

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON PROCEDURE

THE STANDING ORDERS GOVERNING:
GENERAL RULE FOR CONDUCT OF BUSINESS
PROCEDURES FOR THE OPENING OF PARLIAMENT

Report

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Terms of reference of the committee

To inquire into and report on the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures.

Members of the committee

Chairman: Hon. G G D Scholes, MP

Deputy Chairman: Mr P D Shack, MP

Members: Mr R F Edwards, MP
Mr E L Grace, MP
Mr C Hollis, MP
Mr A C Rocher, MP
Mr W E Truss, MP
Hon. F J Walker, QC, MP

Acting Secretary: Mr M Kiermaier



REPORT

Introduction

1. On 7 March 1989 the Standing Committee on Procedure resolved to undertake a comprehensive review of the standing orders of the House of Representatives. The first report in the review, which was tabled in November 1989, covered the standing orders governing the conduct of committees of the House. This is the second report in that review and covers standing orders 1 to 11A, dealing mainly with proceedings on the meeting of a new Parliament.
2. The Clerk of the House provided the committee with a revised set of standing orders relating to the committee's inquiry together with a commentary that presented options for change. The committee drew extensively on this material in its deliberations.

Scope of the report

3. As well as reviewing standing orders relating to the meeting of a new Parliament (standing orders 2 to 11A), the committee has also included standing order 1 in order to complete the review of both chapters I and II of the standing orders.
4. In reviewing standing order 2 (f), relating to the election of the Speaker, the committee considered a previous Procedure Committee report on this matter which was tabled in May 1989¹ and endorsed the major recommendation in that report.
5. The committee has not recommended any changes to standing orders 7, 9, 11 and 11A. It also noted that standing order 10 was omitted by the House on 9 December 1987 and that the House has found it convenient not to be constrained by the provisions of that standing order. Several of the proposed changes to the standing orders are minor, such as changes of expression and the use of gender neutral language.
6. The proposed standing orders are listed at the end of this report.

Standing order 1

7. Much of the practice and procedure of the House of Representatives has been drawn from that of the United Kingdom House of Commons but, inevitably, over the period since 1901 many of the initial standing orders have been omitted or altered to meet the needs of a House operating in a different political environment.

¹ The election of Speaker. *Fifth report, House of Representatives Standing Committee on Procedure*, PP 146 (1989).

8. Standing order 1 provides that, in all cases not provided for by the standing, sessional or other orders or practice of the House, resort shall be had to the practice of the House of Commons in force for the time being, which shall be followed as far as it can be applied.

9. The House of Representatives has developed its own practice in most situations and, therefore, recourse to the practice of the House of Commons is infrequent. Although the origins of the procedures of the House are recognisable, they are still very much the standing orders and practices of the Australian House of Representatives with marked differences from other legislatures.

10. The committee recognises that there is now well documented practice for the House, in particular the *House of Representatives Practice* text, and that regard is being given not only to the practices of the United Kingdom House of Commons but also to those of many other national parliamentary assemblies.

11. The committee recommends that standing order 1 be deleted and replaced with a more broadly based order which reflects the desire of the House to adapt the precedents and practices of other legislatures to its needs and which would not in any way diminish the ability of the Chair to draw on the practice of the House of Commons. The proposed standing order is -

In all cases not provided for in these orders, or by sessional or other orders or practice of the House, procedural questions shall be decided by the Speaker whose decisions may have regard to the practice of other Parliaments so far as it may be applied to the House.

12. This standing order also recognises the Speaker's procedural authority and powers. As stated in *House of Representatives Practice* -

If the standing orders are silent or do not place a limitation on the Speaker, the Speaker should assume the authority to make any ruling or decision which the Speaker thinks is appropriate, and leave it to the House to challenge that ruling or decision if it does not agree with it. This is how the practice of the House is developed.²

Current procedures for the opening of Parliament

13. The opening of a new Parliament is an event of major significance, both to the nation and to those elected to form it. It is appropriate that pertinent traditional and

² A.R. Browning (ed), *House of Representatives Practice*, 2nd ed, AGPS, Canberra, 1989, p.207.

ceremonial elements be incorporated into the opening procedures in recognition of this significance. While most of the current opening arrangements are sound and appropriate, some aspects could be changed or eliminated without detracting from the ceremony of the occasion and without contravening the constitutional requirements.

Procession to the Senate to hear Governor-General's Deputy

14. Under existing arrangements a Deputy appointed by the Governor-General directs an officer of the Senate (Black Rod) to summon Members to the Senate Chamber. When assembled -

- (a) the Deputy addresses Members and Senators advising that the Governor-General, not thinking fit to be present in person, has appointed him or her as the Governor-General's Deputy to declare open the Parliament;
- (b) the instrument of appointment is read by the Clerk of the Senate;
- (c) the Deputy then advises that -
 - (i) after Members have been sworn the Governor-General will declare in person the causes of the calling together of the Parliament;
 - (ii) as it is necessary for a Speaker to be first chosen, Members are to retire to the House to elect such a person, and
 - (iii) he or she will attend in the House for the purpose of administering oaths or affirmations.

When the Deputy retires from the Senate Chamber, Members of the House return to their Chamber in procession. The Deputy of the Governor-General enters the House of Representatives Chamber, the authority is read by the Clerk, the Returns to the Election Writs are laid on the Table and the swearing-in takes place.

15. There is no constitutional requirement for this procession to the Senate to hear the Deputy declare open the Parliament and the committee feels that it is not only time consuming but also a disruptive element in the opening proceedings. The committee has concluded that an alternative arrangement be introduced that would streamline the proceedings without detracting from the ceremony of the occasion.

16. The committee recommends that two Deputies be appointed by the Governor-General to open Parliament simultaneously in the House of Representatives and the Senate Chambers. The Deputy appointed to the House of Representatives could then proceed to administer oaths or affirmations to Members immediately the opening is completed.

17. Two Deputies have been appointed by the Governor-General on previous occasions. In 1941, 1943 and 1951 two were appointed, the Senior Deputy remaining in

the Senate Chamber to swear-in Senators and the second Deputy proceeding to the House to swear-in Members of the House.

18. Under the revised arrangements for the appointment of two Deputies, it is proposed to amend standing orders 5 and 6 to provide for one of the Deputies to attend in the House of Representatives.

Making of oaths or affirmations by Members

19. The administration of the oath or affirmation is governed by s.42 of the Constitution which provides that:

"42. Every senator and every member of the House of Representatives shall before taking his seat make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the form set forth in the schedule to this Constitution."

20. On the first day of a new Parliament oaths or affirmations are administered by the Deputy of the Governor-General after the Commission has been read by the Clerk, with Members making an oath or affirmation at the Table in groups. The process is not a lengthy one, being completed in a period of approximately 23 minutes at the commencement of the 36th Parliament. This ceremony is a fitting one and is probably regarded by Members and their families as one of the most significant features of the opening proceedings. The committee does not recommend any change to this process.

21. It would be possible for the Governor-General to authorise the Clerk of the House to administer the oaths or affirmations, as is the practice in the United Kingdom and Canada. However, under the changes to the arrangements suggested by the committee eliminating the initial procession to the Senate, there would be no saving of time as the Deputy appointed to open Parliament in the House would proceed immediately to swear-in Members.

Election of Speaker

22. Section 35 of the Constitution provides that, before proceeding to the despatch of any other business, the House shall choose a Member to be the Speaker of the House. Standing orders 2 and 12 make provision for the election of the Speaker at the opening of a Parliament. In the House of Representatives the Clerk acts as chair of the House during the election of the Speaker.

23. The procedure for the election of Speaker was reviewed by the Procedure Committee in its fifth report of the 35th Parliament presented to the House in May 1989. The major recommendation of the committee was that until a Speaker is elected the Chair be taken by the Member, not a Minister or Assistant Minister or a party leader or

deputy party leader or a party whip, who has served for the longest period as a Member of the House. The committee also recommended that that person should enjoy all those powers which are exercised by the Speaker during proceedings with the exception that, in general terms, the person would be entitled to a deliberative vote and not a casting vote.

24. Many questions on the role of the Clerk whilst presiding over the Chamber remain undetermined and doubts have been expressed about the extent of the Clerk's powers.³ The committee agrees with the previous Procedure Committee that this places the House in a potentially vulnerable situation and that this could be removed by allowing a Member to preside who would be vested with the powers of the Speaker to apply the standing orders. It would also give some recognition to that Member for service in the House and would leave the Clerk free to conduct any ballots or special ballots when necessary.

25. The committee endorses the recommendations of the previous Procedure Committee in respect of proposed standing orders 2 (f) and (g). If these standing orders are adopted, consequential amendments to standing order 12 relating to the election of the Speaker will be required.

Election of Chair of Committees

26. The standing orders do not specify when the election of the Chair of Committees should take place. Past practice has been that the Chair is elected later in the day of the opening proceedings, usually after the sitting has been suspended for the Speaker to be introduced to the Governor-General and after the Governor-General's Speech has been delivered. To give due deference to the office of Chair of Committees it would seem appropriate for the election for this position to be held immediately following that for the Speaker.

27. The committee does not think it necessary to define in the standing orders the time at which the election of a Chair of Committees should occur, however it recommends that the House adopt the practice of electing a Chair immediately after the election of the Speaker.

Presentation of Speaker to the Governor-General

28. Following the election of the Speaker it is the practice of the House for the Speaker, accompanied by Members, to go in procession to the Members' Hall to present himself or herself to the Governor-General and then to introduce Members and officers. After the Governor-General departs, Members return to the Chamber to await Black Rod, who delivers a message requesting that Members attend the Senate Chamber to hear the Governor-General's opening speech.

³ *House of Representatives Practice*, pp.201-2.

29. There is no constitutional requirement for the presentation of the Speaker to the Governor-General and the committee considers that the procession to the Members' Hall to meet the Governor-General at a separate ceremony prior to the delivery of the opening speech is unnecessary and disruptive to the flow of the opening proceedings.

30. The committee recommends that this practice be discontinued and that instead the Speaker advise the Governor-General of the House's choice of Speaker when attending at the place appointed by the Governor-General to hear the opening speech. The Governor-General could acknowledge this advice and then proceed to deliver the opening speech.

31. If both this procession and the initial procession to the Senate to hear the Deputy of the Governor-General open the Parliament were discontinued, Members would be required to move from their Chamber on only one occasion, namely, for the Governor-General's opening speech. This would simplify the opening proceedings and save time without detracting from the ceremony of the occasion.

Venue for Governor-General's Opening Speech

32. There is nothing in either the Constitution or the standing orders of the House which prescribes the location for the Governor-General's opening speech. Standing order 4 provides that Members attend to hear the Governor-General's speech "at the place appointed by the Governor-General" and the practice has been for Members to attend the Senate Chamber to hear the speech. The practice of the House has developed from the United Kingdom Parliament where the Sovereign opens Parliament in the House of Lords.

33. The committee notes that the formal opening of Parliament and the delivery of the opening speech, unless following a general election for both Houses, is generally a consequence of the dissolution of the House of Representatives only and the subsequent election of Members of the House of Representatives.

34. The House has previously considered the propriety of the opening speech being made in the Senate. On 24 March 1988 the House amended and then unanimously agreed to a motion moved by Mr Scholes that the opening of Parliament be carried out in the Members' Hall or its equivalent in the new Parliament House. The Governor-General was advised and the resolution was sent to the Senate for its concurrence. No action was taken by the Senate.

35. The committee agrees with the advice of the Clerk of the House that it is probably not a matter which can be settled by the House of Representatives alone and that the Senate and the Governor-General would need to be consulted.

Address in Reply

36. Standing order 8 provides for the appointment of a committee to prepare an Address in Reply to the Governor-General's speech after the Speaker has formally

reported the Speech to the House. The Address in Reply debate that follows provides valued opportunities for Members to speak on the widest range of matters and the tradition of the address in reply appears to be well accepted by Members. The committee does not recommend any change to this standing order.

37. The committee also does not propose any change to standing order 9, which provides for the Speaker and other Members to present the Address in Reply to the Governor-General once it has been agreed to by the House. Under present arrangements, the Address is presented at Government House by the Speaker, members of the Address in Reply committee, other Members of the House, the Clerks and the Serjeant-at-Arms. As the committee has recommended that the practice of the Speaker and Members being presented to the Governor-General following the Speaker's election be discontinued, it is appropriate that the current arrangements for presentation of the Address be retained as it provides the opportunity for Members to meet the Governor-General in an informal way.

38. The committee recommends the following standing orders to implement the recommendations in the report:

Proposed standing orders

1. In all cases not provided for in these orders, or by sessional or other orders or practice of the House, procedural questions shall be decided by the Speaker whose decisions may have regard to the practice of other Parliaments so far as it may be applied to the House.
2. On the first day of the meeting of a Parliament for the despatch of business after a dissolution, Members having met at the time and place appointed -
 - (a) The Deputy appointed by the Governor-General shall attend.
 - (b) The Clerk shall read:
 - (i) the Proclamation calling Parliament together,
 - (ii) the Commission appointing the Deputy to declare open the Parliament; and
 - (iii) the Commission authorising the Deputy to administer the oath or affirmation of allegiance to Members then present.
 - (c) The writ or copy-writ of election of each Member shall be laid on the Table by the Clerk, and the Members shall then be sworn, or make affirmation, as prescribed by the Constitution.
 - (d) The Deputy shall then withdraw.

- (e) The House shall then proceed to elect a Speaker.
 - (f) Until a Speaker is elected, the Chair shall be taken by that Member available, not being a Minister or Assistant Minister or a party leader or deputy party leader or a party whip, who has served for the longest period as a Member of the House.
 - (g) The Member presiding under the provisions of paragraph (f) shall enjoy all those powers which are exercised by the Speaker during proceedings except that he or she:
 - (i) shall be entitled to vote in the election of Speaker but shall not have a casting vote in the event of there being an equality of votes cast for two candidates; and
 - (ii) in all other cases shall have a deliberative vote and shall vote by stating to the House whether he or she is voting with the "Ayes" or "Noes".
 - (h) After the election of a Speaker, the House shall suspend its sitting until the time nominated by the Governor-General to declare the causes of the calling of the Parliament together at which time, having received a message from the Governor-General, the Speaker accompanied by Members of the House shall present him or her self as the choice of the House of Representatives before the Governor-General's speech is delivered.
3. On the first day of the meeting of Parliament for the despatch of business, not being next after a dissolution, Members of the House shall meet at the time and place appointed by the Governor-General's Proclamation, the Clerk shall read the Proclamation, the Speaker shall read Prayers and the House shall then await a message from the Governor-General.
4. When a message is received summoning Members to hear the Governor-General's speech, the Speaker and Members shall attend at the place appointed by the Governor-General.
5. When the reasons for calling Parliament together are announced by the Deputy appointed by the Governor-General, the same forms shall be observed by the House as when the Governor-General opens Parliament in person.
6. The Speaker and Members, having heard the speech of the Governor-General or the Governor-General's Deputy, shall return to the House.
7. Before the Governor-General's speech is reported some formal business shall be transacted.
8. The Speaker shall report to the House the Governor-General's speech. A committee then shall be appointed to prepare an Address in Reply.
9. The Address as agreed to by the House shall be presented to the Governor-General by the Speaker, accompanied by any Members who may think fit to attend, and the Speaker shall report to the House the Governor-General's reply to their Address.

11. On any occasion upon which Her Majesty the Queen intends to declare in person the causes of the calling together of the Parliament, references in Chapter II of these standing orders to the Governor-General shall, to the necessary extent, be read as references to Her Majesty.

11A. Where, in these standing orders, the Governor-General is referred to, the reference shall be read as extending and applying to the person for the time being administering the Government of the Commonwealth.

GORDON SCHOLES, MP
Chairman
4 June 1991

