

Swearing-in of senators and members outside of general elections*

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A number of jurisdictions within Australia and the Commonwealth stipulate that new members must be sworn in before ‘taking their seat’.¹ In many cases this is a constitutional requirement.² After an election, by-election or filling of a casual vacancy, and upon the return of the writs, certificates of election or certificates of choice, new members and senators are required to swear an oath or make an affirmation or pledge and sign the Roll before taking their allocated seat and participating in chamber proceedings.³

In particular circumstances the members or senators are also ‘introduced’ to the chamber as part of the swearing-in process. This ‘introduction ceremony’ involves a new member being admitted to the chamber from either outside the chamber, below the Bar or at the Bar. The new member is accompanied by two members from the same political party to the Table, from where they are sworn-in.

The jurisdictions that adopt versions of this ‘introduction ceremony’ include the United Kingdom, the Canadian House of Commons, both houses of Australia’s federal parliament and the New South Wales Legislative Assembly.⁴ They all refer to

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1 Australian House of Representatives, Australian Senate, Canadian House of Commons, Canadian Senate, New Zealand Parliament, New South Wales Legislative Assembly, New South Wales Legislative Council, Australian Capital Territory Legislative Assembly, House of Commons (UK), House of Lords (UK).

2 In Australia this requirement stems from Section 42 of the Constitution.

3 This occurs in the respective chambers of all jurisdictions except Canada where the present swearing-in procedure followed by the House of Commons is more often than not undertaken in the Office of the Clerk. A. O’Brien & M. Bosc, *House of Commons Procedure and Practice*, 2nd ed., House of Commons, Ottawa, 2009, p. 205.

4 The NSW Legislative Council, the ACT Legislative Assembly and Canadian Senate do not refer to any process of introduction, making reference only to the requirements for the oath, affirmation, pledges and the signing of the roll within the chamber. In New Zealand the formal introduction process does not occur. D. McGee, *Parliamentary Practice in New Zealand*, 3rd ed., Dunmore, Wellington, 2005, pp. 136–7.

the House of Commons (UK) resolution of 23 February 1688 as the basis for the ceremony.⁵ It states:

That upon new members coming into the House, they be introduced to the Table between two members, making their obeisances as they go up, that they may be better known to the House.⁶

These jurisdictions, however, only apply the ‘introduction ceremony’ to members elected at a by-election or senators who fill casual vacancies.⁷ Members and senators elected at general or periodical elections are not required to participate in this process. This has been the case since 1736.⁸ Even if such members are late or absent from the swearing in ceremony at the opening of Parliament, they are not subject to an ‘introduction ceremony’ because they are taken as having been returned at the beginning of the Parliament when no such introduction is customary.⁹

Is the ‘introduction ceremony’ mandatory?

Jurisdictions that use the ‘introduction ceremony’ approach it in different ways. The Canadian House of Commons considers the process a ‘ceremonial’ one. The NSW Legislative Assembly does not consider the ceremony to be mandatory. The right of a member to sit and vote in these jurisdictions is not affected if an introduction does not take place.¹⁰

Procedural texts for the House of Commons (UK) and the House of Representatives in Australia make reference to the ‘introduction ceremony’ as being ‘in line with ancient

5 A similar version of Introduction Ceremony has been used in the House of Lords since 1621. It is a more involved ceremony and its purpose has been to substitute for what used to be the personal investiture of a new peer by the sovereign. It also serves as a means of allowing the House to see and recognise new peers as well as to acknowledge their right to sit and vote as a member. *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, 22nd ed., 2010, pp. 17–19, 255–7; House of Lords Select Committee on Ceremony of Introduction, *Ceremony of Introduction Report 1998*, Part 1 and Part 2, <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldselect/ldcerint/078/cere01.htm>.

6 J. Hatsell, *Precedents of Proceedings in the House of Commons*, vol. II, Rothman Reprints, South Hackensack, New Jersey, 1971 (reprint of 4th ed., 1818), p. 85.

7 If the senator is appointed and confirmed by the respective state or territory parliament in the required 14 days the senator is not sworn again. *Odgers’ Australian Senate Practice*, 12th ed., Department of the Senate, Canberra, 2008, p. 106.

8 Hatsell, *Precedent of Proceedings in the House of Commons*, p. 85.

9 Thomas Erskine May, *Parliamentary Practice*, 23rd ed., LexisNexisUK, London, 2004, fn 4, p. 361.

10 O’Brien & Bosc., *House of Commons Procedure and Practice*, p. 207; *New South Wales Legislative Assembly Practice, Procedure and Privilege*, 1st ed., NSW Parliament, Sydney, 2007, p. 48.

order and custom',¹¹ but it is only in the House of Commons (UK) where the 'introduction ceremony' appears to be a requirement before a member can 'take their seat'. Erskine May indicates that a member returned as a result of a by-election must be 'introduced' to the House before they can be sworn-in and take their seat.¹² The only exception is if the order for such a ceremony is dispensed with by the House.¹³ Previous inquiries by both Houses in the UK suggest the 'introduction ceremony' will be retained for the foreseeable future.¹⁴

Although the impact on the legitimacy of the member or senator's ability to take their seat is not stated with regard to the House of Representatives or the Senate, both Australian chambers have continued to use the 'introduction ceremony' for by-elections and casual vacancies.¹⁵ The reasons given for this appear to be for the purpose of identification and/or custom.

The current edition of *House of Representatives Practice* makes reference to the fact that 'this custom is derived from the House of Commons' such 'that they may be the better known to the House'.¹⁶ *Australian Senate Practice* (6th edn) states that the reason for this ceremony is 'that in early Commons times there was the possibility of impersonation'.¹⁷ There is no mention of the introduction ceremony in subsequent editions.

Satisfying the identification issue

The New Zealand Parliament (which does not have an 'introduction ceremony') satisfies the identification issue by requiring that the Clerk receive, and the Speaker view, a copy of the writ for the election endorsed with the member's name on it, prior to the member being admitted and sworn-in.¹⁸ This enables the Speaker to be satisfied that a 'person appearing at the Bar to take the oath or affirmation has been duly elected as a member of Parliament'.¹⁹

11 I. Harris (ed.), *House of Representative Practice*, 5th ed., Department of the House of Representatives, Canberra, 2005, p. 141; Erskine May, *Parliamentary Practice*, fn 4, p. 36.1.

12 Erskine May, *Parliamentary Practice*, fn 4, p. 36.1.

13 Ibid.

14 Ibid; House of Lords Select Committee on Ceremony of Introduction, *Ceremony of Introduction Report 1998*, Summary of Recommendations.

15 See footage of Kelly O'Dwyer and Paul Fletcher on 2 February 2010 (House of Representatives) and footage of Senator Chris Back on 12 March 2009 (Senate), Accessed 20 July 2011.

16 Harris, *House of Representative Practice*, p. 141.

17 J.R. Odgers, *Australian Senate Practice*, 6th ed., Royal Australian Institute of Public Administration (ACT Division), Canberra, 1991, p. 152.

18 If this is not available, as is often the case with by-elections, the Chief Electoral Officer advises the Speaker by means of a fax indicating who has been returned at the particular by-election. McGee, *Parliamentary Practice in New Zealand*, p. 137.

19 McGee, *Parliamentary Practice in New Zealand*, p. 136.

The perspective held by the Canadian House of Commons and the NSW Legislative Assembly also suggests that the process of ‘identification’ is satisfied as a result of the provision of the writs or certificates of election/choice and that the ‘introduction ceremony’ is not for the purpose of ‘identification’.

Summary

The requirement that a senator be admitted to the chamber and sworn-in prior to ‘taking their seat’ is cemented in statute in the majority of jurisdictions, although the requirement for an ‘introduction ceremony’ is not. In some jurisdictions, the majority of which are upper houses, this ceremony has not been considered, while in others it is considered optional or customary. The United Kingdom is the only jurisdiction where it appears a member is unable to take their seat or be sworn in unless they have taken part in an ‘introduction ceremony’.

This suggests that, apart from a desire to follow custom or convention, the need for an ‘introduction ceremony’ at the federal level in Australia is unnecessary if there is confidence that the election writ and/or certificate of choice is an acceptable method of identifying the new member or senator.

