

Practices and procedures

It is more material that there should be a rule to go by than what that rule is: in order that there may be a uniformity of proceeding in the business of the House, not subject to the momentary caprice of the Speaker or to the captious disputes of any of the Members.

Hatsell, II, 207-8

- 2.1 From its inception, the Procedure Committee has been appointed each Parliament to inquire into and report upon matters concerning ‘the practices and procedures of the House’. So what, then, are practices and procedures? These are terms commonly used in the House whose meaning is generally taken for granted. In this chapter it is argued that there is some variation in how the terms are used here and in different legislatures and that they are not sufficiently precise to restrict the area over which the committee may range.
- 2.2 Consider first the different activities covered by the House’s practices and procedures. The early operation of the two Houses of the Commonwealth Parliament was modelled on that of the UK House of Commons but strongly influenced by the experience of the legislatures in the Australian colonies. In Hatsell’s¹ time—the late 18th Century—the activities of the UK House of Commons were confined almost exclusively to the Chamber. However, two centuries later the proceedings of the House of Representatives extend beyond the physical limits of the Chamber to the Main Committee, each of the parliamentary committees to which

¹ John Hatsell, compiler of *Precedents of proceedings in the House of Commons*, was Clerk of the UK House of Commons from 1768 to 1820.

Members belong and, in certain circumstances, Members' offices, wherever they are located.²

- 2.3 Moreover, the rules for proceedings increasingly govern much more than the actions of the Members themselves. Standing, sessional and continuing orders also deal with such issues as the treatment of witnesses, the presence of visitors, the publication of proceedings in a wide range of media (explicitly from paper, implicitly into cyberspace) and the right of citizens to reply to damaging references to them in the House.
- 2.4 If there is no neat boundary around what comprises the business of the House or the rules that govern it, what distinction can be made between practices and procedures? Even the use of the singular or plural conveys shades of meaning in parliamentary discourse.
- 2.5 The Australian Parliament, like its British forebear, operates within a body of law resembling, in the organic way it develops, the common law. Parliamentary law in its most general form is an amalgam of inherited customs, explicit rules and established routines each with varying degrees of force.
- 2.6 For example, there is no explicit rule that the Government—that is, in this context the Ministry formed by certain Members of the House—should occupy the front benches to the right of the Speaker's Chair. This is an inherited custom, one which is recognised in the standing orders but not directly mandated by them. That a Member cannot lodge a petition from himself or herself is an explicit rule contained in the standing orders. The incorporation of unmoved non-Government amendments in *Hansard* when a bill is under guillotine is a concession established by precedent but nowhere provided in the standing orders.
- 2.7 Unlike the British Parliament, the Australian Parliament is subordinate to a written constitution. Nonetheless, the Australian Constitution imposes few limits on the ability of either House to determine the way it goes about its business. The powers, privileges and immunities of each House may be declared by the Parliament³ and each House may make rules and orders for the order and conduct of its business and proceedings.⁴
- 2.8 In the British parliamentary environment, procedure may be taken to subsume practice:

² See HR Practice (5th edn), 712–4 for a discussion of the ambit of 'proceedings in Parliament' in the context of parliamentary privilege.

³ Constitution, s. 49 (which also provides that until declared, they shall be those of the UK House of Commons as at the establishment of the Commonwealth).

⁴ Constitution, s. 50.

The four principal sources of procedure are, (i) practice, (ii) the standing orders and occasionally other orders or resolutions of the House, (iii) rulings from the Chair, including enforcement of many customs of the House, and (iv) a few statutory provisions.⁵

The Australian Constitution seemingly affords the House a narrower compass. At the outset, the rules and orders referred to in subsection 50(ii) were seen to comprise ‘(1) standing rules and orders, (2) sessional rules and orders, (3) orders and resolutions undetermined in regard to duration’.⁶ This does not seem to accommodate inherited practice as such.

2.9 However, what for 103 years in the House of Representatives was the general rule for conduct of business—Standing Order 1—in effect ‘imported’ whatever practices of the UK House of Commons were required to buttress the House of Representatives’ own rules and orders:

In all cases not provided for hereinafter, or by sessional or other orders or practice of the House, resort shall be had to the practice of the Commons House of the Parliament of the United Kingdom of Great Britain and Northern Ireland in force for the time being, which shall be followed as far as it can be applied.⁷

2.10 This leaves us with an implied separation between practice and procedure and a melange of parliamentary terms: ‘big P’ practice, ‘big P’ procedure, individual practices and procedures, rules and orders of varying kinds—standing, sessional and with continuing effect. The associated blurring of semantic distinctions is probably inevitable in a system that develops organically. This would be consistent with the shifts in meaning that follow when a language is transplanted to new soil, a phenomenon common in Australian English.⁸

2.11 There are several good reasons not to follow British terminology too closely in any case. Inevitably, over the course of more than a century the two parliamentary environments have grown increasingly dissimilar and the same terms can refer to markedly different processes.⁹ In other words, we can afford to use our parliamentary vocabulary a little less pedantically.

⁵ Griffith & Ryle, 176.

⁶ Quick & Garran, 507.

⁷ SO 1 (before 16.11.2004), as amended from time to time.

⁸ See for example Ramson, W. S., ‘The vocabulary of Australian English’ in *The Macquarie Dictionary*, Second revision, Sydney: The Macquarie Library, 1981.

⁹ For example, the *adjournment debate* operates quite differently in each place; *standing* and *select committees* are also established differently.

- 2.12 A sufficient distinction for our purposes is that the term ‘procedures’ may be taken to refer to formal actions prescribed by explicit rules. On the other hand, ‘practices’ may refer to relatively informal ways of doing things based on custom, general acceptance and precedent rather than black and white prescription. A change to a procedure will usually require amendment of the standing orders or other resolution of the House; a change to practice may occur at any time—if there is adequate agreement—or otherwise gradually over several years.
- 2.13 In certain cases practice may override procedure. For example, until recently the standing orders required all motions to be seconded. However, in practice the House did not require a motion moved by a Minister to be seconded.¹⁰ Following the recent adoption by the House of redrafted and reorganised standing orders, this exemption is now explicit.¹¹ In our parlance, practice has become procedure.
- 2.14 The elasticity in the use of what in some other parliaments may be rigidly defined terms supports the open-minded manner in which the committee has approached its terms of reference. As will be seen in a later chapter, it has ventured into areas which a Standing Orders Committee may have seen to be not within its jurisdiction.

¹⁰ HR Practice (4th edn), 292. But see HR Deb (31.3.2004) 27736 for an unusual seconding by a Minister of a motion moved by the Prime Minister.

¹¹ SO 116 (as at 8.2.2005). HR Practice (5th edn), 296.