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Hung parliaments – are they good for parliament?

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Members who contested the elections for the House of Representatives on 21 August 2010 were not to know that they were destined to become members of the ‘hung parliaments club’. Compared to their state and territory colleagues, they were late in joining. Like their colleagues, they were immediately either participants in, or most interested observers of, the intense negotiations that commenced as key cross-bench members negotiated with the leaders of the major parties about the formation of government. Like their colleagues in the states and territories, in the new Parliament they found themselves working in circumstances that were very new to them. Above all this was because of the finely balanced numbers, but changes that had been made to House procedures also had a significant impact. After one very interesting series of events, a member labeled it ‘another day in paradigm’!

It is too early to make a thorough assessment of the way the House has operated under the many changes that were negotiated - each of the House’s 150 members would have their own perspective. It is not too early, however, to comment on some of the main features.

The changes to the standing orders reflected the terms of the reform agreements that had been negotiated. The most immediately noticeable change was an increase in the number of hours of sitting each week - the hours were increased from 48 to 56 hours (House and Federation Chamber). These were the standard hours. Sometimes significant amounts of time are added – in the week beginning 27 May, the House itself sat for 41 hours and 57 minutes and the Federation Chamber for 29 hours and 16 minutes.

Virtually all of the additional time added to the House’s standard program was for private members’ business; 19 hours 45 minutes was allocated for these purposes each week, up from 10 hours 20 minutes in the previous Parliament; the proportion of time spent on private members’ business almost doubled from 9 per cent in the 42nd Parliament to 16 per cent.¹

The Selection Committee, which had operated before 1998, was re-established, and resumed its role in prioritising and allocating time for private members’ business and committee and

¹ These figures include motions to suspend standing orders moved by private members and statements by members.

delegation reports. The new arrangements provided that the committee would be chaired by the Speaker – a recognition of the importance of the committee, although a significant demand on a Speaker’s time. The committee met at least twice a week, often there were three meetings and occasionally four. At its regular Tuesday meeting the committee considered and made determinations about applications for private members’ time and for committee or delegation business for the following week.

Members, including shadow ministers and independent members, took full advantage of the opportunities available to introduce bills and to propose resolutions. 68 Private members’ bills had been introduced by 6 June 2013. Some were very high profile, for example the Marriage Equality Bills; others showed the ability of members to respond very quickly to emerging issues – bills dealing with live animal exports illustrated this, and others were of importance locally – the Environment Protection and Biodiversity Conservation (Public Health and Safety) Amendment Bill dealt with the problem of bats that had reached concerning numbers at a particular high school. As at 6 June seven² had been passed by the House and 5 had been passed by both houses and become law.

Although in previous parliaments there had been excellent opportunities for private members to introduce bills and move motions, very few tended to go to a vote. The new standing orders allowed the Selection Committee to recommend which items of private members’ business should be brought to a vote, although the government reserved the right to make decisions about the scheduling of voting. Private members business was debated on Mondays during the specified times, but the voting always took place later in the week, when anything from two or three to eight or more items would be called on for decision. The majority was decided on the voices; but when divisions were held the numbers were almost always finely balanced.

Although the standing orders had long provided for the referral of bills to House committees, only small numbers had in fact been referred; House committees had concentrated on broader inquiries, which allowed them to give in-depth and bipartisan attention to issues of public policy. The new standing orders allowed one member of the Selection Committee to require that a bill, whether a government or a private member’s bill, be referred to a committee for an advisory report. Accordingly, at the committee’s second regular meeting each week, the committee would have before it details of all the government bills that had been introduced. These referrals did not need to be approved or endorsed by the House, the report of the Committee simply recorded the referrals.

Again full advantage was taken of this provision: by 6 June 2013, 198 bills had been referred to House or joint committees. Often the reporting deadlines were very tight – three weeks was not uncommon. State members might recognise the challenge of conducting inquiries

² Includes private senators’ bills agreed by House.

into bills within a timeframe that is not regarded as imposing unreasonable delays in the programming of government legislation; the timeframes meant that hearings were limited and that round-tables, which allowed a number of individuals or groups to participate together, were often used.

For many years Senate committees have been very active in the consideration of bills, and this had probably been a factor in the very limited number of bills that had been referred to House committees in the past. Naturally each House has its rights in these matters, and the referral of a significant number of bills to House committees allowed the possibility of two inquiries into the same measure. This happened on some occasions. On several occasions, however, House committees to which a bill had been referred noted that the bill had also been referred to a Senate committee and did not proceed to conduct an inquiry. In these cases the reports from the House committees were formal only. In another case a Senate committee decided not to proceed with an inquiry because the bill in question had also been referred to the Joint Committee on Public Accounts and Audit. Parliamentary committees are heavily dependent on the willingness of organisations and individuals to participate in inquiries, and no doubt those involved in inquiries appreciated any efforts to reduce duplication.

Committees have worked very diligently right through the life of the Parliament. It is a tribute to committee members, and to support staff, that as well as meeting the new workload generated by the referral of bills, House committees continued their great tradition of investigations into matters of wider public policy: the Standing Committee on Aboriginal and Torres Strait Islander Affairs took evidence at 23 hearings during its inquiry into language learning; the Health and Ageing Committee held 22 hearings in relation to the registration processes and support for overseas trained doctors; and the Regional Australia Committee's inquiry into the use of 'fly in, fly out' workforce practices saw it take evidence at 26 hearings. Happily also the tradition of respectful consideration of witnesses continued and was evident even in cases where the subjects were controversial and where there were deep differences. By 6 June House and joint committees had presented 315 reports containing well over 1,400 recommendations; in addition 99 advisory reports were presented on bills. By comparison 187 reports were presented in the 42nd Parliament.

Operational changes in respect of the House committee system reflected the circumstances of the House. The standard number of members of a committee was set at seven – four government members and three non-government members, but when an independent member was appointed the membership was increased to eight, four government and four non-government. Arrangements were made for three committees to be chaired by an independent member (one House and two joint committees).

The standing orders governing Question Time were changed in important ways. For the first time, time limits were set for both questions and answers. Originally these were 45 seconds and four minutes respectively, but they were reduced later to 30 seconds for questions and

three minutes for answers. The long-standing requirement that answers be relevant was strengthened by the requirement that they be ‘directly’ relevant, and only one point of order on relevance was permitted during each answer. Provision was made for supplementary questions, but this was achieved by means of conditions set by the Speaker rather than through the standing orders. The changes, especially the introduction of time limits, saw Question Time move along more quickly, although this most high profile period of the sitting day continued to attract a good deal of criticism.

Many sitting days have seen significant challenges. In the management of the House it has been a most demanding time for the Leader of the House and the Manager of Opposition Business, and for the whips. No doubt their state and territory counterparts could have assured them that in a hung parliament they would not be likely to have too many easy days.

In reflecting on the work of the House in the 43rd Parliament it is interesting to note that a theme of the reform agreements was that local members were the foundation blocks of the Australian system of democracy. This is of interest because, while the working of the House has often been criticised by members and others, to my knowledge, and in contrast to the Senate, historically the House has not had the benefit of very much reflection on its role, or on the role of members. If I understand it correctly, the composition and role of Victoria’s Legislative Council was subject to debate in connection with the Constitution (Parliamentary Reform) Act 2003. While views about the merits of the changes may differ, it might be thought that such discussions would be a very healthy thing. We can think of the hung Parliament as having provided the Federal members with the opportunity – perhaps the necessity - for such reflection. In reality, and in a way that may be familiar to state colleagues, the daily and weekly routine did not allow much time for reflection.

The Standing Committee on Procedure has made an important contribution in this regard. Its role is to inquire into and report on the practices and procedures of the House and its committees. The committee has maintained a continuous review of the procedural changes implemented at the start of the Parliament. It has had round-table discussions with members and has made four reports (refer:

http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=proc/reports.htm). The committee’s November 2012 report is particularly useful. It includes an excellent overview of the reforms, many statistics, an analysis of and comments on the participation of members in various categories of business, observations on Question Time and comments on the operation of committees.

The committee concluded that the stated aim of increasing the authority of and the opportunities for participation by all members appeared to have been achieved.

The committee saw no reason to resile from an earlier comment to the effect that the additional time allocated to private members’ items was excessive. It concluded that the

increased time for private members' business had not impinged on the Government's ability to effectively manage its business. Because of the increased time allocated to private members the percentage of time taken up by government business fell from 60% to approximately 50%, and the proportion taken by private members' bills and motions increased from approximately 9% to approximately 17% (the gap is accounted for by things like Question Time and House business).³ Despite these different proportions a similar amount of time was available to government because the overall sitting hours had been increased. The committee has acknowledged the implications of the long hours for the health and well-being of members and others and recommended some fine-tuning of the arrangements, including a reduction in the number of sitting hours each week and the reduction of time for private members' business by three hours each week, and the removal of the ability for one member of the Selection Committee to require that a bill be referred to a committee for an advisory report.

It will be interesting to see the judgment of history on the 43rd Parliament. Each one of the House's 150 members will have his or her own perspective. We can predict that unanimity about the strengths and the weaknesses of this Parliament might prove to be elusive – perhaps the numbers would be finely balanced! For our part as staff members we would say that the practices of the House, and committee practices, and committee capacity, have been well and truly tested. Departmental staff have faced many challenges; we have been careful to provide necessary briefings, to swap experiences and to give leadership to colleagues. We have all added to our stock of learning and experience.

We have seen points of parliamentary law and procedure that had usually been of somewhat academic interest become matters of considerable and immediate political significance. On many occasions the substance of procedural advice would not have been convenient to the government; on other occasions it would not have suited the opposition. It is very pleasing to me to be able to say that despite the significance and sensitivity of the decisions that often had to be made on procedural matters, and despite the constant and intense pressure that members and their staffers have been under, to my knowledge there has not been one occasion on which any member has sought to apply pressure of any kind to a staff member about his or her advice. This is a memory we will value for a long time.

As was to be expected, the finely balanced numbers have seen the issue of the casting vote given a good workout. Between 1901 and 1992 it had been exercised 21 times; since November 2010 it has been exercised 15 times – and there are two weeks to go! There is more to this than statistics: although the principles for the exercise of the casting vote had been set down in *House of Representatives Practice*, not all of the 21 occasions on which it had been exercised before 2010 had been consistent with the principles. This Parliament has seen the need for a casting vote to be exercised in an interesting variety of circumstances. In

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every case, and although it has been acknowledged that the Speaker is entitled to cast his or her vote as they consider best, the Speaker or the Deputy Speaker have exercised it in full accordance with the principles. It can be said that the body of practice on this matter has been strengthened.

The comments that I have made are those of a Clerk. Clerks are close to the centre of a lot of the action; we are also that happy couple of metres from the much warmer seat occupied by the Speaker. There would never have been any doubt that the Speaker would carry heavy responsibilities during this parliament; indeed it is difficult to imagine circumstances in which the Speakership could be more crucial to the working of the House. It is arguable that the office has been seen as more significant by members of the wider community and the media attention has been considerable. In short, the pressure on the Speaker has not been limited to the hours spent in the Chair.

It fell to Mr Harry Jenkins to be the first Speaker in a hung Federal Parliament since 1940; to start to apply the new standing orders, to apply the rule that answers must be 'directly' relevant, to set down conditions for supplementary questions, to Chair the new Selection Committee and to start building on the precedents about the exercise of the casting vote.