

The Parliament of the Commonwealth of Australia
House of Representatives Standing Committee on Procedure

The Standing Orders Governing
the Speaker, Chairman, Deputy Chairmen
and Officers

Report

March 1992

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HOUSE OF REPRESENTATIVES

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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 on the review, which was tabled in November 1989, examined the standing orders governing the conduct of committees of the House. The second report, tabled in June 1991, covered standing orders 1 to 11A and dealt mainly with proceedings on the meeting of a new Parliament. This is the third report in the review and covers existing standing orders 12 to 24, relating to the Speaker, Chairman, Deputy Chairmen and officers of the House.

2. During its deliberations the committee considered a paper submitted by the Clerk of the House which provided a revised set of those standing orders relevant to this inquiry, together with a commentary presenting options for change.

Scope of the Report

3. In reviewing standing order 12, relating to the election of the Speaker, the committee considered the recommendations which had been made in two previous Procedure Committee reports.¹ With certain modifications, those recommendations are re-endorsed.

4. Several of the proposed changes to the standing orders are minor, chiefly involving the use of more modern and gender neutral language. The committee has also attempted to remove several ambiguities from the standing orders. The committee has not recommended any change to standing order 14.

5. The proposed standing orders are listed at the end of this report.

¹ House of Representatives Standing Committee on Procedure, 35th Parliament, Fifth Report, *The election of Speaker*, May 1989. (Parliamentary Paper No. 146 of 1989)

House of Representatives Standing Committee on Procedure, *The standing orders governing: General rule for conduct of business; and procedures for the opening of Parliament.*, June 1991. (Parliamentary Paper No. 167 of 1991)

SO 12 — Election of Speaker

6. Section 35 of the Australian Constitution provides that:

The House of Representatives shall, before proceeding to the dispatch of other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be Speaker.

Standing orders 2 and 12 make provision for the election of the Speaker at the opening of a Parliament.

7. Under the current standing orders, the Clerk of the House acts as Chair during the election of the Speaker. As stated in *House of Representatives Practice*:

The Clerk's duties under the standing orders during the election are to deal only with what may be described as the "mechanical" aspects.²

This view is re-iterated in *Procedure in the Canadian House of Commons* which comments:

There is no doubt....that the Clerk does not preside over the House. He is merely chairman of a meeting called to elect a Speaker.³

It is relevant to note that under normal circumstances there is no debate in the Canadian House of Commons during the election of the Speaker. The same cannot be said of the Australian situation. In the House of Representatives, it is not uncommon for debate to occur and points of order to be raised during the election of the Speaker.⁴

8. 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 in that report was that, for the duration of the election of the Speaker, the Chair be taken by the Member, not being a Minister or Assistant Minister or party leader or deputy party leader or party whip, who has the longest period of service as a Member of the House.

² Browning, A.R. (ed), *House of Representatives Practice*, 2nd ed., AGPS, Canberra, 1989, p. 201.

³ Dawson, W.F., *Procedure in the Canadian House of Commons*, University of Toronto Press, 1962, p.60.

⁴ For example see H.R. Debates. (29.8.89) p.471.

9. In that report, the committee intended that total cumulative service should be the determining factor which should determine which Member should preside during the election of Speaker. However, the committee now believes it would be appropriate to adopt criteria more in accordance with the customary definition of "Father" (or "Mother") of the House, namely the Member having the longest continuous service. Service in the Senate by the Member should not be considered as part of service, nor should previous time spent in the House preceding a break in service. The Member so designated is to take the Chair and assume all of the powers of the Speaker for the duration of the election process.

10. As noted above, the current practice is for the proceedings to be chaired by the Clerk during the election of the Speaker. While the Chair is seen as being obviously apolitical during this period, the committee agrees that it places the Clerk in a difficult position and places the House in a potentially vulnerable situation as there must be some doubt as to what powers and privileges the Clerk would possess during this process. Vesting the powers of the Speaker with a Member of the House would eliminate the potential vulnerability of the House and leave the Clerk free to conduct ballots or special ballots when necessary.

11. The provision in paragraph 12 (b) for escorting the Speaker to the Chair by the proposer and seconder has been omitted from the standing order. The committee believes that this procedure is a well established convention and need not be stated explicitly in the standing orders.

12. Paragraph 12 (f) is amended to provide for the closure of question procedure (the "gag"), currently only available to Ministers, to be available to all Members. The present requirement is particularly inappropriate at the opening of a Parliament, when the House is not advised officially of a new Ministry until after the Speaker's election.

13. The wording of paragraphs (h) and (j) has been revised in response to concerns that the word "shall" suggests Members are compelled to participate in the ballot to elect the Speaker. It is currently, and has been for a considerable length of time, the practice of the House that a Member is not obliged to participate in a ballot for the office of Speaker.

14. Paragraphs 12 (o) and (p) have been amended to provide for procedures relating to the delivery of the opening speech of the Governor-General after the dissolution or prorogation of Parliament and for the presentation to the Governor-General of the Speaker in a meeting place such

as the Great Hall or other similar location in the event of a casual vacancy in the office of the Speaker.

15. Consequent amendments would need to be made to standing order 2. It would then read:

- "(f) During the election of a Speaker, the Chair shall be taken by that Member present in the House, 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 current period continuously as a Member of the House.
- (g) The Member presiding under the provisions of paragraph (f) shall exercise all those powers which are vested in 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 only and shall vote by stating to the House whether he or she is voting with the 'Ayes' or 'Noes'."

SO 13 — Election of Chairman of Committees and Deputy Speaker

16. The committee has recommended several minor amendments to standing order 13, principally to relate it more closely to standing order 12 and emphasise that the Chairman of Committees and Deputy Speaker is to be elected in a similar way to the Speaker.

17. The committee recommends the insertion of the words "and Deputy Speaker" after "Chairman of Committees" wherever appropriate in standing order 13 to recognise further the importance and responsibility of the position. It is noted that a similar amendment was made to the Senate standing orders in 1981.

18. Paragraph 13 (f) is amended for consistency with paragraph (f) of standing order 12 and to bring it into line with the normal closure provisions

of standing order 93 and the motion to call on the business of the day under standing order 107.

SOs 14-19 — Absence of Speaker and Chairman

19. No change is recommended to standing order 14.

20. Under standing order 18, the Speaker nominates "not less than 4 Members" to act as Deputy Chairmen of Committees. Together with the provisions of SO 19, those Members may "take the Chair" when directed to do so by the Speaker or Chairman of Committees.

21. The committee believes that it would be appropriate for the Speaker to nominate one of those Members as "Senior Deputy Chair". It would be expected that the Member occupying this position would be the panel Member with the greatest experience in the Chair. Such a nomination, therefore, would be made without regard to political affiliations.

22. It is envisaged that the Senior Deputy Chair would perform the duties of Acting Chairman in the absence of the Chairman or when SO 14 is being applied. Whenever both the Speaker and Chairman are absent from the House the Senior Deputy Chair would take the Chair as Acting Speaker, and assume all the powers and duties of that office for the duration of the absence. This would enable the House to proceed with its business without the need for balloting procedures.

23. The proposed standing orders reflect this new position.

SOs 20-22 — Vacancy in office of Speaker

24. Standing order 20, relating to a vacancy occurring during a session, has been amended to relate closely with the procedure for the election of Speaker recommended in standing order 12. However, unlike the election process at the opening of a Parliament, it is recommended that the presiding Member during this election process should not be a candidate to fill the vacancy. As invariably the Chairman of Committees and Deputy Speaker is a candidate for the election, it would be appropriate for the role of Presiding Member to be taken by one of the Deputy Chairmen of Committees who is not a candidate.

25. Standing order 21, relating to a vacancy occurring during a recess, has also been amended to relate more closely to the proposals put forward in standing order 12.

26. Standing order 22 is amended to make explicit provision for the date and hour of the next meeting of the House to be fixed by the Chairman whenever the Speaker is unable to do so.

SOs 23-24 — Absence of, and vacancy in office of, Clerk

27. These standing order are logical and necessary. They have been amended to incorporate gender neutral language and recognise the senior procedural positions in the Department of the House of Representatives.

28. The committee recommends the following standing orders to implement the recommendations contained in this report:

Proposed standing orders

Election of Speaker

12. The election of Speaker shall be conducted in the following manner:

- (a) At the opening of Parliament, after the Members present have been sworn, or whenever the office of Speaker becomes vacant, a Member addressing the Member presiding shall move that some Member then present be chosen by the House as its Speaker. This motion shall be seconded. A Member when proposed and seconded shall inform the House whether nomination is accepted.**
- (b) The Member presiding shall then ask if there is any further proposal, and if there is not, shall say that the time for proposals has expired. No Member may then address the House or propose any other Member, and the Member presiding shall, without question put, declare the Member proposed and seconded to have been elected as Speaker, and the Member shall take the Chair of the House as Speaker.**

- (c) If more than one Member is proposed as Speaker, the Member presiding shall, after the second proposal and after each subsequent proposal (if any) is made, ask if there is any further proposal, and if there is not, the Member presiding shall say that the time for proposals has expired.
- (d) When the time for proposals has expired, debate may ensue, but it shall be relevant to the election.
- (e) A Member may not speak for more than 5 minutes.
- (f) At any time during the debate a motion may be moved by a Member rising in his or her place, and without notice, and whether any other Member is addressing the Chair or not — That the question be now put. The Member presiding shall then put the question relating to this motion without debate. In the event of the numbers being equal, the question shall be decided in the negative.
- (fa) Upon the carrying of the question "That the question be now put", or upon the cessation of the debate, the election shall be proceeded with as provided in this standing order.
- (g) Before the House proceeds to a ballot the bells shall be rung as in a division.
- (h) If only 2 Members are proposed as Speaker, each Member shall be provided with, and may deliver to the Clerk, a ballot paper in writing, containing the name of the candidate for whom that Member votes. The votes shall be counted by the Clerks at the Table; and the candidate who has the greater number of votes shall be declared to be the Speaker.
- (i) If more than 2 Members are proposed as Speaker, the votes shall be taken in the same manner. The Member who has the greatest number of votes shall be the Speaker, provided he or she has also a majority of the votes of the Members present; but if no candidate has this majority, the name of the candidate having the smallest number of votes shall be excluded from subsequent ballots, and a fresh ballot shall take place. This shall be done as often as necessary, until one candidate is declared to be elected as Speaker by a majority of Members present.
- (j) If at any ballot it is impossible by reason of the equality of votes to determine which name shall be excluded from subsequent ballots, a special ballot shall take place at which there shall be submitted only the names of those candidates

who have received equal votes. At a special ballot each Member shall be provided with a ballot-paper on which the Member shall, if he or she wishes to participate in the special ballot, write only the name of the candidate he or she wishes to retain. The candidate whose name appears upon the smaller or smallest number of ballot-papers shall then be excluded from subsequent ballots.

- (k) At any time after the result of the first ballot is declared, but before the commencement of the second or other subsequent ballot, a candidate may withdraw his or her name from the election which shall then proceed as if he or she had not been nominated.
- (l) If by reason of equality of votes a ballot or special ballot is rendered inconclusive, the Member presiding shall so declare, and unless by a withdrawal another ballot or (as the case may be) another special ballot is rendered unnecessary, the Member presiding shall cause the other ballot or special ballot to be taken. If after the counting of votes the equality continues the Member presiding shall declare this to the House. The sitting shall be suspended for 30 minutes and when the House re-assembles the votes shall be taken again, unless this is made unnecessary by a withdrawal.
- (m) Whenever at any stage a withdrawal leaves only one candidate remaining that Member shall, without further voting, be declared elected as Speaker.
- (n) On taking the Chair, the Member elected returns acknowledgments to the House for the honour conferred, and sits down in the Chair. Then the Mace shall be laid upon the Table.
- (o) Where the election of Speaker takes place at the first day of meeting following a dissolution or a prorogation, the Speaker shall present himself or herself to the Governor-General when the Speaker, together with Members of the House, attend at the place appointed to hear the Governor-General's speech.
- (p) Where the election of Speaker takes place at a time other than the first day of meeting following a dissolution or a prorogation:
 - (i) The Speaker having been congratulated, a Minister shall inform the House when the Governor-General will be pleased to receive the House for the purpose of presenting the Speaker to the Governor-

General, and the sitting of the House shall then be suspended until that time.

- (ii) Before proceeding to any business, the Speaker, together with Members of the House, shall present himself or herself to the Governor-General; and, on resuming the Chair, shall report the presentation to the Governor-General.

Election of Chairman and Deputy Speaker

13. At the commencement of each Parliament, or whenever the office becomes vacant, a Member shall be elected by the House to be the Chairman of Committees and Deputy Speaker to take the Chair of all committees of the whole.

The Chairman shall be elected in the following manner:

- (a) A motion shall be moved, without notice, that a Member be chosen as Chairman of Committees and Deputy Speaker of the House. This motion shall be seconded. A Member when proposed and seconded shall inform the House orally or in writing whether nomination is accepted.
- (b) The Speaker shall then ask if there is any further proposal, and if there is not, shall say that the time for proposals has expired. No Member may then address the House or move any motion for the election of a Member as Chairman, and the Speaker shall, without question put, declare the Member named in the motion to have been elected Chairman of Committees and Deputy Speaker.
- (c) If more than one Member is proposed as Chairman, the Speaker shall, after the second proposal, and after each subsequent proposal (if any), ask if there is any further proposal, and if there is not, shall say that the time for proposals has expired.
- (d) When the time for proposals has expired, debate may ensue, but it shall be relevant to the election.
- (e) A Member may not speak for more than 5 minutes.

- (f) At any time during the debate, a motion without notice may be moved by a Member rising in his or her place, and whether any Member is addressing the Chair or not — That the question be now put, and the question relating to this motion shall be put forthwith and decided without debate.
- (fa) Upon the carrying of the question "That the question be now put", or upon the cessation of debate, the election shall be proceeded with as provided in this standing order.
- (g) Before the House proceeds to a ballot the bells shall be rung as in a division.
- (h) If only 2 Members are proposed as Chairman, each Member, other than the Speaker, shall be provided with, and may deliver to the Clerk, a ballot-paper in writing, containing the name of the candidate for whom the Member votes. The votes shall be counted by the Clerks at the Table; and the Member who has the greater number of votes shall be the Chairman of Committees and Deputy Speaker.
- (i) If more than 2 Members are proposed as Chairman, the votes shall be taken in the same manner. The Member who has the greatest number of votes shall be the Chairman of Committees and Deputy Speaker, provided he or she has also a majority of the votes of the Members present; but if no candidate has this majority, the name of the candidate having the smallest number of votes shall be excluded from subsequent ballots, and a fresh ballot shall take place. This shall be done as often as necessary until one candidate is declared to be Chairman of Committees and Deputy Speaker by a majority of Members present.
- (j) If, after any ballot, other than a ballot which takes place in accordance with paragraph (k) in which the names of only 2 Members are submitted, there is an equality of votes, the Speaker shall give his or her casting vote and the Member for whom the casting vote is given shall be the Chairman of Committees and Deputy Speaker.

- (k) If, after any ballot in which the names of more than 2 Members are submitted, it is impossible by reason of an equality of votes to determine which name shall be excluded from subsequent ballots:
- (i) if there is an equality of votes for 2 Members, the Speaker shall give his or her casting vote and the name of the Member for whom the casting vote is not given shall be excluded from subsequent ballots; and
 - (ii) if there is an equality of votes for more than 2 Members, a special ballot shall take place at which there shall be submitted only the names of those Members who have received equal votes. At a special ballot each Member shall be provided with a ballot-paper on which the Member shall, if he or she wishes to participate in the special ballot, write only the name of the Member to be retained. The name of the Member who receives the smaller or smallest number of votes shall be excluded from subsequent ballots. If, by reason of a continued equality of votes, the special ballot is inconclusive, then, unless a name is withdrawn, the sitting shall be suspended for 30 minutes. When the sitting is resumed, the votes shall be taken again, unless this is made unnecessary by a withdrawal.
- (l) At any time after the result of the first ballot is declared, but before the commencement of any subsequent ballot, a Member whose name was submitted in the first ballot may withdraw and all further proceedings shall take place as if a motion for his or her election as Chairman had not been moved.
- (m) Whenever a withdrawal leaves only one candidate remaining, that Member shall, without question put, be declared elected as Chairman of Committees and Deputy Speaker.

Absence of Speaker and Chairman

14. Whenever the House is informed by the Clerk of the absence of the Speaker, the Chairman of Committees and Deputy Speaker as Acting Speaker shall, subject to any other order of the House, perform the duties of the Speaker during that absence.
15. Whenever the House is informed by the Clerk of the absence of both the Speaker and the Chairman of Committees and Deputy Speaker, the Senior Deputy Chair appointed by the Speaker pursuant to standing order 18 may perform the duties of the Speaker during that absence.
16. If the House is informed by the Speaker of the continued absence of the Chairman of Committees and Deputy Speaker, or by the Acting Speaker of the continued absence of the Speaker, the Senior Deputy Chair appointed by the Speaker pursuant to standing order 18 shall be Acting Chairman of Committees during the continued absence. The Acting Chairman of Committees shall take the Chair as Deputy Speaker whenever requested to do so by the Speaker, or by the Chairman of Committees as Acting Speaker, as appropriate, during a sitting of the House.
17. The Chairman of Committees shall take the Chair as Deputy Speaker whenever requested to do so by the Speaker during a sitting of the House.
18. The Speaker shall nominate at the commencement of every Parliament not less than four Members, one of whom shall be nominated Senior Deputy Chair, and any one of whom shall act as Deputy Chairman of Committees when requested so to do by the Chairman of Committees. The Speaker may, at any time during the Parliament, nominate additional Members. The Speaker may revoke the nomination of any Member.
19. Any of the Deputy Chairmen may be called on to take the Chair as Deputy Speaker by the Speaker or the Chairman of Committees.

Vacancy in office of Speaker

20. When a vacancy has occurred in the office of Speaker during a session, the Clerk shall report the same to the House at its next sitting, and the House shall either forthwith, or at its next

sitting, proceed to the election of a new Speaker in the manner provided in standing order 12: Provided that the presiding Member is not a candidate for the office of Speaker.

21. When a vacancy has occurred in the office of Speaker during a recess, the Clerk shall, on the opening of the next session, report this to the House immediately after reading to the House the Governor-General's Proclamation appointing the time for the Parliament to assemble, and the House shall forthwith proceed to the election of a new Speaker in the same manner as that on the first day of meeting of Parliament for the dispatch of business after a dissolution.
22. When a vacancy has occurred in the office of Speaker, or when the Speaker is unavailable, during any adjournment following which the date and hour of the next meeting is to be, or may be, fixed by the Speaker, the date and hour of the next meeting may be fixed by the Chairman of Committees and Deputy Speaker.

Absence of, and vacancy in office of, Clerk

23. In case of unavoidable absence of the Clerk, the Clerk's duties shall be performed by the Deputy Clerk or, should the latter be absent, by a Clerk Assistant.
24. During any vacancy in the office of Clerk all powers, functions and duties of the Clerk shall be exercised and performed by the Deputy Clerk. Should the Deputy Clerk also be absent, or the office of Deputy Clerk also be vacant, the Clerk's duties shall be performed by a Clerk Assistant.

GORDON SCHOLES, MP
Chairman
31 March 1992

