

# HOUSE REVIEW



## Selected features of House of Representatives business

Sitting period 4-14 September 2017 (no. 5)

This fifth issue of House Review includes discussion of the House's decision on a matter of parliamentary privilege; question time and the possible implications of dual citizenship and Ministerial responsibilities; release of further papers of the Parliamentary Commission of Inquiry; opportunities for backbench Members; and interaction with the Senate.

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### Parliamentary privilege—meaning, process, matter raised, and the response

'Parliamentary privilege' means the special rights and exemptions from the law that apply to the Houses, their committees and members. These rights and immunities are regarded as essential for the Houses, their committees and members to carry out their responsibilities without obstruction or fear of prosecution. Parliamentary privilege belongs to the Houses, not to members in their personal capacity, and the most well-known example is the privilege of freedom of speech. This protects members from law suits and prosecution for what they say in Parliament, although they are still accountable to their House in respect of their statements and actions.

The Constitution (s.49) outlined the Parliament's original power of parliamentary privilege, stating that until declared by the Commonwealth Parliament, the powers, privileges and immunities of the House and Senate, their members and committees, are those of the British House of Commons at Federation in 1901. In 1987, Parliament did 'declare', passing the [Parliamentary Privileges Act](#) which clarifies to a large extent the nature and scope of parliamentary privilege, including when it might offer protections or impose special responsibilities, and what might be necessary to constitute an offence against a House—a contempt. In broad terms, to amount to an offence, conduct would need to, or be intended or likely to, interfere improperly with the exercise by a House or committee of its authority or functions, or with the free performance of a member's duties as a Member (see s.4).

#### *Process*

When a Member raises a matter of privilege in the House, the Speaker may give the matter precedence over other business, enabling the Member to move immediately a motion declaring that a contempt, or a breach of privilege has been committed, or proposing the matter be referred to the House [Committee of Privileges and Members' Interests](#) for inquiry. Debate might follow and then the House decides on the motion. More often, the Speaker considers the matter and responds later in the House. In that case, too, it is up to the House to decide what action, if any, to take.

#### *Matter raised*

On 15 August the Manager of Opposition Business, Mr Burke, raised as a matter of privilege whether the circumstances surrounding the former Member for Dunkley accepting an appointment as a paid director of the Franchise Council of Australia while he was still a Member of the House give rise to issues that may amount to contempts of the House. Mr Burke also presented a number of documents for consideration by the Speaker.

### *Response*

On 4 September the Speaker responded, referring to discussion in *House of Representatives Practice* and the United Kingdom text, Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, of two relevant matters that could be considered as contempts by a Member. The Speaker noted he was not in a position to determine any connection between the former Member's appointment and his actions and statements and he referred to the 'test' for contempt in the Parliamentary Privileges Act (s.4). He stated that he was willing to give precedence to a motion proposing the matters raised be referred to the Committee of Privileges and Members' Interests, he was not in a position to determine whether, on the face of it, the test in the Act had been met, but he was sufficiently concerned to consider the matters should be examined by the Committee. A Member's accountability to the House relates to the time of their membership but, the Speaker stated, issues that arose then can still be dealt with by the House after a Member ceases to be a Member.

Immediately after the Speaker's statement the Manager of Opposition Business moved that these matters be referred to the Committee of Privileges and Members' Interests: whether the former Member for Dunkley's acceptance of and acting as a paid director of the Franchise Council of Australia whilst still a Member gives rise to issues that may constitute a contempt or to issues concerning the appropriate conduct of a Member. No other Member spoke and it was agreed 'on the voices'.

## **Legislation**

### *Introductions*

On 6 and 7 September, eight bills were introduced and on 13 and 14 September, 14 bills were introduced. After a bill has been introduced and the Minister's second reading speech completed, debate must be adjourned and resumption of debate on the second reading is usually made an order of the day for 'the next sitting day'. In fact resumption of debate is usually scheduled for a week or more later. After the Coastal Trading (Revitalising Australian Shipping) Amendment Bill 2017 was introduced on 13 September and debate was adjourned, the usual question was proposed: that the resumption of debate be made an order of the day for the next sitting. An Opposition Member sought to amend the time for resumption to the first sitting in 2018, to allow for consultation. This motion was seconded and the seconder also spoke briefly to explain the amendment. The amendment was defeated on division and the original question 'that resumption of debate be made an order of the day for the next sitting' was agreed on the voices.

### *Referral of bills to the Federation Chamber*

During the fortnight, after debate was resumed on the second reading of several bills and the main Opposition speaker had spoken in the House, the bills were referred by a Minister, by leave, to the Federation Chamber for further consideration. After the Federation Chamber had completed its consideration of most of these bills and resolved that the bill be reported to the House without amendment, once the Chair had reported progress to the House on each bill in turn, a Minister by leave moved the third reading immediately and this question was carried on the voices. The Federation Chamber cannot divide on a question and, in the case of one of the bills, a second reading amendment had been moved by the main Opposition speaker. When the second reading debate was complete in the Federation Chamber and the question was put on the amendment, it could not be resolved on the voices and so consideration could not continue. When the consideration of this bill was reported in the House, the Chair noted that there was an unresolved question. The question on the amendment was then put to the House and negatived on division. The second reading was agreed on the voices, leave was granted for the Minister to move the third reading immediately, and this question was agreed on the voices.

### *Passing the House*

After an extensive second reading debate, the Social Services Legislation Amendment (Welfare Reform) Bill 2017 passed the House on 11 September. Among other things the bill proposes to establish a two year drug testing trial in three regions for new recipients of Newstart allowance and Youth allowance.

After the Minister for Social Services summed up the second reading debate, the House divided on the amendment to the second reading proposed by the ‘shadow’ Minister, the Member for Jagajaga, and on the second reading itself. Following the second reading, the Chair reported two messages from the Governor-General. The first recommended an appropriation for the purposes of the bill but the second was more unusual—recommending an appropriation for the purposes of amendments to the bill. The Minister then moved a number of Government amendments and these were agreed. The House then divided on the question that the bill, as amended, be agreed to. Leave was granted for the Minister to move the third reading immediately and the third reading was carried on division.

Debate resumed on 12 September on the second reading of the Higher Education Support Legislation Amendment (A More Sustainable, Responsive and Transparent Education System) Bill 2017. The bill had been introduced on 11 May and proposes reforms to the funding, provision and administration of higher education, implementing the higher education reform package that was announced in May. The shadow Minister, the Deputy Leader of the Opposition, moved a second reading amendment.

On 13 September, debate on the Higher Education Support bill was interrupted to allow the Chair to report a message from the Senate transmitting the Marriage Law Survey (Additional Safeguards) Bill 2017 and seeking the concurrence of the House. The bill relates to safeguards for communications during the marriage law postal survey and had been introduced in the Senate earlier in the day and passed all stages. In the House, the bill was read a first time and a Minister immediately moved the second reading and spoke briefly. Leave was granted to allow the debate to continue and the shadow Attorney-General spoke, referring amongst other things to the cooperative process involved in preparing the bill. A second Opposition Member spoke briefly to the bill and the questions on the second and third reading were each agreed on the voices. (On 14 September the Chair reported a message from the Governor-General informing the House that His Excellency had assented to the bill.)

On the evening of 13 September, after debate on the Higher Education Support bill had been resumed and continued for some time the Leader of the House moved closure of question. This was carried on division. The question before the House was on the amendment moved by the Deputy Leader of the Opposition. This was defeated on division and the second reading carried on division. The Member for Indi moved two lots of amendments to the detail of the bill, the first was negatived on the voices and the second negatived on division. The remaining questions were carried on the voices.

Details of all bills considered by the House are available from [Last Week in the House](#).

## **Opportunities for private Members**

Apart from the formal options for backbench Members to sponsor bills and motions during time allocated to private Members’ business, many backbench Members take up the considerable number of opportunities each week to speak briefly on topics of their own choice. These include periods of 90-second statements in the House and Federation Chamber (2 hours 45 minutes in total); adjournment debate (2 hours in the House, 30 minutes in the Federation Chamber; each Member called may speak for up to 5 minutes); and grievance debate in the Federation Chamber (1 hour of 10-minute speeches). The grievance debate has its origins in the United Kingdom where traditionally the House of Commons would consider grievances before agreeing to the Crown’s requests for supply. Observers of the Federation Chamber would notice that while speeches during this debate may note a grievance on a particular issue and advocate a particular stance, frequently they simply acknowledge matters of local and national interest.

Each day the Federation Chamber meets, the first 30 minutes are allocated to constituency statements. At these times any Member may speak for up to 3 minutes each and Ministers may join backbench colleagues in making statements. They often address matters that are important to their electorates, but

not necessarily a part of their Executive roles. During the fortnight several Ministers made a constituency statement. Topics included local businesses and volunteer work.

During these opportunities Members are using their voices as local Members and representatives, not without party allegiances and particular interests, but certainly with a knowledge and concern for the issues facing their electorates.

### **Questions without notice—question time**

Part of the House's role is to scrutinise the performance of Executive Government. One of the most visible accountability measures the House exercises is through backbench Members questions to Ministers about their Ministerial responsibilities. Each sitting day at 2.00pm question time begins with a question from the Opposition (often the Leader of the Opposition), usually to the Prime Minister. In recent years it has become customary for many questions to be directed to the Prime Minister, rather than to a range of Ministers. Assistant Ministers/Parliamentary Secretaries may not be questioned. Backbench Members may be asked about an item of House business or a committee for which the Member is responsible. Standing orders place a rigorous framework around the content of questions but the single requirement for an answer is that it be directly relevant to the question.

#### *Closure of Member*

Twice during the week of 14 August, when the Deputy Prime Minister was responding to a Coalition Member's question, the Manager of Opposition Business moved that the Deputy Prime Minister 'be no longer heard'. Each motion was defeated on division. On 6 September, the Manager of Opposition Business moved the closure while the Deputy Prime Minister was responding to a question. After the motion was defeated on division the Speaker referred to the purpose of question time and to his discretion granted by the standing orders not to receive particular motions (including closure of Member) if the motion had been negated and he considered they were an abuse of the forms of the House or moved to obstruct business. The Speaker stated he would not receive another motion in this context during the week. On 11 September the Manager of Opposition Business moved a closure motion when the Deputy Prime Minister began to respond to a question from a Government Member. After the question was put on the closure motion and the motion negated on division, the Speaker stated that he would not receive another such motion during the week.

#### *Suspensions of standing orders*

From time to time in the House, a Minister or a backbench Member (usually an Opposition Member) moves to suspend standing orders to enable actions that would otherwise be precluded by the standing orders. The Manager of Opposition Business moved to suspend standing orders during question time on each sitting day from 4 to 7 September. The suspension motions related to the constitutional qualification of the Deputy Prime Minister and proposed that the House call on the Deputy Prime Minister to stand aside from Cabinet, or similar terms. Because these motions were moved without notice, an absolute majority (76 Members) voting in favour would have been necessary for them to succeed; each motion was defeated on division. When notice is given of a motion to suspend standing orders, only a simple majority of Members present and voting is required for the motion to succeed.

### **Quorum—Chair's attention drawn to the 'state of the House'**

The Constitution provides that until the Parliament decides otherwise, the presence of at least one-third of the whole membership of the House is necessary to constitute a meeting for the House to exercise its powers (s.39). The *House of Representatives Quorum Act 1989* provides that a quorum of the House is at least one-fifth of the whole number (30 Members). This requirement is adhered to strictly both at the start of each sitting day and during divisions. At other times, the House may operate without 30 Members being present: Ministers may be away from the Chamber attending to Executive duties and Members may have commitments in the Federation Chamber, with committees, and constituents.

However, once a Member draws the attention of the Chair ‘to the state of the House’, if a quorum is not present, the bells are rung for up to four minutes, until a quorum of 30 Members is present. The speech time clocks continue to run down while the bells ring. During the week of 4 September, a number of Government Members speeches on bills were punctuated by an Opposition Member drawing the Chair’s attention to the ‘state of the House’, and requiring that a quorum be formed.

### **Parliamentary Commission of Inquiry—Statement by Speaker and presentation of papers**

A Parliamentary Commission of Inquiry was established in 1986 to inquire into allegations regarding the conduct of the late Justice Lionel Murphy and whether the conduct amounted to ‘proved misbehaviour’ within the meaning of s.72 of the Constitution. When the Inquiry ceased, its records were placed in the custody of the Presiding Officers with any decision about access to the records to be approved only by the Presiding Officers and, in relation to the bulk of the records (the ‘Class A’ records which related to the conduct of the late Justice Murphy), any decision about access not to be made for 30 years. In December 2016, the Presiding Officers authorised the release of Inquiry papers that related specifically to s.72, the ‘Class B’ records. On 22 June 2017, the Presiding Officers advised their respective Houses that they had agreed to the public release of the ‘Class A’ records and that they would be published after a number of processes had been completed. On 14 September the Speaker tabled the ‘Class A’ records of the Inquiry as well as the Class B records that had been available on the Parliament House website since December 2016. Both sets of records are now available on the Parliament House website.

### **Motion to condemn the Leader of the Opposition—energy prices**

On 14 September the Minister for the Environment and Energy, pursuant to notice, moved that the House condemn the Leader of the Opposition for ‘deliberately misleading the Australian public on power prices’. The Opposition moved an amendment that sought, in turn, to condemn the Prime Minister. After a short debate the amendment was defeated, and the motion carried on division. The issue of energy security and prices had been a feature of Question Time throughout the fortnight and was also the topic of two Matters of Public Importance discussions and a number of statements by private Members.

### **Interaction with the Senate**

On 5 September a message from the Senate was reported, returning the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, with a number of amendments made by the Senate. Some of these had been proposed by the Government and some by the Opposition. When the House considered the amendments a Minister moved that they be agreed to. This motion was carried on the voices and a message reporting the House’s decision was received in the Senate the following day, along with several other messages from the House. A very similar process was observed on 6 and 7 September when the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2017 was returned from the Senate with amendments.

The next issue of House Review will be published after the sitting period 16-26 October 2017.

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### **Further information**

- [Bills and legislation](#) for bills, explanatory memoranda, amendments, speeches and tracking facility
- [Live Minutes](#) for a real time summary of House decisions and proceedings
- [Votes and Proceedings](#) for all the decisions of the House, available the next business day
- [House of Representatives Practice](#), 6 ed, 2012, the most authoritative guide to House procedure
- House of Representatives [Infosheets](#) for concise discussions of House operations and context
- House of Representatives [Standing Orders](#), September 2016, the House’s rules of procedure
- [Procedural Digest](#) for a more technical discussion of recent House procedural events