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Prayers in the Senate: abolition, retention or change?

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Abbreviations

AD	Australian Democrats
AG	Australian Greens
ALP	Australian Labor Party
Anti-Soc	Anti-Socialist Party
FT	Free Trade
Ind	Independent
Lib	Liberal Party
LP	Labor Party
Nat	Nationalist Party
NLP	National Labour Party
NPA	Nationals Party of Australia (‘The Nationals’)
Prot	Protectionist
SO	Standing Order
UAP	United Australia Party
UK	United Kingdom

Introduction

> Almighty God, we humbly beseech Thee to vouchsafe Thy special blessing upon this Parliament, and that Thou wouldst be pleased to direct and prosper the work of Thy servants to the advancement of Thy glory, and to the true welfare of the people of Australia.
>
> Our Father, which art in Heaven, Hallowed be Thy name. Thy kingdom come. Thy will be done in earth, as it is in Heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive them that trespass against us. And lead us not into temptation; but deliver us from evil: For thine is the kingdom, and the power, and the glory, for ever and ever. Amen.
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> *Standing orders and other orders of the Senate*, 11 February 2014, SO 50.

> I was trying to work out whether the commencement of the day with the Lord's Prayer was followed by legislation or by tradition. I know the answer to that. It is this: Some time last century a Prime Minister of Great Britain took his granddaughter into the House of Commons. Afterwards, she said, 'Grandfather, why does the Speaker start the day with the Lord's Prayer?'. His response was, 'Well, my dear, the Speaker comes to the Parliament in procession, enters the chamber, takes one look at the assembled politicians and prays for the country'. I do hope sincerely for the good of this country that that tradition continues in the new Parliament House.
>
> Senator Brian Harradine[1]

At the beginning of every sitting day, the President of the Senate commences proceedings by taking the chair and reading a parliamentary prayer and the Lord's Prayer, reproduced above.[2] This practice is similarly reflected in the House of Representatives and many other—but not all—Australian state and territory legislatures. Nevertheless, the practice has also been consistently criticised from the time the Senate adopted daily prayers in 1901 and numerous unsuccessful attempts have been made to amend or abolish them from the standing orders.

This research paper documents the debate surrounding prayers in the Senate and its potential trajectory. It presents the historical background to their adoption, highlights attempts to abolish or amend them and outlines a longstanding—but recently renewed—debate over their constitutionality. A brief comparative analysis of practices in other domestic and international legislatures is undertaken in order to

1 Commonwealth of Australia, Senate, *Parliamentary Debates*, 2 June 1988, p. 3547.

2 The President also reads an acknowledgement of country, which was incorporated into SO 50 of the standing orders in 2010: 'I acknowledge the Ngunnawal and Ngambri peoples who are the traditional custodians of the Canberra area and pay respect to the elders, past and present, of all Australia's Indigenous peoples'.

contextualise the debate over whether the Senate should abolish, retain or change the opening prayers. The aim of this paper is not to rehash or critique the arguments for or against the practice.[3] Rather, this paper will inform debate by clarifying historic misconceptions and modern practices, as well as highlighting models for change.

Historical background

1897–98: Prayer at the Australasian Federal Conventions

As delegates of the Australian colonies gathered at the Australasian Federal Conventions in 1897–98 to finalise drafting of the Australian Constitution, they did so amid a fierce and coordinated campaign by the Christian churches to gather signatures petitioning the 'recognition of God' in the Constitution and for the daily sessions of both houses of the future federal parliament to be opened with prayer.[4] Despite this, the latter issue briefly arose only twice and was never substantively debated. In the first instance, on 22 April 1897, delegates in Adelaide were debating the wording of the preamble and a proposal that the opening lines of the Constitution should recognise the 'supremacy of God' and invoke 'His blessing' by inserting the words 'invoking Divine Providence' into the preamble.[5] Sir Adye Douglas of Tasmania ridiculed the proposal, quipping that '[w]e might as well say that all business here or elsewhere should be commenced with prayer'. He remarked that the practice of opening prayers in the UK House of Commons was a 'mere farce' and that '[n]othing does more harm to religion than to make an outward show of it'.[6] Other delegates did not, on this occasion, engage with Douglas' remarks on the specific issue of prayers and the proposal debated was negatived.[7]

On 2 March 1898 in Melbourne, delegates once again debated the wording of the preamble and a new proposal to incorporate the words, 'humbly relying upon the

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3 See generally, Gonzalo Villalta Puig & Steven Tudor, 'To the advancement of thy glory?: A constitutional and policy critique of parliamentary prayers', *Public Law Review*, vol. 20, no. 1, 2009, pp. 68–74 (outlining the core arguments 'for' and 'against' the practice).

4 See generally Richard Ely, *Unto God and Caesar: Religious Issues in the Emerging Commonwealth 1891–1906*, Studies in Australian Federation, Melbourne University Press, Melbourne, 1976, pp. 21–88. Ely notes that the political persuasiveness of this campaign could have been weakened by the fact that politicians may have been aware that signatures were typically gathered by ministers during or at the close of worship, when potential signatories 'would be least inclined to demur at signing'. Further, it is notable that there were also well-supported and coordinated counter-petitions, urging that religion and the state should be kept entirely separate.

5 See *Official Report of the National Australasian Convention Debates*, Adelaide, 22 April 1897, pp. 1183–9 (online version). The proposal was initiated by Patrick Glynn of South Australia in response to 'petitions of widespread desire that the spirit of the proposal should be accepted', ibid, p. 1184.

6 Ibid, p. 1186.

7 Ibid, p. 1189.

blessing of Almighty God'.[8] Douglas returned to his criticism of the daily prayers in the House of Commons, suggesting that 'nobody attends the House until the prayer is over', before asking '[d]o we want to introduce that system here?' He noted that while 'some legislative assemblies in Australia' followed the practice, Tasmania had abandoned it after finding 'it to be a perfect piece of mockery'.[9] Delegates from Victoria retorted that the President of the Legislative Council read the Lord's Prayer and that 'nearly all members know it now'.[10] While the proposal to amend the preamble passed,[11] the prayers question remained unsettled. For this reason, the leading churches shifted their focus to campaigning for a religious ceremony at the Commonwealth inauguration and to secure daily prayers in the future federal parliament.[12]

1901–03: Introduction of prayers into the standing orders of the Senate

Having successfully campaigned for the integration of a religious element in the inauguration ceremony on 1 January 1901, 'it became a common ploy during the following months for clerics advocating prayers at the opening of parliament, and in the parliamentary sessions, to cite the religious element in the inauguration ceremony as legally relevant precedent'.[13] Richard Ely observes that '[t]he legal complexity inherent in a federal system made such errors of interpretation not only convenient, but in some degree natural'.[14] Unlike previous years, the campaign for prayers now mostly involved 'discreet negotiation' and the issue 'scarcely entered the March election campaign'.[15]

In March 1901, in the lead-up to the opening of the parliament, Prime Minister Edmund Barton wrote to the presiding officers of the state legislatures (excluding New South Wales) and the Canadian House of Commons, enquiring whether it was their practice to open daily sessions with prayers. The replies received revealed a

8 See *Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 2 March 1898, pp. 1732–41 (online version). The proposal was once again initiated by Patrick Glynn of South Australia, ibid, p. 1732.

9 Ibid, p. 1739.

10 Ibid, p. 1739 (Alfred Deakin and Sir Alexander James Peacock).

11 Ibid, p. 1741.

12 See Ely, above note 4, pp. 111–28.

13 Ibid, pp. 116–17. Ely notes that '[r]esponsibility for arranging the ceremony, and its religious and clerical content, was divided—although not in a completely clear way—between the New South Wales government and the British government's representative, Lord Hopetoun'.

14 Ibid, p. 117.

15 Ibid, p. 119.

fairly even split on the issue.[16] Edmund Barton's papers on the matter also include correspondence from various Christian churches and representatives urging that the federal parliament open daily with prayer. Further, he received a letter from the Clerk of the House of Representatives outlining that the following bodies had made submissions to the Standing Orders Committee requesting the same: the Council of Churches, Victoria; Bible Christian Endeavour Society, Echuca; Australasian Wesleyan Methodist Church; Presbyterian Church of Victoria; and the General Synod of the Church of England in Australia.[17] So while the practice was hardly uniform across the Australian legislatures, there was a great deal of pressure on federal parliamentarians to adopt the practice at the opening of parliament and for daily sessions.

When the Senate held its first meeting on 9 May 1901, the Governor-General read a number of prayers.[18] Thereafter, daily proceedings commenced without them,[19] though their absence quickly became a matter of high priority, mostly due to pressure from the churches and public.[20] Ely suggests that '[t]he prayers offered at the opening of parliament, unlike those offered at the 1 January ceremony, provided a genuinely compelling precedent. Virtually, a principle already had been conceded'.[21] He further

16 The Legislative Assembly of Victoria and the legislatures of South Australia and Tasmania did not open with prayers at the time. The House of Commons of Canada, the Legislative Council of Victoria, and the legislatures in Queensland and Western Australia opened with prayer. See National Archives of Australia: Department of External Affairs, A6, correspondence files, annual single number series, 1901; 1901/617, papers relating to the proposal to open parliament with prayer, 1901. Daily prayers were not read in the New South Wales legislatures. See Ely, above note 4, p. 122.

17 Ibid.

18 *Journals of the Senate*, 9 May 1901, p. 1; Commonwealth of Australia, Senate, *Parliamentary Debates*, 9 May 1901, p. 5.

19 The Senate initially operated by convention, without any official standing orders. A draft set of standing orders were tabled for consideration on 10 May 1901, with a revised set tabled on 23 May 1901. On 5 June 1901, the Senate considered whether to temporarily adopt the revised draft orders, but instead decided to appoint a committee to determine whether standing orders from one of the states would be most appropriate to adopt in the interim. The following day the committee reported and the Senate temporarily adopted the orders of the House of Assembly of South Australia. These orders had been adopted at the Australian Federal Convention of 1897–98 and as such were familiar to the President of the Senate and the greatest number of senators, many of whom had attended the conventions as delegates. The South Australian standing orders and the revised draft standing orders did not instruct that daily proceedings should open with a prayer. Notably, the words 'and read the Lord's Prayer' were crossed out of an instruction in the revised draft standing orders (SO 15) that, at the opening of Parliament, '[t]he President shall take the Chair and read the Lord's Prayer'.

20 For example, on 20 May 1901, *The Advertiser* (p. 6) reported that: 'Members of both Houses are being inundated with letters from constituents urging them to support the proposal to have the proceedings of the Senate and the House of Representatives opened each day with the Lord's Prayer'. There were also reports that 'the council of churches' had 'issued circulars to ministers and members' urging the same. See 'Prayer in the Commonwealth Parliament', *The Register*, 22 May 1901, p. 4. See also Ely, above note 4, pp. 121–2.

21 Ibid, p. 121.

notes that cabinet 'probably was in some measure internally divided' on the issue and that '[t]he Victorian Council of Churches therefore approached two sympathetic Presbyterian parliamentarians, W. Knox in the House of Representatives, and J.T. Walker in the Senate, requesting them to raise the matter in parliament'.[22]

The political prominence of the prayers issue in 1901 is highlighted by the fact that the very first petition presented to the Senate went to the matter. On the third day of the first session of the Senate, Senator James Walker (NSW: FT, Anti-Soc) dutifully presented a petition from the General Assembly of the Presbyterian Church of New South Wales 'in favour of opening the proceedings of the Senate with daily prayer'.[23] On 14 June 1901, Senator Walker presented another petition, this time 'from a public meeting of members of the Christian Endeavour movement, in the town of Marrickville, New South Wales, in favour of the proceedings of the Senate being opened with prayer'.[24] He subsequently moved 'an instruction to the Standing Orders Committee to frame a standing order providing that the proceedings of this Senate be opened daily with prayer'.[25] The President also informed the Senate that he had received communications from a range of individuals and representatives of various churches, all asking that the motion be agreed to.[26] It was clear that the campaign for prayers in the parliament was working effectively.

Senator Walker, speaking in support of his motion, recalled that the Governor-General had opened the parliament with a prayer and also highlighted that 'the Legislatures of the United Kingdom, the United States of America, the Dominion of Canada, the State of Queensland, and the [Victorian] Legislative Council … are opened with prayer'. He cited recognition of the Almighty in the preamble to the Constitution and the national anthem as further support for his proposition that the introduction of a prayer would follow 'a national custom'. Further, he suggested that an opening prayer would 'do something to increase the spirit of reverence in this rising community', noting that the absence of 'reverence on the part of young people' was 'frequently very noticeable'.[27]

While the motion was ultimately passed,[28] the preceding debate foreshadowed the nature of contemporary debates on the issue. Senator James Drake (Qld: Prot), who

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22 Ibid, p. 122.

23 *Journals of the Senate*, 21 May 1901, p. 9; Commonwealth of Australia, Senate, *Parliamentary Debates*, 21 May 1901, p. 34. See also Petition (no. 1) presented by Senator Walker from General Assembly of Presbyterian Church of New South Wales: in favour of opening proceedings of Senate with daily prayer, Tabled Senate Paper no. C/1901.

24 *Journals of the Senate*, 14 June 1901, p. 35; Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, p. 1134. The petition was signed by Reverend W.R. Poole, chairman of the public meeting in Marrickville, New South Wales. See Petition (no. 4) presented by Senator Walker from a citizen: opening with a prayer, Tabled Senate Paper no. 7/1901.

25 *Journals of the Senate*, 14 June 1901, p. 35.

26 Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, p. 1136.

27 Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, p. 1137.

28 *Journals of the Senate*, 14 June 1901, p. 35.

seconded the motion, thought the practice would 'perhaps induce an attitude of mind on the part of members of the Legislature that is favourable to the despatch of the business which they have to perform'. However, there was significant disagreement as to whether the practice would be an inappropriate 'parade of religion' or merely a simple 'recognition of divine power and a divine authority' and a request for 'Divine guidance'. Senators from Queensland and Victoria suggested that the practice would be consistent with custom in the legislatures of the states they represented. Senator Sir Josiah Symon (SA: FT, Anti-Soc) commended the motion for acceptance but briefly observed that the same course was prohibited in the schools of the states. Elaborating on this point, Senator Gregor McGregor (SA: LP) drew attention to section 116 of the Constitution, which prevents the Commonwealth from legislating in respect of religion. Senator Sir Frederick Sargood (Vic: FT) rebutted the point, arguing that a standing order was not a 'law' and thus outside the application of section 116. Finally, Senator Sir George Pearce (WA: LP, NLP, Nat, UAP) suggested that the prayer take the form of the Lord's Prayer, objecting to a proposal that a special prayer also be incorporated. He suggested that 'the principles and precepts' in the Lord's Prayer were 'worthy of the concurrence of honorable senators', 'even if uttered by atheists'.[29]

On 26 June 1901, without any further substantive debate on the issue, the Senate adopted the recommendation of an interim report of the Standing Orders Committee that the Senate adopt the same prayers read in the House of Representatives.[30] This report did not elaborate on the reasoning or justification for the recommendation made, nor did it actually reproduce the text of the prayers. The *Journals of the Senate* record that, the following day, the President of the Senate commenced the session by reading prayers,[31] and the practice has continued since. A brief background on how the House of Representatives settled on the exact form of the prayers adopted is outlined further below.

On 19 August 1903, the Senate adopted the *Second report of the Standing Orders Committee on the proposed standing orders*, finalising protracted negotiations over the final form of the standing orders, and directed that the agreed form of the standing orders commence operation on 1 September 1903.[32] SO 53, as it then was, thus formalised the prayers previously adopted by the Senate. The form of the prayer was

29 Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, pp. 1137–40.

30 Commonwealth of Australia, Senate, *Second Report from the Standing Orders Committee*, Parl. Paper no. L.1/1901; *Journals of the Senate*, 26 June 1901, p. 49; Commonwealth of Australia, Senate, *Parliamentary Debates*, 26 June 1901, pp. 1568–78.

31 *Journals of the Senate*, 27 June 1901, p. 53.

32 *Journals of the Senate*, 19 August 1903, p. 134. See also Commonwealth of Australia, Senate, *Second Report of the Standing Orders Committee on the Proposed Standing Orders*, Parl. Paper no. S.3/1903. The text of the prayers read in the Senate today is identical to SO 50 proposed by the Standing Orders Committee in its draft orders presented to the Senate on 9 October 1901. See Commonwealth of Australia, Senate, *Third Report of the Standing Orders Committee*, Parl. Paper No L.7/1901.

similar to that in the House of Representatives, except that the preamble to the Lord's Prayer was slightly different.[33]

In the media, responses to the decision to incorporate prayers into daily sessions of the federal parliament were varied. Any criticisms, however, tended to focus on the wording of the prayer, as opposed to the principle of its incorporation, and were 'isolated, or received little publicity'.[34]

Proposals to abolish or change prayers in the Senate

Since the introduction of prayers in the federal parliament in 1901, there have been a number of proposals in the Senate to amend or abolish them, and yet none have been successful. It should be noted that, in November 1989, old SO 53 was renumbered as SO 50 and a minor rephrasing of the lead-in was made as part of a major revision of the standing orders.[35] SO 50 was substantively amended on 26 October 2010 to incorporate an 'acknowledgement of country',[36] however the prayers have remained in the same form since they were formally incorporated into the standing orders in 1903.

Throughout the 1960s–70s there were a number of occasions on which senators sought to 'modernise' the language of the Lord's Prayer or, alternatively, to ensure it was retained in its traditional form. In the first instance, this was likely in response to reports on 15 September 1966 that a commission appointed by the Church of England in Australia had—quite controversially—recommended the modernisation of the language of the Lord's Prayer.[37] On the same day, Senator James Ormonde (NSW: ALP) sought the reassurance of the Leader of the Government in the Senate that the proposed revised version of the Lord's Prayer would not replace the traditional form

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33 The form of the preamble to the Lord's Prayer adopted by the House of Representatives was as follows:

> Almighty God, we humbly beseech Thee at this time to vouchsafe Thy special blessing upon this Parliament, and that thou wouldst be pleased to direct and prosper all our consultations to the advancement of Thy glory, and to the true welfare of the people of Australia.
>
> (*Votes and Proceedings of the House of Representatives*, 13 June 1901, p. 59)

The preamble was modernised by the Senate Standing Orders Committee in September 1901 to read:

> Almighty God, we humbly beseech Thee to vouchsafe Thy blessing upon this Parliament. Direct and prosper our deliberations to the advancement of Thy glory, and the true welfare of the people of Australia.
>
> (Commonwealth of Australia, Senate, *Third Report of the Standing Orders Committee*, Parl. Paper no. L.7/1901, draft SO 50)

34 Ely, above note 4, p. 124.

35 *Journals of the Senate*, 21 November 1989, p. 2219; Rosemary Laing (ed.), *Annotated Standing Orders of the Australian Senate*, Department of the Senate, Canberra, 2009, p. 188.

36 *Journals of the Senate*, 26 October 2010, p. 203. For the text of the acknowledgement of country, see above note 2.

37 'ACT clergy favour new Lord's Prayer', *The Daily Telegraph*, 15 September 1966, p. 1.

until the Senate had the opportunity to discuss the proposal.[38] Only a few years later, when the revised version of the Lord's Prayer had presumably received greater acceptance, the Deputy President was asked whether he considered that 'by using the old conservative wording in the daily prayer in the Senate we mar our image as with it men and women who are dedicated to the task of legislating for the young and the old in an up-to-date manner?'[39] The relevant responders on both occasions articulated no position as to the matter and merely stated that it was the responsibility of the Senate to determine the wording.

On 27 September 1979, Senator John Watson (Tas: Lib) requested that the Deputy President give consideration to 'widening' the content of the opening prayer 'to acknowledge Australia's obligations within the world community and, secondly, to use modern English'.[40] The Deputy President agreed to consider the question, noting 'that the prayers that are in use, and have been in use in this place for a long time, are basically regarded as suitable to the occasion'.[41] It does not appear that the Deputy President formally responded in the Senate after this time.

The first significant attempt to actually modify the prayers occurred on 30 October 1997, when Senator Bob Brown (Tas: AG) successfully moved a motion to refer the following amendments to SO 50 to the Procedure Committee for inquiry and report, following consultation with all senators:

> (a) omit all words after "following", substitute "invitation to prayer or reflection:
>
> Senators, let us in silence pray or reflect upon our responsibilities to the people of Australia, to the States and Territories which we represent, and to all future generations"; and
>
> (b) omit the heading to standing order 50, substitute, "Prayer or reflection".[42]

This 'invitation to prayer or reflection' appears to be based on the opening statement read at the start of each sitting day in the Legislative Assembly of the Australian Capital Territory, which was adopted in 1995.[43]

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38 Commonwealth of Australia, Senate, *Parliamentary Debates*, 15 September 1966, p. 407. See also Commonwealth of Australia, Senate, *Parliamentary Debates*, 22 September 1966, pp. 620–1.

39 Commonwealth of Australia, Senate, *Parliamentary Debates*, 18 September 1969, p. 1008 (Martin Cameron).

40 Commonwealth of Australia, Senate, *Parliamentary Debates*, 27 September 1979, p. 1027.

41 Ibid.

42 *Journals of the Senate*, 30 October 1997, p. 2773.

43 See Australian Capital Territory, Legislative Assembly, *Standing Orders and Continuing Resolutions of the Assembly*, April 2014, SO 30. This standing order has remained unamended since it was introduced in 1995. See further below, 'Australian Capital Territory'.

The *Second report of 1997 of the Procedure Committee*, tabled on 26 November 1997, concluded that:

> It is clear that many senators who join in the prayer regard its retention as important, but among those who do not join in the prayer there does not appear to be a strong view that its proposed abolition is a significant question which should occupy the time of the Senate.[44]

During a short debate on a motion to take note of the Procedure Committee's report, Senator Brian Harradine (Tas: Ind) declared that '[t]he acknowledgement of the Divine is deeply embedded in [Australian] culture' and foreshadowed, but did not pursue, some minor amendments aimed at modernising the language of the prayer.[45] Senator Brown, conceding it would never be the 'biggest issue' on the Senate's agenda, argued that it had 'attracted some public attention'. He noted 'criticism from Catholic bishops' but suggested there had 'been quite strong and positive feedback' to his proposal and that alternatives had been presented to him 'by other clergy and by members of the interested public'.[46] The following day, Senator Brown's motion to amend SO 50 in the above form was subsequently moved and negatived without division or further debate.[47]

Senator Brown's motion set off a debate in the media about the issue.[48] Leader of the Opposition in the Senate, Senator John Faulkner (NSW: ALP), spoke on behalf of the Australian Labor Party in noting that the practice was 'not compulsory' and that it should continue because the 'prayers give comfort and inspiration to some senators, and many in the community'.[49] Senator Andrew Murray (WA: AD) suggested a 'rotating arrangement', incorporating prayers from other faiths as well as days without prayer.[50] Senator Brown responded that this model was worth considering but that he was opposed to 'introducing religious figures into the Senate'.[51]

Less than a decade later, the issue briefly resurfaced. On 1 March 2006, Senator Lyn Allison (Vic: AD) moved that the Senate 'calls on the Government, if it is serious about a secular state, to take steps to [*inter alia*] … abolish official parliamentary prayers'. The motion was overwhelming negatived, only receiving the support of

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44 *Journals of the Senate*, 26 November 1997, pp. 2991–2; Commonwealth of Australia, Senate, Procedure Committee, *Second Report of 1997*, Tabled Senate Paper no. 10377/1996–98, 1997, p. 5.

45 Commonwealth of Australia, Senate, *Parliamentary Debates*, 26 November 1997, pp. 9517–9.

46 Ibid, pp. 9519–20.

47 *Journals of the Senate*, 27 November 1997, p. 3048.

48 See, e.g., the exchange between John Fleming and Richard Randerson, 'Pity the politician who doesn't have a prayer: Monday viewpoint', *Sydney Morning Herald*, 24 November 1997, p. 21.

49 'ALP not without a prayer', *Illawarra Mercury*, 21 November 1997, p. 10.

50 Jodie Brough, 'Senators in need of guidance over the role of daily prayer', *Sydney Morning Herald*, 12 November 1997, p. 3.

51 Ibid.

seven senators from the Australian Democrats and the Australian Greens.[52] On this occasion there was no debate.[53] Dismissing the move, Prime Minister John Howard argued that it was 'an absurd proposition which shows a total misunderstanding of the nature of the separation of church and state'.[54]

The most recent attempt to change the prayers occurred on 13 February 2014, when Senator Richard Di Natale (Vic: AG) moved that the following matter be referred to the Procedure Committee for inquiry and report:

> That consideration be given to amending section 50 of the standing orders to replace the prayer with the following: 'Senators, let us in silence pray or reflect upon our responsibilities to the people of Australia, to the states and territories which we represent, and to all future generations.'[55]

The proposed wording was identical to that previously proposed by Senator Brown in 1997 and the wording adopted by the Legislative Assembly of the Australian Capital Territory in 1995. The question was once again negatived, with Senator Claire Moore (Qld: ALP) indicating that the Australian Labour Party did not support the motion because the Procedure Committee was currently undertaking a review 'of all the procedures'.[56] Senator Di Natale responded that Senator Rachel Siewert (WA: AG) would raise the matter with the Procedure Committee, on behalf of the Australian Greens, for the following reasons:

> We are doing this because we live in a country where there is a clear separation between church and state. We live in a country of many different faiths—in fact, a country where many people have no faith—and a modern Australian parliament should reflect that. We do say that there should be some opportunity for reflection or, indeed, prayer, if people feel that way, and that is why we would like to see a minute at the start of each day in this place being offered for that reason.[57]

In the media, the Leader of the Government in the Senate, Senator Eric Abetz (Tas: Lib), described the move as part of the Australian Greens' 'ongoing attempt to rewrite our history and deny our heritage'. Mark Dreyfus QC, a Labor member of the House of Representatives, who is Jewish, suggested that a multi-faith model might be more appropriate than abolishing prayers altogether.[58]

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52 *Journals of the Senate*, 1 March 2006, pp. 1935–6 (Senators Allison, B. Brown, Murray, Siewert, Bartlett, Milne & Nettle, voting in favour).

53 Commonwealth of Australia, Senate, *Parliamentary Debates*, 1 March 2006, pp. 85–6.

54 'Howard dismisses bid to scrap parliamentary prayers', *AAP General News Wire*, 2 March 2006.

55 *Journals of the Senate*, 13 February 2014, p. 473.

56 Commonwealth of Australia, Senate, *Parliamentary Debates*, 13 February 2014, p. 361.

57 Ibid.

58 Judith Ireland, 'Greens to move motion to remove Lord's Prayer in favour of "silent reflection"', *Sydney Morning Herald* (online edition), 13 February 2014. See also Phoebe Roth, 'Jewish MPs defend the Lord's Prayer', *The Australian Jewish News*, 24 January 2014, p. 4.

To date, no further attempts have been made to abolish or amend prayers in the Senate. Further, the Senate Procedure Committee has not reported further on the more specific question of parliamentary prayers in the Senate. However, given the consistent and recent lack of support for moves to amend the prayers, it seems unlikely that any changes will be recommended.

Support for prayers in the Senate

It is worth noting that there have been a number of occasions where the Senate or individual senators have actively sought to demonstrate their support for parliamentary prayers. This has occurred in two contexts: firstly, during adjournment speeches and, secondly, as a result of debates to ensure procedural hurdles did not prevent the saying of prayers.

On 17 March 2005, Senator Santo Santoro (Qld: Lib) made an adjournment speech about 'the place of the Lord's Prayer in the proceedings of [the Senate] and in the Australian parliament generally', articulating his firm belief in the practice. Noting that '96 per cent of the population was Christian' at the time of federation, he argued that the 'changing demographics of Australia since 1901 seem, frankly, barely relevant'.[59] Senator Santoro characterised the opening prayers as 'non-denominational' and 'inclusive', arguing that attempts to remove them were not. In November 2010, Senator Julian McGauran (Vic: Lib) similarly spoke during an adjournment debate to offer his support for daily prayers. In this context, he argued that the recent incorporation of an 'acknowledgement of country' into SO 50, read immediately after the prayers, meant that 'respect for the Lord's prayer' had been 'watered down'. Instead, he suggested, the acknowledgement of country 'ought to be separate, and be seen to be separate, from the meaning or significance given to the Lord's Prayer in the parliament'.[60]

The importance of prayers for some senators has, on some occasions, created procedural difficulties for the Senate. For example, on Saturday 11 July 1998, the Senate resumed meeting in committee of the whole to debate the Telstra (Transition to Full Private Ownership) Bill 1998, after suspending (rather than adjourning) proceedings the prior evening. In these circumstances, the President does not actually 'take the chair' upon the resumption of proceedings and thus, under a technical reading of SO 50, prayers do not have to be read. As proceedings resumed on this occasion, Senator Ron Boswell (Qld: NPA) immediately raised a point of order and requested that the prayers be read. The chairman advised that to procedurally trigger the reading of prayers, progress from the committee of the whole had to be reported. After a lengthy debate on the procedural motion to do so, an exasperated Senator Barney Cooney (Vic: ALP) remarked, '[i]t will soon be time for Sunday morning mass. All we want are the prayers'. At this point, the President read the prayers 'with

59 Commonwealth of Australia, Senate, *Parliamentary Debates*, 17 March 2005, pp. 136–7.

60 Commonwealth of Australia, Senate, *Parliamentary Debates*, 23 November 2010, pp. 1981–2.

the concurrence of the Senate'.[61] Similarly, on 17 August 2007, a committee of the whole reported progress so that the prayers could be read.[62] It is now accepted that:

> the prayer is read at the beginning of each day regardless of whether the Senate has adjourned or suspended the previous day. If the Senate is in committee of the whole, progress is reported before the suspension is moved or takes effect.[63]

Constitutionality

The debates over the introduction of the prayers into the federal parliament in 1901 highlighted that their constitutionality would be an ongoing matter. As previously noted, some senators were of the view that section 116 of the Constitution may prohibit the practice.[64] This section is set out as follows:

> **Commonwealth not to legislate in respect of religion**
>
> The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

Speaking on the matter in 1901, Senator McGregor pondered:

> What did the framers of the Constitution mean? Did they mean that the Parliament was not to impose religious observances in the streets or in the schools? Did they mean that Parliament was not to impose religious observances anywhere else but here?[65]

As previously mentioned, Senator Sargood was quick to point out that a standing order was not a 'law', and therefore section 116 did not make unconstitutional the incorporation of prayers into the daily sessions of the Senate. It would seem that Senator Sargood's analysis remains at least partly relevant today.

Constitutional law scholars have more recently considered the question in light of the High Court's—now well developed—jurisprudence on section 116.[66] Gonzalo Villalta Puig and Steven Tudor surmise that:

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61 Commonwealth of Australia, Senate, *Parliamentary Debates*, 11 July 1998, pp. 5591–601.

62 *Journals of the Senate*, 17 August 2007, p. 4253.

63 Laing, above note 35, pp. 189–90.

64 Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, p. 1138 (Gregor McGregor and Sir Josiah Symon).

65 Commonwealth of Australia, Senate, *Parliamentary Debates*, 14 June 1901, p. 1139.

66 See generally Luke Beck, 'The constitutional prohibition on religious tests', *Melbourne University Law Review*, vol. 35, 2011, pp. 323–52; Luke Beck, 'Clear and emphatic: the separation of church and state under the Australian Constitution', *University of Tasmania Law Review*, vol. 27, no. 2, 2008, pp. 161–96; Puig & Tudor, above note 3, pp. 56–68; Gonzalo Villalta Puig, 'Parliamentary prayers and section 116 of the Australian Constitution', *Papers on Parliament*, no. 51, 2009, pp. 71–84.

> [T]he High Court has interpreted s 116 narrowly because it has read it as a regulator of Commonwealth legislative power rather than as a guarantee of an individual civil right. The High Court has found further justification for its narrow approach in the limited jurisdiction of s 116, which does not apply to the States even though it is in Ch V (The States) of the *Constitution*, and in the text of the section, which by the preposition "for" directs the High Court to assess the purpose as opposed to the effect of the law under challenge.[67]

On the basis of this narrow interpretation, they conclude that a hypothetical claim against parliamentary prayers under section 116 would be 'untenable' for four reasons. Firstly, the High Court would be unlikely to interpret section 116 as applying to the houses of the federal parliament 'in any capacity other than as makers of law'. Secondly, 'given that s 116 is directed to "law", it follows that the High Court would be unlikely to accept that the word includes standing orders made under [section 50 of the Constitution] such as those that require the reading of parliamentary prayers'. Thirdly, only two of the four clauses of s 116 'could, with some difficulty, ground a hypothetical claim of unconstitutionality'. Finally, irrespective of the above analysis, 'the High Court has refused to limit the unlimited discretion of either House of Parliament to order and conduct its business and proceedings under [sections] 49 and 50 of the *Constitution*'. However, Puig and Tudor go on to argue that the High Court *should* 'correct an editorial mistake' in section 116 and interpret it to imply a right to freedom of thought, which would then, 'perhaps', deem parliamentary prayers unconstitutional.[68]

Contrary to the analysis of Puig and Tudor,[69] Luke Beck has argued that SO 50 does indeed create a 'religious test' for the position of President of the Senate, who must read a distinctly Christian prayer on taking the chair. He suggests that this might be contrary to the final clause of section 116 (that 'no religious test shall be required as a qualification for any office or public trust under the Commonwealth'), because 'in a real and practical sense it serves as a condition precedent or as a condition subsequent to holding the relevant office or position'. This clause, unlike the other three, is not limited to 'laws' and so is more likely to be interpreted as applying to the standing orders. Furthermore, he is of the view that the question would be justiciable.[70]

There are certainly important theoretical questions over whether SO 50 is constitutional or, at the very least, contrary to the spirit of section 116 of the Constitution. Whether the courts would even be willing to consider the question appears to be a considerable hurdle to a final resolution of the matter. In this context,

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67 Puig & Tudor, above note 3, p. 64.

68 Ibid, pp. 64–8.

69 Without any substantive analysis, Puig & Tudor dismiss the 'religious test' clause as 'simply not relevant' because 'parliamentary prayers are not intended as religious tests'. Puig & Tudor, above note 3, p. 65.

70 See Beck, 2011, above note 66, pp. 340–52.

it could be argued that parliament has an important role in constitutional interpretation and grappling with these issues without assistance from the courts.[71]

Finally, it is perhaps worthwhile to acknowledge that similar challenges have been mounted—and failed—in the United States and Canada.[72]

The practice in other legislatures

As previously highlighted, daily prayers were not uniformly practised across the state legislatures when first adopted by the Senate in 1901. However, since that time, all legislatures in Australia, except the Legislative Assembly for the Australian Capital Territory, have now instituted some form of daily prayers. Internationally, the story is very similar in comparable jurisdictions, such as the United Kingdom, Canada, New Zealand and the United States. The following sections briefly canvass the practices in these jurisdictions and any significant challenges or modifications to them.

The House of Representatives

Like the Senate, the first sitting of the House of Representatives opened with prayers read by the Governor-General.[73] As previously mentioned, William Knox (Kooyong: FT; Anti-Soc; Lib) had been approached by the Victorian Council of Churches and agreed to raise the issue of prayers in the House of Representatives. On 7 June 1901, he moved '[t]hat the Standing Orders should provide that, upon Mr Speaker taking the Chair, he shall read a prayer'.[74] Speaking in support of the motion, Knox quite comprehensively documented the campaign by the churches to bring about the motion. He noted that the practice was not uniform in the states, but claimed 'we ought to look to a wider area of national interest in other great Federations', naming the legislatures of the United Kingdom, the United States and Canada as those where prayers were read.[75] Ely characterised the ensuing debate as 'subdued' and summarised it the following way:

> It was clear that the majority were willing to allow prayers, provided these were read by the speaker rather than a chaplain, and provided they were 'entirely unsectarian in character'. Those who spoke fell into two groups. Some, such as Knox and [Patrick] Glynn, saw value in parliamentary

71 See generally Gabrielle Appleby & Adam Webster, 'Parliament's role in constitutional interpretation', *Melbourne University Law Review*, vol. 37, 2013, pp. 255–96.

72 See, e.g., *Ontario (Speaker of the Legislative Assembly) v Ontario Human Rights Commission* (2001) 54 OR (3d) 595; *Marsh v. Chambers*, 463 US 783 (1983); *Murray v. Buchanan*, 729 F 2d 689 (DC Cir, 1983); *Newdow v. Eagen*, 309 F Supp 2d 29 (DC, 2004); *Town of Greece v. Galloway*, 572 US __ (2014).

73 *Votes and Proceedings of the House of Representatives*, 9 May 1901, p. 6.

74 *Votes and Proceedings of the House of Representatives*, 7 June 1901, p. 41.

75 Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 7 June 1901, pp. 815–17.

> prayers. Others—Barton and Sir William McMillan—doubted their propriety but said they would not oppose them.[76]

Perhaps validating the strategy of the churches, members made a number of references to precedent on the issue, namely that the preamble to the Constitution and the opening of the federal parliament contained religious references.[77] Knox's motion was agreed to, however an amendment providing for the appointment of a chaplain for the purpose was withdrawn, as it was agreed that the Speaker was the most appropriate person to read prayers in the House.[78] The Standing Orders Committee subsequently devised a prayer, which was adopted by the House on 13 June 1901, without debate.[79]

Ely explains that the first part of this prayer was composed by Lord Tennyson for the opening of parliament; however, the version adopted by the House removed a reference to 'the triune nature of God'. The second part was 'the "authorized" translation of the longer-ending version of the Lord's Prayer'.[80]

The *House of Representatives Practice* offers a helpful summary of the history of prayers in the House following their adoption in 1901:

> The standing order was amended in 1918 when the initial prayer or preface was amended and an additional prayer was added before the Lord's Prayer for the duration of the war. In its report of 21 March 1972 the Standing Orders Committee considered a submission from a Member which suggested a different form of prayer, and that prayers once a week would suffice. The committee agreed that there should be no change either in the frequency of offering prayers or in their content. When the Procedure Committee reviewed the standing orders in 2002–2003, partly with a view to modernising their language, the committee made no recommendation in

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76 Ely, above note 4, p. 123. See also Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 7 June 1901, pp. 815–21.

77 Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 7 June 1901, pp. 817, 819–20.

78 *Votes and Proceedings of the House of Representatives*, 7 June 1901, p. 41; Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 7 June 1901, pp. 815–21.

79 *Votes and Proceedings of the House of Representatives*, 13 June 1901, p. 59; Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 13 June 1901, p. 1077. The prayer adopted is as follows:

> Upon the Speaker taking the Chair each day he shall read the following prayer:
>
> Almighty God, we humbly beseech Thee at this time to vouchsafe Thy special blessing upon this Parliament, and that Thou wouldst be pleased to direct and prosper all our consultations to the advancement of Thy glory, and to the true welfare of the people of Australia.
>
> Our Father, which art in Heaven, hallowed be Thy name. Thy kingdom come. Thy will be done in earth, as it is in heaven. Give us this day our daily bread. And forgive us our trespasses, as we forgive them that trespass against us. And lead us not into temptation; but deliver us from evil: For Thine is the kingdom, and the power, and the glory, for ever and ever. Amen.

80 Ely, above note 4, p. 123.

> relation to the prayers, and the revised standing orders adopted in November 2004 retained the original wording.[81]

The most recent and notable proposal to reconsider the practice of prayers in the House of Representatives emanated from the Speaker, Harry Jenkins, in 2008. Jenkins, through the media,[82] called for public debate on the issue after Rob Oakeshott (Lyne: Ind) used his maiden speech to request that he, as the Speaker, 'revisit the question of a daily acknowledgement within [the] chamber for traditional owners'.[83] Jenkins cited the practice as '[o]ne of the most controversial aspects of parliamentary procedures' and that the issue had been 'raised with him by MPs and members of the public'.[84] Prime Minister Kevin Rudd, Opposition Leader Malcolm Turnbull and Nationals Leader Warren Truss all firmly rejected proposals to replace the Lord's Prayer with the acknowledgement, citing the practice as a longstanding tradition and a non-partisan reaffirmation of members' commitment to the common good of the Australian people. One commentator suggested '[t]he Rudd and Turnbull repudiation was swift', suggesting that there was '[n]o point upsetting the all-important Christian lobby'.[85] Senator Brown, the Leader of the Australian Greens, reiterated his earlier calls for a period of reflection and the Australian Federation of Islamic Councils backed a 'more universal' prayer.[86] Ian Hunter, a South Australian parliamentarian, writes that '[t]he Australian press were, to a large degree, opposed to such a change in parliamentary practice, and used their pages to advocate the status quo'.[87]

While an acknowledgement to country was later inserted into the standing orders in 2010,[88] the prayers have remained in the same form as they were in 1901.

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81 B.C. Wright & P.E. Fowler (eds.), *House of Representatives Practice*, 6th edition, Department of the House of Representatives, Canberra, 2012, p. 249 [internal citations omitted]. See also Commonwealth of Australia, House of Representatives, Standing Orders Committee, *Changes in the Standing Orders and Practice of the House of Representatives*, Parl. Paper no. 20/1972, p. 13 (rejecting a submission suggesting a different form of prayer).

82 See, e.g., Nicola Berkovic, 'Rudd, Turnbull back daily prayer', *The Australian*, 27 October 2008, p. 2; Sharri Markson, 'Speaker wants Lord's Prayer out of the House', *Sunday Telegraph*, 26 October 2008, p. 3.

83 Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 22 October 2008, p. 9948.

84 Markson, above note 82.

85 Peter van Onselen, 'When debate doesn't have a prayer', *Sunday Telegraph*, 23 November 2008, p. 114.

86 Berkovic, above note 82.

87 Ian Hunter, 'Parliament and Prayer', *Flinders Journal of History and Politics*, vol. 26, 2010, p. 32.

88 *Votes and Proceedings of the House of Representatives*, 29 September 2010, p. 34.

State and territory legislatures

Australian Capital Territory

The Legislative Assembly for the Australian Capital Territory is the only legislature in Australia where a parliamentary prayer or the Lord's Prayer is not read at the beginning of each day. Instead, SO 30 requires that, '[u]pon the Speaker taking the Chair at the commencement of each sitting, and a quorum of Members being present, the following shall be read':

> Members, at the beginning of this sitting of the Assembly, I would ask you to stand in silence and pray or reflect on our responsibilities to the people of the Australian Capital Territory.[89]

As highlighted above, this text has provided the inspiration for successive moves by the Australian Greens to lobby the Senate to adopt a similar model.

Prior to 1995, the standing orders required the Speaker to read a parliamentary prayer, similar to that read in the federal parliament.[90] A report of the Administration and Procedure Committee, released in May 1995, noted that some members of the committee were concerned that the prayer 'did not reflect all the spiritual groups of the community which they represented'.[91] After a lengthy debate, the Assembly narrowly voted on 1 June 1995 to adopt the committee's recommendation to replace the prayer with a more secular 'prayer or reflection', as set out above.[92] During the debate, it was suggested by one member that Sri Lanka was the only Commonwealth Parliament at the time which did not open daily sittings with prayers.[93]

The *Companion to the standing orders of the Legislative Assembly for the Australian Capital Territory* makes the following observation as to the issue, perhaps explaining the unwillingness of the Senate to adopt any changes:

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89 Australian Capital Territory, Legislative Assembly, *Standing Orders and Continuing Resolutions of the Assembly*, April 2014, SO 30. SO 74 requires that the prayer or reflection is the first item of ordinary business.

90 The original prayer was actually included in the draft standing orders presented by the Presiding Officer at the first sitting on 11 May 1989. These orders purportedly reflected those in the House of Representatives. However, there are indications that the draft standing orders did not include the Lord's Prayer and that the language of the parliamentary prayer was modernised. See Mark McRae, Derek Abbott & Tom Duncan (eds.), *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory*, 2009, pp. xvi, 121; Australian Capital Territory, Legislative Assembly, *Parliamentary Debates*, 11 May 1989, pp. 4–6; Australian Capital Territory, Legislative Assembly, *Parliamentary Debates*, 1 June 1995, p. 696 (Greg Cornwell).

91 Australian Capital Territory, Legislative Assembly, Standing Committee on Administration and Procedure, *Standing Orders and Citizen's Right of Reply*, May 1995, pp. 3–4.

92 Australian Capital Territory, Legislative Assembly, *Minutes of Proceedings*, 1 June 1995, pp. 66–8; Australian Capital Territory, Legislative Assembly, *Parliamentary Debates*, 1 June 1995, pp. 695–714.

93 Australian Capital Territory, Legislative Assembly, *Parliamentary Debates*, 1 June 1995, p. 698 (Greg Cornwell).

> As a new legislature, the Assembly has found itself less constrained by the inertia imposed by established practice or tradition in responding to contemporary demands. For example, the adoption of a 'prayer or reflection' was possibly unique in legislatures derived from Westminster when adopted by the Assembly in 1995.[94]

New South Wales

The standing orders of the New South Wales Legislative Assembly, the lower house, require that the Speaker or the Clerk read a parliamentary prayer after the Speaker takes the chair each day.[95] This prayer must also be read by the Speaker on the first day of a new session.[96] It does not appear that there have been any attempts to amend or abolish the prayers.

The situation in the upper house has been more controversial. The standing orders of the New South Wales Legislative Council, Australia's first and oldest legislative body, currently require that the President read a parliamentary prayer and the Lord's Prayer. Unlike any other domestic legislature, it is possible for the President to nominate another member, or request the Clerk to read the prayers.[97] The prayers must also be read on the first day of the meeting of a session of parliament to be opened by the Governor, where there is a President.[98] Despite commencing proceedings in 1823, the parliamentary prayer was only inserted into the standing orders in 1934, while the Lord's Prayer was adopted into the sessional orders in 1988.[99] The standing orders adopted in 2004 formally include both prayers.

There have been a number of notable but failed attempts, primarily by Lee Rhiannon (then MLC) of the Australian Greens, to amend or remove the prayers from the Legislative Council:

> In October 2001, the House debated a motion to amend the sessional order in relation to prayers to require the President, instead of offering prayers, to ask all members 'to stand in silence and pray or reflect on your responsibilities to the people of New South Wales'. The question was resolved in the negative on division by 31 votes to 5. The debate on the motion explored the history of parliamentary prayers and arguments for and

94 McRae, Abbott & Duncan, above note 90, p. 114.

95 New South Wales, Legislative Assembly, *Standing Orders*, 16 November 2010, SO 39. The parliamentary prayer read is a modernised form of that adopted by the federal parliament.

96 Ibid, SO 3(2).

97 New South Wales, Legislative Council, *Standing Rules and Orders*, 5 May 2004, SO 28. The prayers read are very similar to those adopted by the federal parliament.

98 Ibid, SO 5(1)(a).

99 Lynn Lovelock and John Evans (eds.), *New South Wales Legislative Council Practice*, New South Wales Legislative Council, Federation Press, Sydney, 2008, pp. 233–234 [internal citations omitted].

against their use. A similar motion was again debated on 16 September 2003, and negatived 30 votes to 7.[100]

Northern Territory

The standing orders of the Legislative Assembly of the Northern Territory require that, upon taking the chair each day, and if a quorum of members is present, the Speaker shall read a parliamentary prayer and the Lord's Prayer.[101] It would not appear that there have been any moves to amend or abolish the prayers since the Assembly was established in March 1974.

Queensland

In Queensland, the standing rules and orders of the Legislative Assembly do not specifically require that proceedings open with a prayer. Peculiarly, chapter 11 of the orders is entitled, 'Meeting times, prayer and quorom', but it does not contain any further instructions on the matter. The sessional orders do, however, list 'prayers' as the first item of business on a sitting day.[102] Further, SO 45 does require that 'prayers' be read by the chair for an 'official opening' by the Governor after a general election.[103]

The practice of reading prayers was introduced into the Legislative Assembly in 1860, during the first session of the first parliament, though with some opposition. The House adopted a 'Prayer for the High Court of Parliament' from the Prayer Book of the Church of England, on the understanding that references to 'thy Church' were to include all denominations of Christians.[104] The prayer adopted in 1860 is seemingly the prayer still read today.[105]

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100 Ibid, p. 234 [internal citations omitted]. See further New South Wales, Legislative Council, *Parliamentary Debates*, 17 October 2001, pp. 17365–8, 17390–400; New South Wales, Legislative Council, *Parliamentary Debates*, 2 September 2003, pp. 2916–17; New South Wales, Legislative Council, *Parliamentary Debates*, 16 September 2003, pp. 3264–73, 3285–93. An unsuccessful attempt was also made to remove the prayers in 1996, see New South Wales, Legislative Council, *Parliamentary Debates*, 30 October 1996, p. 5513.

101 Northern Territory, Legislative Assembly, *Standing Orders*, adopted 29 August 1985 (as amended) incorporating amendments and resolutions to and including 23 October 2012, SO 34. The form of the prayers is substantially similar to those read in the federal parliament.

102 Queensland, Legislative Assembly, *Sessional Orders*, 54th Parliament (first session), adopted 17 May 2012, amended 3 April 2014.

103 Queensland, Legislative Assembly, *Standing Rules and Orders*, 31 August 2004 (as amended 1 July 2014).

104 Queensland, Legislative Assembly, *Record of the Proceedings of the Queensland Parliament*, 13 June 1860 (one member described the proposal as 'subversive of his right to liberty of conscience'). See also Queensland, Legislative Council, *Record of the Proceedings of the Queensland Parliament*, 31 May 1860 (where the motion to introduce prayers in the now-abolished Legislative Council was carried unanimously).

105 Queensland Parliament, *Parliamentary Practices and Procedures*, February 2008, pp. 5–7. The prayer read, which is notably different from those in other Australian legislatures, is as follows:

MOST GRACIOUS GOD:

Interestingly, on 17 November 1870 there was a lengthy debate on a proposal to abolish the prayers, which ultimately failed. A number of members were of the view that the practice, then in its tenth year, was a 'mockery' and that it potentially excluded some members. Others, in support of daily prayers, suggested that such members could simply enter the chamber at the conclusion of the prayer. References were made to the fact that the practice had been adopted in the United Kingdom and the United States, however it was also pointed out that Victoria had recently abolished the practice and New South Wales had also voted not to introduce it.[106] These early debates do not appear to have been repeated in Queensland in more recent times.

South Australia

The standing orders of the House of Assembly of South Australia currently require the Speaker, upon taking the chair each day, to read a parliamentary prayer and the Lord's Prayer, which is reproduced in full. Members must stand in their places and the Bar is drawn while prayers are read.[107] In the Legislative Council, daily proceedings are similarly opened with both a parliamentary prayer and the Lord's Prayer.[108]

The practice of opening with prayers has been a matter of some controversy in South Australia, though no recent attempt has been made to amend or remove them. For example, a former President of the Legislative Council, a non-believer, failed in her attempt to delegate the reading of prayers to the Clerk, and in 2003 and 2007, two members were the subject of debate by other members and sections of the media for not participating in the prayers in a manner deemed appropriate.[109] Hunter describes that the introduction of the prayers into the Parliament of South Australia was also quite contentious:

> In 1886, Robert Caldwell (Member for the Yorke Peninsula) moved a motion calling for parliamentary prayers to be included in the standing orders. The motion, which was ultimately unsuccessful, was opposed for a number of reasons: Rowland Rees (Member for Onkaparinga) contested the

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> We humbly beseech Thee, as for this State in general, so especially for the Parliament of Queensland under our Most Religious and Gracious Queen at this time assembled: That Thou wouldst be pleased to direct and prosper all our consultations, to the advancement of Thy glory, the good of Thy Church, the safety, honour, and welfare of our Sovereign and this portion of Her Commonwealth; that all things may be so ordered and settled by our endeavours upon the best and surest foundations; that peace and happiness, truth and justice, religion and piety may be established among us for all generations. These and all other necessaries, for us, and Thy whole Church, we humbly beg in the Name and Mediation of Jesus Christ, our Most Blessed Lord and Saviour.
>
> AMEN

106 See Queensland, Legislative Assembly, *Parliamentary Debates*, 17 November 1870, pp. 48–52.

107 South Australia, House of Assembly, *Standing Orders*, 4 February 1999, SO 39. The prayers read are substantially similar to those read in the federal parliament.

108 South Australia, Legislative Council, *Standing Orders*, 5 August 1999, SO 51. The prayers read are substantially similar to those read in the federal parliament.

109 Hunter, above note 87, pp. 34–5.

> notion, believing that to 'introduce the element of worship as suggested, and you will see history repeat itself by such worship becoming a mere matter of form and indifference, and finally being availed by the very few.'
>
> The issue arose once again in the aftermath of the First World War. In August 1918, Robert Nichols (Member for Stanley) moved a motion once again calling for the introduction of parliamentary prayers in the House of Assembly. Amongst those who opposed their introduction was John Gunn (Member for Adelaide), who reflected on the Federal parliament, where prayer 'is read glibly by somebody. Nobody takes particular notice of it.' Member for Burra Burra Henry Buxton argued that the inclusion of parliamentary prayers would lead to hypocrisy by members who would pray and then be at each other's throats shortly thereafter in the cut-and-thrust of parliamentary debate.
>
> However, such opposition was overridden on this occasion, and parliamentary prayers were introduced in the House of Assembly on 5 November 1918. The following day (6 November 1918), a motion was introduced into the Legislative Council calling for the proceedings of the Upper House to be opened with a daily prayer. Other members generally agreed, and parliamentary prayers were introduced into the Legislative Council on 10 July 1919.[110]

Tasmania

The Tasmanian Legislative Council standing orders require the President to read prayers 'at the time appointed on every day fixed for the meeting of the Council' but do not indicate the form of the prayers.[111] The standing orders of the House of Assembly are more thorough, setting out that the Speaker upon taking the chair each day shall, as the first order of business, read a parliamentary prayer and the Lord's Prayer.[112]

According to Douglas, speaking at the Australasian Federal Convention in 1898, Tasmania had abandoned the practice of opening with prayers after finding 'it to be a perfect piece of mockery'.[113] Nevertheless, prayers were (re)introduced to the Tasmanian Parliament in 1930. Proposals to change the prayers because 'the behaviour of Members in the chamber was generally the antithesis of Christian behaviour', in 1989, and later to replace it with 'something more befitting the times', in 2003, both failed.[114]

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110 Ibid, pp. 35–6 [internal citations removed].

111 Tasmania, Legislative Council, *Standing Orders*, November 2010, SO 28.

112 Tasmania, House of Assembly, *Standing and Sessional Orders and Rules*, May 2014, SO 32 & 55(a). The prayers read are similar to those adopted by the federal parliament.

113 *Official Record of the Debates of the Australasian Federal Convention*, Melbourne, 2 March 1898, p. 1739.

114 Hunter, above note 87, p. 37.

Victoria

The standing orders of the Legislative Assembly of Victoria do not formally incorporate prayers as an item of business, however references are made to the ending of 'the Prayer' before recordings or question time (on a Tuesday) may commence.[115] To the contrary, the standing orders of the Legislative Council of Victoria specifically require the President to read the Lord's Prayer upon the opening of a new Parliament, the opening of a new session not following a dissolution, and whenever the Council meets as soon as a quorum of members is present.[116] The exact form of the Lord's Prayer to be read by the President is not reproduced in the standing orders.

Correspondence to Prime Minister Edmund Barton in 1901 from the Speaker of the Legislative Assembly reveals that, at the time, the Legislative Assembly did not open with prayer and that proposals in 1866 and 1871 to implement the practice were negatived. While it was the practice of the Legislative Council to open with prayer in 1901, unsuccessful efforts had already been made by that time to repeal the relevant standing orders.[117] It does not appear that there have been any recent or significant moves in Victoria to amend the current practice.

Western Australia

The standing orders of the Legislative Assembly[118] and Legislative Council[119] of the Parliament of Western Australia both list 'prayers' as the first item of ordinary business, but the exact form of the prayers is not reproduced. The Lord's Prayer is said in both houses; however the additional form of parliamentary prayer is different in each House.[120]

It would appear that prayers were read in the Legislative Council as far back as 1840, though reference to them was likely not inserted into the standing orders until 1907.[121] A motion in 1975 to revise and modernise the wording of the prayers was successful, though the debate gave no indication of any desire to abolish them.[122] On 16 October 2013, a motion was passed that the Legislative Council Standing Committee on Procedure and Privilege 'inquire into and consider whether the current Council prayer should be changed and, if so, recommend an appropriately worded alternative'. On

115 Victoria, Legislative Assembly, *Standing Orders*, February 2011, SO 55(1)(a) & 232(4)(e)(v).

116 Victoria, Legislative Council, *Standing Orders*, 2014, SO 1.01(10), 1.07(5) & 4.02.

117 See National Archives of Australia, above note 16.

118 Western Australia, Legislative Assembly, *Standing Orders*, 26 June 2014, SO 58.

119 Western Australia, Legislative Council, *Standing Orders*, December 2013, SO 14.

120 Harry C.J. Phillips (ed.), *Second Reading: Parliamentary Government in Western Australia*, Revised Internet Edition, Parliament of Western Australia, 2010, p. 69.

121 See Western Australia, Legislative Council, *Parliamentary Debates*, 25 March 1975, p. 305 (J. Heitman, repeating the advice of the Clerk who had researched the matter).

122 See Western Australia, Legislative Council, *Parliamentary Debates*, 25 March 1975, pp. 303–6; Western Australia, Legislative Council, *Parliamentary Debates*, 22 April 1975, pp. 976–9.

3 December 2015 the Council passed the Committee's recommendation that an amended, gender-inclusive version of the existing prayer be adopted.[123]

International legislatures

The United Kingdom

As would be expected, sittings in both the UK House of Commons and House of Lords currently commence with prayers, which are distinctly Anglican. It is believed the practice first started in about 1558 and became common practice by 1567. In the Commons, the Speaker's Chaplain usually reads the prayers, while a senior Bishop usually reads them in the Lords.[124] In 2009, during a debate in the parliament on the role of Christianity in public life, a member briefly questioned the relevance of the practice but nevertheless supported it.[125] In this sense, the lack of the debate on the issue is perhaps indicative that support for the practice is strongest in the place where it originated.[126]

The same is not true, however, in Scotland, Northern Ireland and Wales where the United Kingdom has devolved powers in recent times. In Scotland, 'time for reflection' was designed at the inception of the Scottish Parliament in 1999, as an alternative to Westminster Anglican prayers. Indeed, the very first debate of the new parliament concerned whether there should be prayers. Under the 'time for reflection' system, there is a weekly opportunity for representatives of religions and belief systems to address the parliament.[127] In the Legislative Assembly of Northern Ireland, where sectarian tensions have been deeply entrenched, proceedings begin with a private voluntary two-minute period of silent contemplation or prayer, according to the preference of individual members, which is nevertheless known as 'prayers'.[128] Finally, in the Welsh Assembly there is no form of prayers, reflection or moment of

123 Western Australia, Legislative Council, *Parliamentary Debates*, 16 October 2013, pp. 4881a–84a and 3 December 2015, pp. 9406–7; Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, *Legislative Council Prayer*, June 2015. Note that there were a number of earlier and quite extensive debates on the matter, see Western Australia, Legislative Council, *Parliamentary Debates*, 24 May 2012, pp. 3201a–2a; Western Australia, Legislative Council, *Parliamentary Debates*, 18 September 2013, pp. 4277b–83a.

124 UK Parliament, *Prayers*, http://www.parliament.uk/about/how/business/prayers/ (accessed 16 October 2014).

125 Hunter, above note 87, p. 31.

126 See also Martin Lanouette, 'Prayer in the legislature: tradition meets secularization', *Canadian Parliamentary Review*, vol. 32, no. 4, 2009, pp. 4–5 (noting that '[n]o organization or group supporting multidenominational prayer has lasted long enough to be able to change this centuries old practice').

127 See Norman Bonney, 'Proportional prayers: time for reflection in the Scottish Parliament', *Parliamentary Affairs*, vol. 66, 2013, pp. 816–33 (noting that '[n]on–Christian religions appear far more frequently than their population justifies statistically and secular and humanist belief is greatly under-represented').

128 Norman Bonney, 'Established religion, parliamentary devolution and new state religion in the UK', *Parliamentary Affairs*, vol. 66, 2013, p. 433.

silence.[129] Norman Bonney suggests that '[t]he religious ritual of the UK parliament appear to be much more fixed and enduring than those devised in the context of devolution since 1999 to resolve tensions between the religious and political spheres in the "Celtic" regions'.[130]

The United States of America

The United States House of Representatives and Senate both open daily proceedings with a prayer, read by an appointed chaplain. This continues a tradition established by the Continental Congresses in 1789. Since 1789, chaplains of various denominations have served both houses and, for many decades, guest chaplains representative of the world's major faiths have also been invited to open proceedings with a prayer. The appointment of chaplains to read prayers has been challenged as breaching the separation between church and state, as early as the 1850s, and there have been a number of unsuccessful constitutional challenges to the practice.[131]

A survey conducted in 2002 by the National Conference of State Legislatures revealed that 'almost all' state legislatures still used an opening prayer, though practices as to who delivered the prayer and its form varied.[132]

Canada

The House of Commons in Canada has opened daily proceedings with prayer since 1877, although the practice was not codified in the standing orders until 1927.[133] In the years since, suggestions were made on numerous occasions 'to rewrite or reword the prayer in a non-sectarian form and to have the prayer read by a chaplain instead of the Speaker'. In 1994, a new prayer was adopted after 'the House concurred in a report recommending a new form of prayer more reflective of the different religions embraced by Canadians'.[134] Depending on the preferences of the Speaker, the prayer

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129 Ibid.

130 Ibid, p. 439.

131 See Ida A. Brudnick, *House and Senate Chaplains: An Overview*, CRS Report for Congress, Congressional Research Service, Library of Congress, Washington, 26 May 2011. See also, above note 72 (listing relevant US case law).

132 National Conference of State Legislatures, *Inside the Legislative Process*, Washington, 2002 (online edition), tab 5, part 7, p. 145.

133 Audrey O'Brien & Marc Bosc (eds.), *House of Commons Procedure and Practice*, 2nd ed. (online version), House of Commons (Canada), 2009 (accessed 22 October 2014). However, the very first parliament was not opened with prayers. See National Archives of Australia, above note 16.

134 The text of this prayer is as follows:

> Almighty God, we give thanks for the great blessings which have been bestowed on Canada and its citizens, including the gifts of freedom, opportunity and peace that we enjoy. We pray for our Sovereign, Queen Elizabeth, and the Governor General. Guide us in our deliberations as Members of Parliament, and strengthen us in our awareness of our duties and responsibilities as Members. Grant us wisdom, knowledge, and understanding to preserve the blessings of this country for the benefit of all and to make good laws and wise decisions. Amen.

is read in English or French, and some have chosen to alternate between the two, while others have used a bilingual version.[135] The current standing orders only direct that '[t]he Speaker shall read prayers every day at the meeting of the House before any business is entered upon', but do not incorporate the text of the prayer.[136]

In the Senate of Canada, prayers have always been read at the start of a sitting and references to it have always been found in the *Rules of the Senate*. In 1868, the Senate adopted a resolution that the practice 'should not be discontinued' on the basis that the Parliament of England and the Legislative Councils of Canada and other Provinces engaged in the practice at the time. The current wording of Rule 4.1, adopted on 19 June 2012, simply states that the Speaker 'shall proceed to Prayers as soon as quorum is present'. While the wording is not incorporated into the rules, a parliamentary prayer is read in both English and French, though its exact wording has changed over time.[137]

Martin Lanouette, in an article published in 2009, notes that 'only the provinces of Prince Edward Island and New Brunswick still recite the traditional Lord's Prayer', while Nova Scotia uses a 'shortened version of the traditional prayer' that was adopted in 1972. All other Canadian provinces and territories 'have opted to recite non-denominational prayers and/or to alternate various prayers, with the exception of Ontario', where the Lord's Prayer is 'followed by alternating prayers from First Nations, Buddhist, Hindu, Muslim, Jewish, Baha'i and Sikh faiths'. Notably, the Newfoundland Legislative Assembly has never opened its sittings with a prayer and Quebec amended its standing orders in 1972 to provide for a moment of silence and reflection before the commencement of proceedings, a decision confirmed in 1976.[138]

New Zealand

When the New Zealand House of Representatives commenced proceedings in May 1854, the first vote resolved whether a prayer should be recited as the first act of the House. After some debate over whether this 'may tend to subvert the perfect religious equality' recognised in the Constitution, a majority of the House voted in favour and a local clergyman read prayers.[139] On 7 June 1854, the House voted to open daily proceedings with a prayer and, after its form was determined by a committee, the

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Audrey O'Brien & Marc Bosc (eds.), *House of Commons Procedure and Practice*, 2nd ed. (online version), House of Commons (Canada), 2009 (accessed 22 October 2014).

135 Ibid.

136 Canada, House of Commons, *Standing Orders*, January 2014, SO 30(1).

137 Canada, Senate, *Companion to the Rules of the Senate of Canada*, 2nd ed., November 2013, p. 55. The English version of the prayer read is as follows:

> Almighty God, we beseech thee to protect our Queen and to bless the people of Canada. Guide us in our endeavours; let your spirit preside over our deliberations so that, at this time assembled, we may serve ever better the cause of peace and justice in our land and throughout the world. Amen.

138 Lanouette, above note 126, pp. 4–6.

139 New Zealand, *Votes and Proceedings of the House of Representatives*, 1854, session 1, pp. 3–4.

practice formally commenced on 23 June 1854.[140] Following a number of alterations, the current wording of the parliamentary prayer, which is distinctly Christian,[141] was adopted by resolution of the House in 1962. However, at the time of its adoption the form of the prayer was not considered to be strictly binding on the Speaker.[142] Indeed, Standing Order 62 merely requires the Speaker, on taking the chair, to read 'a prayer'.[143] This has allowed the Speaker to read a Māori version of the prayer.[144]

The Standing Orders Committee has considered whether the prayer should be retained, amended or abolished on a number of occasions over the last decade. On each occasion the committee recommended that the House retain the prayer in its existing form or that the Speaker consult members before making a permanent change.[145] In its most recent review of the standing orders in July 2014, the Standing Orders Committee acknowledged 'that not all members identify with the practice of reading a Christian prayer at the opening of a sitting of the House, although it is a tradition of very long standing'.[146] It considered that 'the Speaker should consult members in the new Parliament about the prayer'.[147]

Abolition, retention or change?

The history of prayers in the Senate, as well as in other comparable jurisdictions, reveals that the debate over whether the parliament should engage in public prayers is longstanding, reoccurring and spirited. Indeed, if the practice in Australian legislatures

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140 Ibid, [digitised version not fully paginated].

141 The prayer adopted by the House in 1962 reads:

> Almighty God, humbly acknowledging our need for Thy guidance in all things, and laying aside all private and personal interests, we beseech Thee to grant that we may conduct the affairs of this House and of our country to the glory of Thy holy name, the maintenance of true religion and justice, the honour of the Queen, and the public welfare, peace, and tranquillity of New Zealand, through Jesus Christ our Lord. Amen.

David McGee, *Parliamentary Practice in New Zealand*, 3rd ed., Dunmore Publishing Limited, Wellington, 2005, p. 159.

142 New Zealand, House of Representatives, Standing Orders Committee, *Petition 2002/83 of Dr Anthony Hochberg and Nine Others (Relating to the Parliamentary Prayer)*, June 2007, p. 3 (citing New Zealand, *Journals of the House of Representatives*, 1962, p. 40; New Zealand, House of Representatives, *Parliamentary Debates*, 1962, vol. 330, pp. 337–8).

143 New Zealand, House of Representatives, *Standing Orders*, as amended 30 July 2014.

144 McGee, above note 141, p. 159 (citing New Zealand, House of Representatives, *Parliamentary Debates*, 1994, vol. 545, p. 5351).

145 See New Zealand, House of Representatives, Standing Orders Committee, *Review of Standing Orders*, December 2003 (1.18B), p. 17; New Zealand, House of Representatives, Standing Orders Committee, *Petition 2002/83 of Dr Anthony Hochberg and Nine Others (Relating to the Parliamentary Prayer)*, June 2007; New Zealand, House of Representatives, Standing Orders Committee, *Review of Standing Orders*, September 2011 (1.18B), p. 22.

146 New Zealand, House of Representatives, Standing Orders Committee, *Review of Standing Orders*, July 2014 (1.18A), p. 11.

147 Ibid.

is to be described as a ‘tradition’ or ‘custom’—as it often is by its supporters—it should be recognised that challenges to the practice have been very much a part of this. It should also be recognised that many state and territory legislatures only introduced prayers subsequent to their adoption by the federal parliament in 1901, following a coordinated campaign by the Christian churches, and not solely out of some desire to follow traditions in the British Parliament. Furthermore, recently established legislatures, such as those in the Australian Capital Territory, Scotland, Ireland and Wales, have all decisively rejected ‘traditional’ Westminster prayers.

Records of debates on the matter from South Australia in 1886, Queensland in 1870, or in the new Commonwealth of Australia in 1901 could easily be mistaken for those from the Senate in 2014, when the Australian Greens most recently attempted to change the prayers. It is clear that for many parliamentarians, engaging in even an arguably unsectarian Christian prayer sits uncomfortably with notions of secularity that modern western parliaments purport to uphold. In this sense, it would be incorrect to say that attempts to change or abolish the prayers are ‘attempts to rewrite history’. A better characterisation would be to say they are merely repeating it.

Nevertheless, this analysis of the history of prayers in the Senate makes clear that although opposed by some, it would appear the practice is now well established and remains supported by a majority of senators. Further, as revealed by the debates at the time of federation between 1897 and 1901, parliamentarians do respond to public pressure and the potential influence of the Christian churches; it would seem this remains a factor today, albeit less pronounced.

Modification or the replacement of the parliamentary prayer with something more strictly secular appears to be the most successful model for change available. Indeed, the form of prayer or reflection adopted by the Legislative Assembly for the Australian Capital Territory has now been proposed in the New South Wales Legislative Council, the Senate, and more recently in the Western Australian Legislative Council. It has also been embraced by some overseas legislatures. Multi-faith models, such as those used in the United States Congress and the Parliament of Scotland, seemed to have gained little to no traction in Australia. Finally, if the Senate were to appoint a President who is uncomfortable with reading the prayers, and these models were deemed unsuitable, it may be worth considering the approach in the New South Wales Legislative Council to allow delegation of the duty. As previously suggested, the potential inconsistencies between parliamentary prayers and the Constitution are best resolved by the parliament rather than the courts.

It seems inevitable that the Australian Senate will, at some stage, return to the issue of prayers; although perceptions that it is not the most pressing issue for the Senate to debate invariably act as a barrier. The success of future attempts to change or abolish the prayers will depend on the majority will of senators, who must effectively seek and judge their electors’ views on the issue. History shows that the principle of the matter appears to be placed second only to whether change would unite or unnecessarily divide the community. In predicting the trajectory of the prayers debate, Edmund Barton’s political judgement in 1901 may be as relevant today as it was then:

> Although I do not oppose the motion [to introduce daily prayers], I have my doubts whether ordinances of this kind do really tend to the improvement of morality and the inculcation of piety. I have my doubts whether, apart from those prayers we say in church, we should not adopt the advice which is given by a very high teacher, who told us to pray in our closet. I recognise, however, that there are very large differences of opinion on the subject. I know that a large number of those who have their doubts as to the propriety of these ordinances are not so offended in their religious susceptibilities if they are carried out, as those would be who demand that ordinances of this kind should be observed if their wishes were not complied with. That being so, I am inclined to give way to the course which is least offensive to the religious susceptibilities of the public, and, therefore, to assent to a proposition of this kind.[148]

148 Commonwealth of Australia, House of Representatives, *Parliamentary Debates*, 7 June 1901, p. 819.