S.O. 92(b));
- 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. 101(a));
- allowing a supplementary question to be asked during Question Time (S.O. 101(b));
- determining the cut-off time for questions for the next Notice Paper (S.O. 102(c));
- amending or dividing notices (S.O. 109);
- disallowing any motion or amendment which he or she considers the same in substance as any question resolved in the same session (S.O. 114(b)); and
- giving an opinion as to whether the majority of voices were 'Aye' or 'No' (S.O. 125).

The Speaker's power to call the House together, or to delay its meeting, after a period of adjournment is derived from the resolution of the House agreed to prior to the adjournment of the House.⁸⁵ The motion traditionally makes provision for the Speaker to fix or to alter the date and hour of the next meeting. Standing order 30(b) also permits the Speaker, when the House is not sitting, to set an alternative day or hour for the next meeting. However, it is the invariable practice for the Speaker not to act on his or her own initiative in this respect, but to await a request from the Government. If the House has adjourned to a date and hour

⁸⁴ All of these powers are discussed in detail elsewhere in the text.

⁸⁵ See also Ch. on 'Order of business and the sitting day'.

to be fixed, a Gazette notice is usually published when the day of meeting is determined, indicating the date and hour of meeting.⁸⁶

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

The Speaker may suspend the sitting:

- for a meal break or in order to obtain a quorum;
- in the case of grave disorder;⁹¹
- after election while he or she presents himself or herself to the Governor-General;⁹²
- 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;⁹³
- during the election of the Deputy Speaker and Second Deputy Speaker if there is an equality of votes in the special ballot procedures;⁹⁴
- if requested to do so by the Leader of the House because no further business is available at that time;⁹⁵
- 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);⁹⁶
- for the formal presentation of the Address in Reply to the Governor-General's speech;⁹⁷
- for special ceremonial occasions;⁹⁸ or
- on instruction by the House.⁹⁹

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.¹⁰⁰

86 Gazette S8 (18.1.91).

87 S.O. 32(a).

88 S.O. 57.

89 S.O. 95.

90 S.O. 31.

91 S.O. 95.

92 S.O. 4(h).

93 S.O. 4(i).

94 S.O. 11(l).

95 H.R. Deb. (17.3.31) 279–80.

96 E.g. VP 1990–92/1625.

97 E.g. VP 1996–98/288.

98 VP 1974–75/25.

99 VP 1974–75/1127.

100 VP 1978–80/1539–40; VP 1983–84/988–9; VP 1985–87/667; and see Ch. on 'Parliamentary privilege'.

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 was of a peculiarly parliamentary nature falling within the responsibilities of the Speaker.

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.¹⁰¹ On 1 October 1947 Speaker Rosevear participated in debate in committee on the 1947–48 estimates.¹⁰²

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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵

The Deputy Speaker also ruled that it was in order for Speaker Rosevear to address the House from the Table.¹⁰⁶

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. The Speaker spoke from the Table of the House, on the government side.¹⁰⁷ Later Speakers have introduced bills relating to the parliamentary service, and moved and spoken (from the Chair) to the second reading.¹⁰⁸ In the case of the Parliamentary Service Bill 1999 the Speaker also moved amendments to the bill.¹⁰⁹

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’.¹¹⁰

¹⁰¹ VP 1940–43/365; H.R. Deb. (4.6.42) 2125–6.

¹⁰² H.R. Deb. (1.10.47) 403.

¹⁰³ H.R. Deb. (4.3.53) 563.

¹⁰⁴ 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).

¹⁰⁵ H.R. Deb. (29.3.44) 2209.

¹⁰⁶ VP 1943–44/119.

¹⁰⁷ H.R. Deb. (19.3.87) 1154–6; H.R. Deb. (19.5.88) 2692–4.

¹⁰⁸ For a full listing see table in Ch. on ‘Non-government business’.

¹⁰⁹ VP 1998–2001/672–3, 898.

¹¹⁰ H.R. Deb. (14.6.45) 3116, 3119.

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’.¹¹¹ 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.

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.¹¹²

The Speaker frequently makes statements to the House¹¹³ 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.¹¹⁴ It is usual for the Speaker to take part in valedictory remarks at the end of each year.

Questions

Standing order 103 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 in writing 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.¹¹⁵

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.¹¹⁶

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

¹¹² N. Wilding and P. Laundy, *An encyclopaedia of Parliament*, 4th edn, Cassell, London, 1972, p. 704.

¹¹³ E.g. H.R. Deb. (21.8.96) 3346–7; VP 1998–2001/26.

¹¹⁴ H.R. Deb. (22.5.78) 2339.

¹¹⁵ H.R. Deb. (21.5.01) 76.

¹¹⁶ H.R. Deb. (30.4.31) 1491.

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

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.¹¹⁸ 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.¹¹⁹

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.¹²⁰

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.¹²¹

Parliamentary administration

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 Parliamentary Services. Certain Acts refer to the Minister administering the department concerned. For such purposes the Speaker is considered to be the Minister administering the Department of the House of Representatives.

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.

The powers and functions of a Presiding Officer under the *Parliamentary Service Act 1999* parallel those of a Minister in relation to an executive government department under the *Public Service Act 1999*. Under the provisions of the Parliamentary Service Act the Presiding Officers are no longer involved in everyday administrative matters, which are the responsibility of the Clerks of the two Houses, and the departmental secretary in relation to the joint department. For the purposes of the Financial Management and Accountability Act ‘Minister’ is defined to include a Presiding Officer. The Act authorises the Presiding Officers to approve expenditure under an appropriation for a parliamentary department.¹²²

The Parliamentary Service Act and the administration and staff of the Department of the House of Representatives are discussed in more detail at p. 204.

The Speaker (or the Speaker and the President), may respond to committee recommendations concerning matters within the Speaker’s (Presiding Officers’) responsibility.¹²³

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 administrative actions taken by them, all public expenditure and, where applicable, accountability for revenue collected. However, the Presiding Officers 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 office and travel entitlements.

Ex officio membership of 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.¹²⁴ The Speaker is a member of the House Committee and the Library Committee, which are also appointed under standing orders.¹²⁵ 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, Deputy Speaker and Second Deputy Speaker can only be chosen to serve on a committee if they consent to do so, or if a standing or other order requires the appointment.¹²⁶ Speaker Cameron agreed to be a member of the Select Committee on Hansard¹²⁷ 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

122 *Financial Management and Accountability Act 1997*, ss. 5, 36.

123 H.R. Deb. (1.4.2004) 28010.

124 See also Ch. on ‘Parliamentary committees’.

125 S.O.s 217, 218.

126 S.O. 230.

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

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.

ABSENCE OF SPEAKER AND VACANCY IN OFFICE

Vacancy

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.¹²⁸

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.¹²⁹

If a vacancy occurs between two sessions, the Clerk reports the vacancy to the House when it returns either after hearing the Governor-General's speech or after the declaration of the opening of the session.¹³⁰ The House then elects a new Speaker.¹³¹ In all cases, until a Speaker has been elected, the Clerk acts as chair of the House¹³² and conducts the election of the Speaker.

A vacancy in the office of Speaker may occur for the following reasons:¹³³

- 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, or, if appropriate, the Administrator; or
- the death of the Speaker.

A Speaker who is resigning his or her seat as well as his or her office does so in writing to the Governor-General.¹³⁴

Deemed Speaker

Continuing authority for certain administrative actions of the Speaker is provided for in the Parliamentary Presiding Officers Act.¹³⁵ When the office of Speaker becomes 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

¹²⁸ Constitution, s. 35.

¹²⁹ S.O. 19(a).

¹³⁰ See also Ch. on 'The parliamentary calendar'.

¹³¹ S.O. 19(b).

¹³² S.O. 10(b).

¹³³ Constitution, s. 35. For details of specific vacancies see appendix 2.

¹³⁴ Constitution, s. 35; this was the case with Speaker Jenkins, VP 1985–87/665–6.

¹³⁵ Parliamentary Presiding Officers Act 1965.

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.¹³⁶ 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 elected by the House, and such a person can be deemed to be the Speaker.

Acting Speaker

The Constitution provides that before or during any absence of the Speaker, the House may choose a Member to perform the Speaker's duties in the Speaker's absence.¹³⁷ 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 be Acting Speaker.¹³⁸ The Deputy Speaker (or Second Deputy Speaker) continues to act without any formal announcement on subsequent days. The Clerk normally informs the House, if the Speaker is absent through illness or parliamentary duties, 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.¹³⁹ This standing order was seen by the Standing Orders Committee in 1962 as imposing a restriction not possible under the Constitution,¹⁴⁰ and the present standing order 18(a) authorises the Deputy Speaker, or if he or she is also absent the Second Deputy Speaker, to be Acting Speaker, performing 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.¹⁴¹

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.¹⁴² The Clerk acts as chair of the House until a Member is elected to perform the duties of Speaker. 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.¹⁴³

A Member chosen by the House as Acting Speaker, in accordance with section 36 of the Constitution (proceeding under standing order 18), has all the powers of the Speaker including constitutional powers and ex officio functions such as membership of committees.

¹³⁶ Constitution, ss. 33, 37.

¹³⁷ Constitution, s. 36.

¹³⁸ S.O. 18(a).

¹³⁹ S.O. 22 (temporary standing orders adopted 1901); later S.O. 13.

¹⁴⁰ Standing Orders Committee, *Report*, HR 1 (1962–63) 12. For further information on the previous situation see p. 217 of the first edition.

¹⁴¹ VP 1978–80/422–3, 433; VP 1987–89/773, 1143.

¹⁴² S.O. 18(b).

¹⁴³ VP 1920–21/537.

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.¹⁴⁴ There have been occasions of lengthy acting appointments during absences of the Speaker due to illness or parliamentary duties overseas.¹⁴⁵

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.¹⁴⁶ The provision for a casting vote also applies to Members deputising for or acting in the position of Speaker (that is, Deputy Speaker or Second Deputy Speaker, or another Member as Acting Speaker).¹⁴⁷ The provision for a casting vote does not apply to members of the Speaker's panel in the Chair, unless specifically appointed by resolution of the House as Acting Speaker, as 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.¹⁴⁸

Any reasons stated by the Chair when exercising a casting vote are recorded in the Votes and Proceedings.¹⁴⁹

The occasion has arisen in the House where there has been an equality of votes but the Speaker has not exercised 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 of standing orders without notice), Speaker Aston did not exercise a casting vote as his vote would have had no effect on the result.¹⁵⁰ On 30 November 2000 the votes were equal on a motion of dissent from a ruling by Speaker Andrew. The Speaker stated that the question had not been supported by a majority and, in the circumstances, he was not prepared to give a casting vote, but believed his ruling to be correct. He said that as the matter of the time for the ringing of the bells had been raised (complaint having been made that they had rung for one minute instead of four), there was the possibility of confusion, and under the standing order (now S.O. 132) he would put the question again.¹⁵¹

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

¹⁴⁴ Then S.O. 16.

¹⁴⁵ E.g. VP 1948–49/5, 289; VP 1950–51/195.

¹⁴⁶ Constitution, s. 40.

¹⁴⁷ S.O. 3(d).

¹⁴⁸ Opinion of the Solicitor-General, 22 February 1962.

¹⁴⁹ S.O.s 135(c).

¹⁵⁰ VP 1968–69/375; H.R. Deb. (19.3.68) 698.

¹⁵¹ VP 1998–2001/1936.

- that a casting vote on an amendment to a bill should leave the bill in its existing form.¹⁵²

There have been 21 occasions¹⁵³ when the Speaker or Deputy Speaker has 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 negativing the amendment. The subsequent question on the second reading was agreed to by a majority of 6.¹⁵⁴

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’.¹⁵⁵ Speaker Bell on 3 December 1935,¹⁵⁶ Deputy Speaker Lucock on 10 October 1963¹⁵⁷ and Deputy Speaker Edwards on 29 April 1992¹⁵⁸ 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.¹⁵⁹
- 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 documents presented to the House. 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.¹⁶⁰
- 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’.¹⁶¹

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

152 *May*, 23rd edn, p. 414.

153 Up to the end of 2004.

154 VP 1901–02/455–6.

155 VP 1914/53.

156 VP 1934–37/480.

157 VP 1962–63/580.

158 VP 1990–92/1439.

159 VP 1990–92/803–805.

160 VP 1929/17–18.

161 VP 1940–43/450; H.R. Deb. (11.12.42) 1824.

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.¹⁶²

- 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.¹⁶³
- 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’.¹⁶⁴
- 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.¹⁶⁵
- 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’.¹⁶⁶ The main question was then put and the numbers again being equal, the Speaker gave his casting vote with the ‘Ayes’.¹⁶⁷ On the motion for the first reading the Speaker was again required to exercise his casting vote which he gave with the ‘Ayes’,¹⁶⁸ and he took similar action in respect of the second reading on 21–23 May 1914,¹⁶⁹ and the third reading on 28 May 1914.¹⁷⁰
- 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’.¹⁷¹
- 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

¹⁶² VP 1913/43–4.

¹⁶³ VP 1913/149–50.

¹⁶⁴ VP 1913/151.

¹⁶⁵ VP 1914/31.

¹⁶⁶ VP 1914/39–40.

¹⁶⁷ VP 1914/41.

¹⁶⁸ VP 1914/41–2.

¹⁶⁹ VP 1914/48.

¹⁷⁰ VP 1914/61.

¹⁷¹ VP 1937–40/87.

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’.¹⁷²

- 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’.¹⁷³

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.¹⁷⁴ 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). The Speaker does not participate in Main Committee proceedings.

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 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.

¹⁷² VP 1929–31/593.

¹⁷³ VP 1970–72/1018–19.

¹⁷⁴ S.O.s 14(d), 14(e).

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 which 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. In 1963 a major revision and renumbering was agreed to, and significant changes were subsequently made on a regular basis.

In November 2003 the Procedure Committee presented a report providing and recommending a completely revised set of standing orders for the House¹⁷⁵—a revision initiated by an earlier recommendation by the committee that the standing orders be ‘restructured and rewritten to make them more logical, intelligible and readable’.¹⁷⁶ In June 2004 the House resolved to adopt the revised standing orders, to come into effect on the first day of sitting of the 41st Parliament.¹⁷⁷

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 financial bills.

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.

See also ‘Motions relating to the standing orders’ in Chapter on ‘Motions’.

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 Opposition and Government during debate and in Question Time.

The standing orders used to provide 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

¹⁷⁵ Standing Committee on Procedure, *Revised standing orders*, PP 394 (2003).

¹⁷⁶ Standing Committee on Procedure, *It's your House: Community involvement in the procedures and practices of the House of Representatives and its committees*, PP 363 (1999).

¹⁷⁷ VP 2002–04/1744.

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’.¹⁷⁸ With the development of the House’s own body of practice, reference to House of Commons practice has become very rare, and this provision was omitted from the revised standing orders adopted in 2004.

Standing order 3(e) now provides that:

The Speaker (or other Member presiding) is responsible for ruling whenever any question arises as to the interpretation or application of a standing order and for deciding cases not otherwise provided for. In all cases the Speaker shall have regard to previous rulings of Speakers of the House and to established practices of the House.

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 (*see below*), 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 his or her own volition and rule the proposed motion or amendment out of order. The Speaker must preserve order in the Chamber to enable business to be conducted properly. 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.

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 sufficient 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 Speaker has stated that *House of Representatives Practice* is the authoritative source of precedent.¹⁷⁹

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.¹⁸⁰ The situation is also different in the

178 Former S.O. 1.

179 H.R. Deb. (10.3.2004) 26438–9.

180 May, 23rd edn, p. 221. In the House of Commons rulings are of course also given in response to points of order taken without any warning.

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.¹⁸¹

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.

Points of order

The principal standing orders relating to points of order and Speaker's rulings are standing orders 86 and 87 which state that:

- a Member may raise a point of order with the Speaker at any time;
- the matter takes precedence until it is disposed of by the Speaker giving a ruling on it;
- if a Member wishes to dissent from a ruling, the dissent must be declared at once. A motion of dissent, which must be submitted in writing, shall, if seconded, be proposed to the House and may be debated immediately.

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

A Member has a right to make his or her point of order without interruption except by the Chair. However, there may be circumstances when a point of order on a point of order may be justified—for example, when points of order which are inordinately long, frivolous or of dubious validity, and when unparliamentary language is used. It would be expected that the Chair would normally intervene in these cases but a point of order on the point of order could be made. On occasion the Chair may hear further points of order before ruling, or grant other Members indulgence to speak to clarify a situation. However, there is no obligation on the Chair to exercise such discretion. The Chair may rule on a point of order as soon as he or she feels in a position to do so.¹⁸²

The opportunity to raise a point of order should not be misused to deliberately disrupt proceedings or to respond to debate. If this is, or is anticipated to be, the case, or if the Speaker believes that he or she is aware of the issues, Speakers have cut short the point of order or refused to hear it until the Member interrupted by the point of order has finished speaking. Members have been disciplined by the Chair for raising spurious or frivolous points of order¹⁸³ and for persisting with matters after the Chair has ruled.¹⁸⁴

Dissent from rulings

Standing order 87 provides that, if a Member dissents from a ruling of the Speaker, the objection or dissent must be declared at once. A Member moving a motion of dissent must submit the motion in writing. If the motion is seconded, the Speaker shall then propose the question to the House, and debate may proceed immediately.

¹⁸¹ *Odgers*, 11th edn, pp. 116, 211.

¹⁸² H.R. Deb. (29.6.00) 18719.

¹⁸³ E.g. VP 1993–96/1808; VP 1996–98/195, 1871, 2461; VP 1998–2001/1225.

¹⁸⁴ E.g. VP 1974–75/958; VP 1993–96/1602; VP 1996–98/2065.

Any motion of dissent must be moved at the time the ruling is made,¹⁸⁵ and no amendment may be moved to the motion as a ruling must be either accepted without qualification or rejected.¹⁸⁶ A Member cannot move dissent from a ruling which has just been supported by a vote of the House.¹⁸⁷ 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.¹⁸⁸

A dissent motion has lapsed for want of a seconder,¹⁸⁹ and a dissent motion has been withdrawn by leave.¹⁹⁰ A proposed dissent motion has been ruled out of order when it referred to a matter that had happened two days before.¹⁹¹ 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.¹⁹² 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.¹⁹³ It is not in order to move dissent in relation to the allocation of the call, which is a matter for the Chair's discretion.¹⁹⁴ The Speaker has not accepted a motion of dissent when the question before the Chair was that 'the question be now put', as standing order 81 obliges the Chair to put that question immediately without amendment or debate.¹⁹⁵ On one occasion a Speaker has declined to accept a motion that a Member moving a motion of dissent be not further heard,¹⁹⁶ but on other occasions such motions have been accepted and agreed to.¹⁹⁷

TABLE 6.1 MOTIONS OF DISSENT FROM RULINGS IN THE HOUSE 1901–2004

	Moved	Negatived	Agreed to	Withdrawn, lapsed, etc.
Speaker	117	91	6	21
Acting Speaker	12	10	—	2
Deputy Speaker	<u>39</u>	<u>32</u>	<u>1</u>	<u>5</u>
Total	168	133	7	28

Table 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.¹⁹⁸ Any dissent from the Speaker's ruling is not necessarily

¹⁸⁵ VP 1950–51/27; VP 1951–53/65–6. A dissent motion has been moved following a statement by the Speaker in which he responded to queries arising from a decision he had made at an earlier sitting, H.R. Deb. (27.5.2003) 15039–15056.

¹⁸⁶ VP 1951–53/505.

¹⁸⁷ H.R. Deb. (30.9.54) 1774.

¹⁸⁸ H.R. Deb. (25.11.53) 530; H.R. Deb. (26.11.53) 553–4.

¹⁸⁹ VP 1912/13; VP 1974–75/441–2.

¹⁹⁰ VP 1971/543. Leave to withdraw a motion has however been refused, VP 1954–55/330.

¹⁹¹ H.R. Deb. (9.3.50) 585.

¹⁹² H.R. Deb. (1.6.77) 2281.

¹⁹³ VP 1954–55/221, 265–6.

¹⁹⁴ H.R. Deb. (3.4.2000) 15091–3. (The call can be challenged by the motion that another Member who had risen 'be heard now'.)

¹⁹⁵ H.R. Deb. (15.3.2000) 14783–7.

¹⁹⁶ VP 1978–80/572.

¹⁹⁷ E.g. VP 2002–04/970–2.

¹⁹⁸ 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.

interpreted as a censure of the Speaker.¹⁹⁹ In speaking to a motion of dissent a Member may not make a personal reflection on the Speaker.²⁰⁰

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

It has been the invariable rule, when a motion has been submitted inviting the House to disagree with Mr Speaker's ruling, for the Speaker to reply from the Chair . . . I shall make my statement from the Chair . . .²⁰¹

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 negatived.²⁰² The Speaker ruled that it was in order for the Deputy Speaker to vote in the division.²⁰³ On another occasion, having been relieved in the Chair by the Speaker, a member of the Speaker's panel whose ruling had been subject to dissent voted in favour of the dissent.²⁰⁴

A dissent motion may be moved in the Main Committee (*see* p. 200).

The procedure of dissenting from a ruling of the Speaker is not shared in the practice of the lower Houses of other major Westminster-style Parliaments, namely, the United Kingdom, Canada and India. Before the dissent provision was abolished in the Canadian House of Commons, Laundy 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.²⁰⁵

In 1986 the Procedure Committee recommended that the House should abolish the dissent procedure, but the recommendation was not adopted.²⁰⁶

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.²⁰⁷

The most frequent determination of points of procedure between the two Houses has occurred in relation to Senate amendments to bills or pressed requests for amendments, where the rights or responsibilities of the House were considered to be affected. Typically,

¹⁹⁹ H.R. Deb. (13.5.14) 895–6.

²⁰⁰ H.R. Deb. (27.5.2003) 15053.

²⁰¹ VP 1929–31/492; H.R. Deb. (12.3.31) 279.

²⁰² VP 1962–63/55.

²⁰³ H.R. Deb. (7.3.62) 552.

²⁰⁴ VP 2002–2004/358–9.

²⁰⁵ Philip Laundy, *The office of Speaker*, Cassell, London, 1964, p. 36.

²⁰⁶ Standing Committee on Procedure, *The standing orders and practices which govern the conduct of Question Time*, PP 354 (1986).

²⁰⁷ VP 1907–08/384–5; H.R. Deb. (22.4.08) 10485–7.

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.²⁰⁸

In any matter which might involve or touch on the constitutional rights or powers of the House, the view has been taken that, other things being equal, the Speaker should not take decisions which could have the effect of limiting these rights or powers. On 10 June 1999 the Speaker was asked to rule against an amendment to the effect that a Member was not in breach of section 44(v) of the Constitution. It was argued that the amendment was unconstitutional and out of order because of the provisions of section 376 of the Commonwealth Electoral Act which allow reference of such matters to the Court of Disputed Returns. The Speaker allowed the amendment to stand, stating that the matter should be allowed to proceed because the House was master of its own destiny.²⁰⁹ On 13 October 1999 the Speaker was asked to rule on an amendment to the effect that a private Member be censured and ordered to produce a document believed to be in his possession and from which he had quoted. The Speaker was asked to rule the amendment out of order on the grounds that the House did not have the power to order a private Member to produce documents. The Speaker stated that it was not his intention to limit the power of the House to determine what could or could not be produced, that the House was master of its own destiny and that the matter could be put.²¹⁰

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;²¹¹
- it is not the duty of the Speaker to give a decision on (to interpret) a question of law,²¹² 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.²¹³

CRITICISM OF SPEAKER'S ACTIONS AND CONDUCT

The Speaker's actions can only be criticised by a substantive motion. This may be a motion of dissent from a Speaker's ruling, where comment must be limited to the specifics of the ruling. Wider criticism is usually in the form of a censure or no confidence motion.

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.

208 See Ch. on 'Senate amendments and requests'.

209 H.R. Deb. (10.6.99) 6727–33, and see 'Challenges to membership—Section 44(v) of the Constitution' in Ch. on 'Members'.

210 H.R. Deb. (13.10.99) 11492–510.

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

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

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

TABLE 6.2 MOTIONS OF CENSURE OF OR NO CONFIDENCE IN THE SPEAKER, THE ACTING SPEAKER OR DEPUTY SPEAKER, AND RELATED MOTIONS 1901–2004

<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
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

<i>Occupant of the Chair *</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
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 (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
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

<i>Occupant of the Chair *</i>	<i>Date</i>	<i>Motion</i>	<i>Decision</i>
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 (moved by Mr Smith). VP 1990–92/1976–7; H.R. Deb. (17.12.92) 4071–77.	Negated 71 to 65
Speaker Andrew	30.11.2000	That the Speaker no longer possesses the confidence of the House (moved by Mr Beazley). VP 1998–2001/1936; H.R. Deb. (30.11.2000) 23117–35.	Negated 78 to 60
Speaker Andrew	26.5.2002	That so much of the standing orders be suspended as would prevent the Member for Lilley from moving forthwith the following motion: 1. the unprecedented decision of the Speaker to expunge the Hansard record without reference to precedents of the House; 2. his continuing application of standing orders in favour of the Government exemplified today in Question Time by refusing to rule the Minister for Employment and Workplace Relations out of order, rather, extending to him latitude denied to the Opposition to ask a relevant and in order question to the Deputy Prime Minister and Leader of the National Party; and 3. the abuse of House procedures in gagging a dissent motion to protect the Speaker from scrutiny over his rulings in the House. (moved by Mr Swan) VP 2002–04/201–4; H.R. Deb. (28.5.2002) 2484.	Negated 76 to 59

* Table does not include motions moved in respect of the former Chairman of Committees (3, all negated)—see p. 237 of the second edition.

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.²¹⁴ The mover described his motion as ‘something stronger than dissent . . . not as strong as a censure . . .’.²¹⁵

It is not acceptable for the Speaker to be criticised incidentally in debate.²¹⁶ On 25 May 1950, a Member, during the adjournment debate, questioned the way in which Speaker Cameron had called Members during Question Time. The Speaker in reply said that the Member ‘will come to my office in due course, examine the figures, and next week he will state the correct position’. He then gave figures showing the number of questions asked during the preceding weeks.²¹⁷ 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.²¹⁸

A reflection on the character or actions of the Speaker inside or outside the House has attracted the use of the penal powers of the House of Commons.²¹⁹ However, since the enactment of the Parliamentary Privileges Act, proposed actions in such circumstances have had 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 Ballarat²²⁰ (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.²²¹ 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.²²²

²¹⁴ NP 15 (10.4.73) 511; VP 1973–74/121.

²¹⁵ H.R. Deb. (12.4.73) 1396.

²¹⁶ H.R. Deb. (20.5.20) 2383; H.R. Deb. (29.3.44) 2203–24.

²¹⁷ H.R. Deb. (25.5.50) 3279–80.

²¹⁸ See H.R. Deb. (31.5.50) 3454–62; H.R. Deb. (1.6.50) 3577–87, 3653–5.

²¹⁹ May, 23rd edn, pp. 145, 220.

²²⁰ Division name changed from Ballarat to Ballarat in 1977.

²²¹ VP 1913/151–3; H.R. Deb. (11.11.13) 2982–3053.

²²² H.R. Deb. (29.4.15) 2729–49; VP 1914–17/181.

On 15 May 1964 a radio journalist during a broadcast implied 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. 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, he requested the Speaker not to press the matter in relation to the stations and emphasised that he alone was to blame. He agreed to broadcast 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. The 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.²²³

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. The Speaker, however, granted precedence to the matter under the standing order relating to privilege, 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.²²⁴

²²³ H.R. Deb. (22.8.86) 529, 558–9; H.R. Deb. (16.9.86) 701–5; VP 1985–87/1089, 1090, 1102.

²²⁴ VP 1985–87/1467–8; H.R. Deb. (24.2.87) 573, 580–7.

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.²²⁵

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 reflection on the Chair. The Member concerned then unreservedly withdrew the reflection and apologised to the Chair.²²⁶

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 1975,²²⁷ 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, during which a Member pointedly implied that he was lying. After interchanges, and suggestions by Speaker Cope, accepted by the Member, that the Member substitute 'untruth' for the word 'lie', Mr Cameron rose to protest again and 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 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, Manager of Opposition Business. Government Members crossed the floor to vote against the suspension (although some government Members left the Chamber), and the motion was defeated by 59 votes to 55. After announcing the result of the division, Speaker Cope informed the House of his intention to submit his written resignation 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 day²²⁸ and, following formal communication of the resignation to the House, Mr Scholes was elected Speaker.²²⁹ 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.

²²⁵ VP 1985–87/1591; H.R. Deb. (28.4.87) 2059. On 26 April 1988 Speaker Child mentioned criticisms attributed to a Member (Mr Downter). 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.

²²⁶ VP 1990–92/223–4.

²²⁷ H.R. Deb. (27.2.75) 824–9.

²²⁸ VP 1974–75/502–3; Constitution, s. 35.

²²⁹ VP 1974–75/508–9.

In addition to the function of Speaker's deputy, the Deputy Speaker has specific responsibility for chairing the Main Committee.²³⁰ In the absence of the Speaker the Deputy Speaker serves as Acting Speaker (*see* p. 181).

Election of Deputy Speaker

At the beginning of each Parliament or whenever the office becomes vacant, the House elects a Member to be Deputy Speaker.²³¹

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 election of the Second Deputy Speaker. The procedure is similar to that for the election of Speaker²³² except that the Speaker presides, not the Clerk. A further difference is that nominees do not have to be present at the election or inform the House whether they accept nomination. A motion proposing that a Member be elected Deputy Speaker is moved and seconded. The Speaker then asks if there are further proposals and, if there are none, the Speaker, without debate, declares the Member to be Deputy Speaker.

If there is more than one nomination, 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 most votes is elected Deputy Speaker and the Member with the next greatest number of votes Second Deputy Speaker. If two nominees are equal the Speaker has a casting vote. There is provision for a special ballot if more than two nominees are equal.

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–Nationals coalition Government, the usual practice has been for the Nationals to nominate the Government's candidate for Deputy Speaker and for the Liberal Party to nominate the candidate for Speaker.²³³

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.²³⁴ In divisions in the House in the period from 1941 to 1943, Chairman Prowse frequently voted against the Government²³⁵ and immediately following his resignation he voted in support of a motion of no confidence in the Government.²³⁶

²³⁰ S.O. 16(b).

²³¹ S.O. 13. For a list of Chairmen of Committees/Deputy Speakers since 1901 *see* Appendix 3.

²³² The election procedures of S.O. 11 are qualified by S.O. 14 for this purpose.

²³³ 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.

²³⁴ VP 1940–43/549.

²³⁵ VP 1940–43/308, 313, 349, 473, 478.

²³⁶ VP 1940–43/551.

Deputy Speaker as Chair of House

When the House is informed by the Clerk of the absence of the Speaker, the Deputy Speaker becomes Acting Speaker²³⁷ (*see* p. 181). The Deputy Speaker may take the Chair of the House during any sitting of the House whenever requested to do so by the Speaker.²³⁸

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.²³⁹

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.²⁴⁰ 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 Speaker²⁴¹ but the Deputy Speaker, in practice, ensures that an unofficial roster is maintained to provide occupants for the Chair throughout a sitting. '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.²⁴² The Acting Deputy Speaker has all the powers and functions of the Deputy Speaker.²⁴³

The Deputy Speaker is ex officio a member, and customarily chair, of the Selection Committee, but is not otherwise required to serve on any committee without his or her consent.²⁴⁴

Powers and duties of Deputy Speaker as Chair of Main Committee

In the Main Committee the Deputy Speaker has the same responsibility for the preservation of order as the Speaker has in the House.²⁴⁵

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 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 direct a Member to leave the Chamber 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 must, immediately suspend or adjourn the sitting and report the disorder to the House.²⁴⁶ In practice there are several factors which minimise

²³⁷ S.O. 18(a).

²³⁸ S.O. 16(c).

²³⁹ S.O.s 16(c), 17.

²⁴⁰ S. Deb. (24.9.06) 5165.

²⁴¹ S.O.s 16(c), 17(b).

²⁴² S.O.s 16(c), 18(a).

²⁴³ See VP 1951–53/367 (before present offices were created).

²⁴⁴ S.O. 230.

²⁴⁵ S.O.s 60, 187(a).

²⁴⁶ S.O. 187.

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 Committee²⁴⁷ when these characteristics have not been evident, following the suspension of standing orders to allow debate in the Main Committee to continue regardless of any resolved questions.²⁴⁸

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),²⁴⁹ 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. Dissent motions have been moved in the Main Committee. These followed (and were in relation to) the suspension of the unresolved question procedure noted above.²⁵⁰ The Chair of the Main Committee has no casting vote (the unresolved question procedure makes this unnecessary).

A motion of no confidence in the Chair of the Main Committee cannot be moved in the Main Committee, which can only consider matters referred by the House. Additionally, the Chair of the Main Committee is appointed pursuant to the standing orders, and a resolution of the Main Committee cannot prevail over the standing orders. Such a motion could be moved in the House pursuant to notice or by leave.²⁵¹

The Deputy Speaker may be relieved in the Chair of the Main Committee by the Second Deputy Speaker or a member of the Speaker's panel.²⁵² In practice a roster is maintained.

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.²⁵³

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

247 E.g. VP 1996–98/765; VP 2002–04/137–8.

248 E.g. VP 1996–98/551–5. 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.

249 See pp. 236–7 of the 2nd edition.

250 Because of disorder the proceedings were suspended by the Chair, VP 1996–98/765, H.R. Deb. (31.10.96) 6346–51. On resumption the dissent motion was not proceeded with by the Member who had moved it, H.R. Deb. (6.11.96) 6733. On the second occasion, by the time the dissent was reported to the House it had become meaningless in view of later proceedings, and the question was not put to the House. H.R. Deb. (26.8.2002) 5676–8; (29.8.2002) 6192.

251 H.R. Deb. (29.8.2002) 6192.

252 S.O.s 16(c), 17(c).

253 The Constitution and the standing orders of the House contain no specific provision on the matter.

forthwith to appoint a Chairman of Committees'.²⁵⁴ More recent practice was 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 Committees until a new Chairman was elected by the House on 19 August 1975.²⁵⁵ 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.²⁵⁶

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.²⁵⁷ In the absence of both the Speaker and the Deputy Speaker the Second Deputy Speaker may perform the duties of Speaker, as Acting Speaker.²⁵⁸ At the request of the Speaker, he or she may take the Chair of the House (as Deputy Speaker)²⁵⁹ without formal communication to the House.

In proposing the new office the Procedure Committee recommended that it be filled by a non-government Member.²⁶⁰ The recommendation was accepted by the Government,²⁶¹ and the first Second Deputy Speaker was an opposition Member, nominated by the Opposition and elected unopposed.²⁶² The standing orders now state that only a non-government Member may be nominated.²⁶³ 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.

At the beginning of a Parliament, or whenever the two offices are vacant at the same time, elections for Deputy Speaker and Second Deputy Speaker are conducted together, 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.²⁶⁴ 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 when there are two vacancies, a separate election for Second Deputy Speaker is conducted.²⁶⁵

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

254 VP 1940–43/549–50; VP 1961/9.

255 VP 1974–75/821.

256 *Parliamentary Presiding Officers Act 1965*.

257 S.O. 16(c).

258 S.O. 18(a); e.g. VP 1993–95/2189; VP 1996–98/929.

259 S.O. 16(c).

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

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

262 VP 1993–95/842.

263 S.O. 13(c).

264 S.O. 14.

265 S.O. 14(b). The standing order allows the position to be left unfilled.

nominate additional Members or revoke the nomination of a Member.²⁶⁶ The Speaker's nomination of the members of the panel has traditionally been by warrant which he or she has presented to the House early in a new Parliament, although the standing order does not specify that a warrant or other instrument is necessary. 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.²⁶⁷

If disorder does arise or if special circumstances apply when a member of the Speaker's panel is presiding, the Speaker or Deputy Speaker will often resume the Chair.

On occasion, when neither the Speaker or 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 Chair in committee as Deputy Chairman) other Members have taken the Chair with the concurrence of the House so that business could proceed.²⁶⁸ 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.²⁶⁹

The number of Members nominated by the Speaker has varied. 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 later Parliaments 10 Members have been nominated (since February 1994 as members of the Speaker's panel).²⁷⁰

It is the practice for the Speaker to appoint both opposition and government Members to the Speaker's panel, with government Members being in the majority. In 1951 Speaker Cameron nominated three government and three opposition Members as Temporary Chairmen. The three opposition Members declined nomination.²⁷¹ 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.²⁷²

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.²⁷³ In 1956 Speaker Cameron did not nominate any opposition Members as Deputy

²⁶⁶ S.O. 17(a).

²⁶⁷ S.O. 17(b)(c).

²⁶⁸ H. R. Deb. (8.7.15) 4723.

²⁶⁹ *And see* H.R. Deb. (14.3.91) 2054.

²⁷⁰ VP 1993–95/785; 1996–98/46–7, 64.

²⁷¹ VP 1951–53/29.

²⁷² NP 6 (26.6.51) 13; NP 7 (27.6.51) 18.

²⁷³ H.R. Deb. (10.8.54) 96.

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’.²⁷⁴

Speaker Cameron died on 9 August 1956 and Speaker McLeay was elected on 29 August 1956, it then being necessary to make new nominations.²⁷⁵ Speaker McLeay’s first warrant nominated only government Members as Temporary Chairmen.²⁷⁶ However after the Leader of the Opposition had discussed the matter with him, Speaker McLeay later nominated four opposition Members as Temporary Chairmen.²⁷⁷

In 1962 no opposition Members were nominated as Temporary Chairmen of Committees,²⁷⁸ due to the fact that the margin in numbers between government and opposition Members was only one, and the Opposition preferred not to have any of its Members act as Temporary Chairmen.

Recent practice has been for the Clerk or a senior member of staff, 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.²⁷⁹ In 1958 Speaker McLeay nominated a member of the opposition executive (Mr Webb) as a Temporary Chairman.²⁸⁰

STAFF OF THE HOUSE AND ADMINISTRATION

The historical distinction between Parliament and Government is of particular importance to the staff of the House. The Clerk and his or her staff 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 ongoing staff 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

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

275 See also VP 1974–75/512 for warrant by new Speaker Scholes.

276 VP 1956–57/263.

277 VP 1956–57/281.

278 VP 1962–63/17.

279 E.g. Mr White, 8 March 1933; Mr K. Beazley removed in 2005 after being elected Leader of the Opposition.

280 VP 1958/13.

lives to their task and to develop their individual capacities to a very high standard of professionalism.²⁸¹

These ideals have always applied in the Commonwealth Parliament, but they were strengthened and given full legislative recognition by the passage of the *Parliamentary Service Act 1999*.

The Parliamentary Service Act

Staff of the Department of the House of Representatives, and the other parliamentary departments, are employed under the *Parliamentary Service Act 1999*.²⁸² The objectives²⁸³ of this Act are:

- to establish a non-partisan Parliamentary Service that is efficient and effective in serving the Parliament;
- to provide a legal framework for the effective and fair employment, management and leadership of Parliamentary Service employees;
- to define the powers and responsibilities of Secretaries, the Parliamentary Service Commissioner and the Parliamentary Service Merit Protection Commissioner;²⁸⁴ and
- to establish rights and obligations of Parliamentary Service employees.

The legal framework provided by the Parliamentary Service Act for the employment of Parliamentary Service employees follows that established by the *Public Service Act 1999* for Public Service employees, except where differences are necessary to reflect the unique character of the parliamentary service and the obligation of parliamentary staff to serve the Parliament.

The Act sets out the following values specific to the Parliamentary Service:²⁸⁵

- the Parliamentary Service provides professional advice and support for the Parliament independently of the Executive Government of the Commonwealth;
- the Parliamentary Service provides non-partisan and impartial advice and services to each House of the Parliament, to committees of each House, to joint committees and to Senators and Members;
- the Parliamentary Service is openly accountable for its actions to the Parliament.

Principal staff 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 14 Clerks of the House of Representatives.²⁸⁶

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

²⁸¹ Philip Marsden, *The officers of the Commons 1363–1978*, 2nd edn, HMSO, London, 1979, p. 15.

²⁸² Before the commencement of this Act parliamentary staff were employed pursuant to specific sections of the *Public Service Act 1922*.

²⁸³ *Parliamentary Service Act 1999*, s. 3.

²⁸⁴ These are separate offices from those of Public Service Commissioner and Public Service Merit Protection Commissioner, but in practice have been held by the same persons.

²⁸⁵ *Parliamentary Service Act 1999*, s. 10.

²⁸⁶ See Appendix 5.

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.²⁸⁷

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.²⁸⁸

At 8.12 p.m. Clerk McGregor’s death was announced by the Speaker and as a mark of respect the House immediately adjourned.²⁸⁹

The death of former Clerks has been reported to the House, Members standing as a mark of respect.²⁹⁰

In 1937 Frank Clifton Green was appointed Clerk and served for a record period of 18 years. A Clerk’s term of office is now limited to 10 years.²⁹¹

The Clerk is appointed by the Speaker after the Speaker has consulted Members of the House about the proposed appointment.²⁹² In practice, party leaders are consulted. Without exception, a person 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. A person cannot be appointed as the Clerk of the House of Representatives unless the Speaker making the appointment is satisfied that the person has extensive knowledge of, and experience in, relevant parliamentary law, procedure and practice.²⁹³

287 S.O.s 27, 28.

288 VP 1926–28/354.

289 VP 1926–28/359.

290 E.g. VP 2004–05/127.

291 *Parliamentary Service Act 1999*, s. 58 (3).

292 *Parliamentary Service Act 1999*, s. 58 (2).

293 *Parliamentary Service Act 1999*, s. 58 (4).

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 Parliaments²⁹⁴ 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.

While the House is sitting 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. Until January 1995, when the practice was discontinued at the Speaker's direction,²⁹⁵ 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 in the same way as the secretary of an executive department administers his or her department. 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 165 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 staffing matters, financial management and so on.

The Clerk is responsible for procedural and related matters both inside and outside the Chamber.²⁹⁶ 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 documents of the House, the arrangements for bills, production of the Notice Paper, and the signing of Addresses agreed to by the House, motions 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

294 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.

295 VP 1993–95/1759; H.R. Deb. (31.1.95) 1.

296 The Clerk's role in these matters is discussed in detail throughout the text.

must be certified by the Clerk to that effect before it can be forwarded to the Governor-General for 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. 167*).

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 Parliaments and in particular of that of the United Kingdom House of Commons from which much of House of Representatives practice was derived.²⁹⁷

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 or technical matter suddenly arising.

Each day before the House meets the Clerk needs to examine the business scheduled for the day's sitting, consider any difficulties which may arise and, prior to the meeting of the House, brief the Speaker in relation to the day's business. The Clerk and staff 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 and senior staff

The office of Deputy Clerk is the second most senior in the House of Representatives. In the absence of the Clerk the Deputy Clerk performs the Clerk's duties.²⁹⁸ 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.²⁹⁹ The Deputy Clerk is the Clerk of the Main Committee.

The Clerk and Deputy Clerk may be relieved in their Chamber duties by the Clerks Assistant and the Serjeant-at-Arms, and by other senior parliamentary staff. The Clerks Assistant and the Serjeant-at-Arms manage areas of the Department of the House of Representatives (*see below*).

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

²⁹⁷ Constitution, s. 49.

²⁹⁸ S.O. 21.

²⁹⁹ S.O. 22.

functions of the Serjeant-at-Arms today. Over the centuries the Serjeant-at-Arms as bearer of the Mace 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-at-Arms in the Chamber include the recording of Members' attendance and delivering messages to the Senate. If a Member refuses to follow the Speaker's direction, the Speaker may order the Serjeant-at-Arms to remove the Member from the Chamber or the Main Committee or take the Member into custody.³⁰⁰ The Serjeant-at-Arms announces to the Speaker any visitor seeking formal entrance to the Chamber, such as the Usher of the Black Rod. The Serjeant-at-Arms is responsible for maintaining order in the galleries and can remove or take into custody any visitor or person other than a Member who disturbs the operation of the Chamber or the Main Committee.³⁰¹ Outside the Chamber the responsibilities of the Serjeant-at-Arms 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 certain 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, or slacks, in place of the knee breeches.

The Department of the House of Representatives

The Department of the House of Representatives provides the administrative support for the efficient conduct of the House of Representatives, its committees and certain joint committees and a range of services and facilities for Members in Parliament House. The department also administers certain shared functions on behalf of both Houses. In 2005 the organisational structure of the department consisted of five output groups as follows:

Chamber and Main Committee, managed by the Clerk Assistant (Table), provides programming, procedural and administrative support necessary for the conduct of the business of the House and the Main Committee; undertakes research on parliamentary matters; produces publications and provides information about the House and its proceedings; and provides secretariat services for certain domestic committees.

Community awareness, managed by the Clerk Assistant (Table), promotes awareness and understanding of the House of Representatives and the Parliament.

Committee services, managed by the Clerk Assistant (Committees), provides secretariat services to the House of Representatives investigatory committees and some joint committees (other joint committees are supported by the Department of the Senate).

Inter-parliamentary relations, managed by the Clerk Assistant (Committees), supports the Parliament's relations with other Parliaments (jointly funded by the Department of the Senate).

³⁰⁰ S.O. 94(f).

³⁰¹ S.O. 96. If a person is taken into custody the Serjeant-at-Arms must report this to the House without delay.

Members' services, managed by the Serjeant-at-Arms, administers salaries and certain entitlements of Members and provides a wide range of services to Members in Parliament House; and delivers corporate support services, including human resources, financial management and information technology services.

The other parliamentary departments

The Parliamentary Service comprises three departments, namely, the Department of the House of Representatives, the Department of the Senate, and the Department of Parliamentary Services. The Presiding Officers are the parliamentary heads of these departments, their authority and administrative responsibility being established by the *Parliamentary Service Act 1999*. 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 Department of Parliamentary Services, which provides joint support to Senators and Members. The Clerk of each House is the head of his or her department; the other department has a Secretary as departmental head.

Department of the Senate

The role and functions of the Department of the Senate are equivalent to those of the Department of the House of Representatives. The Department of the Senate also administers certain shared functions on behalf of both Houses. The Department of the Senate provides the secretariats to those joint committees not supported by the Department of the House of Representatives. It also administers the Parliamentary Education Office, which provides educational material and programs on the role and functions of the Parliament (jointly funded by the Department of the House of Representatives).

Department of Parliamentary Services

The Department of Parliamentary Services (DPS) was formed on 1 February 2004³⁰² by the amalgamation of the three former joint departments—the Department of the Parliamentary Reporting Staff, the Department of the Parliamentary Library, and the Joint House Department. It covers the following services:

INFORMATION, ANALYSIS AND ADVICE SERVICES

The Parliamentary Librarian is a statutory officer within DPS appointed by the Presiding Officers.³⁰³ The Parliamentary Library provides Members with information, analysis and advice. The Library also maintains a wide variety of information resources such as newspapers, maps and the Electronic Media Monitoring Service which enables Members to obtain desktop access to radio and television programs broadcast in Canberra.

The Presiding Officers are assisted in policy-making and other matters by the Library Committees of the Senate and the House of Representatives, generally sitting together as the Joint Library Committee, which like the Joint House Committee, does not normally submit reports nor have executive power and pursues a purely advisory role.³⁰⁴

³⁰² In accordance with resolutions passed by each House (VP 2002–2004/1079, 1092), pursuant to s. 54 of the *Parliamentary Service Act 1999*.

³⁰³ The statutory position of Parliamentary Librarian was created by the *Parliamentary Service Amendment Act 2005*.

³⁰⁴ See 'Library and House Committees' in Ch. on 'Parliamentary committees'.

TRANSCRIPTION SERVICES.

Hansard provides transcripts of all proceedings in the chambers, the Main Committee of the House of Representatives and parliamentary committee hearings.³⁰⁵

INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)

DPS is responsible for most of the computing and telecommunications infrastructure in Parliament House (except in the Ministerial Wing which is the responsibility of the Department of Finance and Administration). DPS provides ICT services such as technical support and training to all areas of Parliament House and, under a contractual arrangement with the Department of Finance and Administration, to electorate offices as well.

BROADCASTING SERVICES

DPS provides live television, radio and Internet coverage of both chambers, the Main Committee of the House of Representatives and most parliamentary committee hearings held in Parliament House, as well as audio coverage of all other parliamentary committee hearings. Proceedings are broadcast within the building on the House Monitoring System and externally by the ABC and other broadcasters.

BUILDING SUPPORT SERVICES

DPS is responsible for repairs, maintenance and modifications to the structure, fabric and finishes of Parliament House and all of its engineering services such as air conditioning, lighting, plumbing, hydraulic services, movement systems and waste disposal. DPS also cares for the Parliament House landscape, and for the Parliament House Art Collection (including the Historic Memorials Collection).

In the administration of these services the Presiding Officers take advice from the Joint House Committee. The Committee does not report to either House and does not have any executive power over the services provided.³⁰⁶

SECURITY

DPS coordinates security and emergency activities and provides security advice to occupants of Parliament House, issues parliamentary photographic passes and investigates security breaches. The Presiding Officers receive security advice from the Security Management Board established under the Parliamentary Service Act.

OTHER SERVICES.

DPS is responsible for facilities management, catering, cleaning, the Health and Recreation Centre, the Nurses Centre and visitor services.

Parliamentary finances

Since 1982–83 funding for the Parliament has been provided separately from funding for executive government operations, through the annual Appropriation (Parliamentary Departments) Acts. From 2000–2001 budgets for the parliamentary departments have been prepared using an accrual basis. The Appropriation (Parliamentary Departments) Acts contain appropriations for each department, under the headings ‘departmental outputs’, ‘administered expenses’, and ‘equity injections and loans’.

³⁰⁵ For a partial history of Hansard see *Commonwealth Hansard—its establishment and development 1901 to 1972*, PP 286 (1972).

³⁰⁶ See ‘Library and House Committees’ in Ch. on ‘Parliamentary committees’.