

Third reading

Members of Parliament are rarely prepared to invest intellectual resources in order to know in detail the rules and procedures that govern their proceedings or the rationale that underpins them. ... For MPs, working within existing procedures is a habitual activity that is perfectly rational. ... By accepting existing procedures, they are able to devote their intellectual energies to matters that may more directly meet their political and electoral needs.

Norton, 26

Introduction

- 9.1 Before completing this report with some general conclusions, it is appropriate to look ahead and consider whether any changes in direction are needed. It is assumed that the last twenty years should provide a sufficient basis on which to judge how apt the committee is to continue the task of revision, simplification and balancing of the House's practices and procedures.
- 9.2 The chapter begins with a rumination on several issues, including maintaining interest in the committee, whether expertise is more important for members than enthusiasm and formalising a more comprehensive response to reports. The chapter concludes with an overview of the last twenty years of procedural reform and the part the Procedure Committee has played in the process.

Maintaining membership

- 9.3 The Constitution imposes, as much as bestows, upon the House the responsibility to maintain its own operating rules.¹ It follows that the House itself must provide the mechanism for ongoing procedural maintenance. Like most legislatures, the House delegates this housekeeping to a committee. The Procedure Committee is but one of the twenty House committees and twelve joint committees on which Members may serve.
- 9.4 Members of Parliament, be they Ministers or backbenchers, must ration their time prudently. The working life of most Members is divided across a medley of parliamentary, electorate and party commitments. As Lord Norton implies in the opening quote, it is sensible for a Member to take parliamentary procedure as a given when there are so many other avenues for exertion.
- 9.5 Clearly there are certain advantages in being familiar with parliamentary practice and procedure. More centrally, however, maintaining an active committee membership rests upon the committee's productivity and impact and its influence on procedural reform in the House.

Expertise versus effectiveness

- 9.6 The ostensible virtue of the Standing Orders Committee rested in the standing of its members, especially those who were appointed *ex officio*. Typically, they were widely experienced in the practice of politics and, in reaching their rank in the legislature, had learned the operating procedures essential for parliamentary effectiveness. Because of their influence, their concurrence on any proposal would presuppose its broad acceptance by the House. Unfortunately the cost of their status was that they were too busy otherwise to attend to the work of the committee.
- 9.7 In its early years, the Procedure Committee, too, had members with lengthy parliamentary experience. However, because they were not office holders they were better placed to ensure that meetings had quorums and that inquiries were completed. If members of the Procedure Committee have on average lacked the experience of their predecessors it has certainly not diminished the committee's productivity or influence.

¹ Constitution, s. 50.

- 9.8 Though it is difficult to establish this empirically, a consideration of the record suggests that enthusiasm and the opportunity to participate are more important than expertise on its own. On this basis, there seems little need to alter the composition of the committee.

Making it happen

- 9.9 The previous chapter noted the evolution of a more sophisticated approach to framing and promoting proposals for procedural reform. The committee now routinely anticipates the implementation of its recommendations and actively lobbies for their adoption. However, the committee is hindered by what over twenty years has in practice been a haphazard mechanism for responding to its reports. It is worth speculating on the feasibility of a more systematic process.
- 9.10 Reports of the Procedure Committee are treated like those of most other parliamentary committees. The existing response process conforms more or less to the system first established by the Fraser Government in 1978 and followed with minor modifications to this day.² However, a close reading of Prime Minister Fraser's ministerial statement which announced 'steps to ensure that parliamentary committee reports are dealt with on a methodical basis' reveals that reports of 'the committees relating to house management' were not to be included.³
- 9.11 This was arguably recognition that while it was appropriate for the Executive to respond to recommendations about the operation of government, it was for the House itself to consider and react to proposals about its internal operations. Of course at this stage the Procedure Committee had not been established and it is not clear whether it should be seen as a committee relating to house management. In any event it should be noted that section 50 of the Constitution unequivocally vests in each House the power to make rules and orders with respect to the exercise of its powers, privileges and immunities and the order and conduct of its business.
- 9.12 Nevertheless, as has been noted in earlier chapters, the initiative for implementing procedural reform has, by default, been assumed by the government of the day. The Leader of the House⁴ has become the nominal

² See HR Practice (5th edn), 689.

³ HR Deb (25.5.1978) 2465-6.

⁴ The position originated in 1951. See HR Practice (5th edn), 63-4.

gatekeeper, moving the necessary motions in the House to give effect to changes to practices and procedures with prior endorsement obtained in processes outside the Chamber.

- 9.13 To recapitulate, the existing response mechanism is haphazard and too often over the last twenty years has left little indication on the official record of the outcome of committee recommendations. A further deficiency is that in some cases only the views of that part of the Ministry involved in producing a response are offered. On the other hand, there has been a tendency in recent years for some level of discussion in the party room on some committee recommendations.
- 9.14 A more comprehensive approach would enable a broader set of views to be incorporated in what would be the House's response. This might be effected by a practice which:
- set a customary period within which the response was to be prepared;
 - involved a conference of the Speaker, Leader of the House and Manager of Opposition Business to discuss respective views on the report's recommendations;
 - included the subsequent preparation of a document containing respective positions (including those of independent or minor party Members) on each recommendation and an indication of any consensus; and
 - culminated in the presentation of the document to the House by the Speaker as the House's response to the report.
- 9.15 At the end of the day, the majority of votes on the floor of the House determines what changes can be made to the House's procedures. This is not to concede that the House must run to Executive rules. No doubt it is usually the case that a good deal of consultation and negotiation occurs behind the scenes before proposals are put to the vote. However, there is something to be said for a more visible process which ensures that the committee's recommendations have been widely considered.

General conclusions

- 9.16 The House of Representatives began operating in 1901 with rules and procedures it had inherited from the UK Parliament, but modified by the experiences of the colonial legislatures as they adapted to self-government in a political environment already markedly different from that in Britain.

The first standing orders to govern the House's proceedings were based primarily on those of the House of Assembly in the Province of South Australia. They were assumed to be a stopgap until the House's Standing Orders Committee prepared their own. The 'temporary' standing orders were to prevail for fifty years.

- 9.17 In the meantime the principal rationale for procedural change was to facilitate the conduct of government business. The introduction of the gag, the guillotine and time limits for speeches were typical examples of measures which would expedite the passage of government business. The many challenges which faced national government in the first five decades of the Twentieth Century probably inhibited any desire among Members to strengthen the representative and scrutinising roles of the House at the expense of making laws for the Commonwealth.
- 9.18 A general perception emerged in the final quarter of the century that the House's rules and procedures needed overhauling. This was given voice by the Joint Committee on the Parliamentary Committee System which found that the existing machinery, principally in the form of the Standing Orders Committee, was insufficiently active, responsive or effective.
- 9.19 The Procedure Committee was established in 1985, first on a provisional basis but becoming permanent in 1992. Members, the Ministry and the Speaker, respectively, saw roles for the committee in preserving and enhancing the rights and opportunities of Members to participate in the House's proceedings; to improve the efficiency of the conduct of business; and, to resolve inconsistencies and ambiguities in the practices and procedures of the House.
- 9.20 The committee was successful almost from the outset, initiating major reforms to non-government business with its second report. It presented forty-four reports in the twenty years to March 2005. Its most notable achievements include:
- a comprehensive regime for arranging private Members' business and the presentation and consideration of committee and delegation reports (effective 1989);
 - the establishment of the Main Committee, primarily as a parallel debating chamber to share the legislative workload of the House and secondarily to provide more opportunities for private Members to participate (effective 1994);
 - a range of measures to enhance the visibility and accessibility of the House of Representatives to the public through the media and other channels (effective 2001);

- the restructuring of sitting hours to minimise late night sittings (effective 2003); and
- the complete redrafting and reorganisation of the standing orders (effective 2004).

9.21 While the committee's major achievements may speak for themselves, its lesser achievements—the ad hoc problem solving and running repairs to the standing and sessional orders which it routinely undertakes—are easily overlooked. However, it is arguably this aspect of the committee's work which has confirmed its ability to foster procedural reform in the House of Representatives.

9.22 The committee is not always successful in achieving implementation of its recommendations. Some of the problems it has dealt with offer no easy solutions and there are significant issues which remain unresolved. They include sitting patterns, the conduct of Question Time, procedures for opening Parliament, electronic voting and debating committee reports. It is inevitable that the committee will revisit these matters in coming years.

9.23 There are very few procedural changes which have occurred in the last twenty years without the committee's involvement. Perhaps the only procedural area which the committee has not entered is that relating to the sovereignty of government business. By and large the committee has been long-sighted and realistic about what it can achieve and has avoided futile conflict, internally and externally.

9.24 The committee has met the expectations held in 1985 that it would improve the lot of ordinary Members, increase efficiency in the conduct of business and resolve problems in the standing orders. It can fairly claim to be the main force for procedural reform in the House of Representatives.

9.25 The Joint Committee on the Parliamentary Committee System was perhaps unfairly dismissive in 1976 of the Standing Orders Committee in each of the two Houses of the Australian Parliament.⁵ Were that joint committee to reconvene after thirty years it would surely conclude that the House of Representatives Standing Committee on Procedure, unlike the Standing Orders Committees which had preceded it, had made a significant number of notable achievements.

⁵ See the Joint Committee's judgment at page *vii*.