

Development of practices and procedures in the House of Representatives

... the values incorporated in both the Constitution and the initial Standing Orders have been subordinated to those associated with Executive government.

Reid & Forrest, 17

- 3.1 It is a commonplace opinion that the House of Representatives has become merely the rubber stamp of the Executive.¹ There is nothing particularly novel about this observation—the House was not quite forty years old when a former Prime Minister reminisced that:

The business of Parliament in the early years of Federation was controlled by its members to a very much greater extent than nowadays. The legislature was then a deliberative body, decisions were arrived at after questions had been thoroughly debated. ... Parliament was then the supreme authority in something more than name, and not, as too often occurs these days, a mere machine for registering Government decisions.²

- 3.2 However, if there ever was a golden age in which the House was untrammelled by executive dominance it was rather short-lived. The pattern for the ministry taking the procedural initiative was set very early: at the second sitting of the House the first Prime Minister, Edmund

¹ See Bach, 239–48, for a selection of published opinions on the reputation of the House (as well as the author's disinterested remarks in mitigation).

² Hughes, 243.

Barton, presented ‘a copy of Draft Standing Orders relative to Public Business, for provisional use’.³

- 3.3 The provisional standing orders had been prepared supposedly by the clerks of the two Houses but in fact by the Clerk of the Senate, Mr E. G. Blackmore,⁴ in ‘a mood of passive emulation—a willingness to conduct the business of each house of the new federal Parliament along lines that the Parliaments of the Australian colonies had been conducted during the previous half-century’ as a result of which the draft standing orders ‘demonstrated a lack of enterprise, originality, imagination and zeal to try new methods or to match new procedures to the new Constitution, to the new federation, or to the executive government’s new responsibilities’.⁵
- 3.4 In fact, Barton had expected that these rules and orders would serve as a stopgap until the House adopted enduring standing orders to be recommended by its nascent Standing Orders Committee. A slightly revised version of the draft orders presented, again by Barton, at the next sitting was to serve for almost five decades, despite occasional reports by the committee proposing wholesale replacements. It may be argued that ‘the House’ as an agent of its own destiny lacked a sufficiently coherent identity to assert itself—the ongoing responsibility for procedural change fell to the government of the day by default.
- 3.5 It is therefore not surprising that, until recent times, most of the major developments in the House’s procedures were government initiatives intended to streamline the conduct of government business.⁶
- 3.6 First came the introduction of the closure,⁷ or ‘gag’, in 1905. Prime Minister Alfred Deakin, in response to Opposition delaying tactics on the passage of a bill, led debate on the motion for its adoption. The new standing order to accommodate the gag was agreed to after a debate that extended over several days.⁸ Despite the Government’s urgent desire to

³ VP 1901/13.

⁴ Previously Clerk of the Legislative Council of South Australia and Clerk of the Australasian Federal Convention 1897–98.

⁵ Reid & Forrest, 135–9.

⁶ Reid & Forrest, 40.

⁷ Two forms of closure were introduced—closure of debate on the question before the House (as a motion ‘That the question be now put’) and closure of the Member speaking (as a motion ‘That the Member be not further heard’ or, following the 2004 revision of the standing orders ‘That the Member be no longer heard’), respectively. The term ‘gag’ is mostly used to refer to the first form.

⁸ Souter, 93–4; VP 1905/167–9, 171–3, 175–8, 181–3.

add the closure mechanism to its procedural armoury, the measure was not used for the first time until 1909.⁹

- 3.7 Speech time limits were applied from 1912. Ostensibly, this was not a government initiative. However, Prime Minister Andrew Fisher played a part in instigating an expeditious examination by the Standing Orders Committee of setting time limits for debates. It was in fact a private Member who moved a motion in general terms, which, by way of amendment during debate, introduced specific time limits.¹⁰
- 3.8 The notice of motion to add the guillotine¹¹ to the standing orders first appeared on the Notice Paper on 20 September 1918. In a ministerial statement at the previous sitting, Acting Prime Minister Watt stated that the Government intended ‘to make the present session essentially a business one’ and that a proposed amendment to the standing orders would, if adopted, ‘substantially expedite public business’.¹²
- 3.9 In moving the adoption of new standing order 262A (Limitation of debate) some sittings later, the Acting Prime Minister offered some general remarks on how ‘that which was designed to effect despatch has become the instrument of delay ... largely because of the antiquity of the forms which British Parliaments the world over, including ourselves, have persisted in using’ and went on to say that:
- I am optimistic enough to believe that some day a Parliament with sufficient time and intention will wipe the slate clean, and will develop totally new rules for its procedure—rules that will be safe and elastic enough to meet the constantly increasing pressure of modern parliamentary assemblies.¹³
- 3.10 After considerable debate,¹⁴ the standing order was adopted.¹⁵ Less than a month later the guillotine descended for the first time: on 6 November

⁹ HR Practice (5th edn), 517.

¹⁰ The Standing Orders Committee met on 16 July 1912 to deliberate on ‘the question of a time limit of speeches’. Later that day, the Prime Minister presented its report. Later again at the same sitting, Mr McWilliams, pursuant to notice given on 10 July, moved a motion seeking an unspecified time limit on speeches. Several amendments were considered during debate before a complicated formulation was adopted at the next sitting. See VP 1912/38, 42–5, 339–40 and Reid & Forrest, 150–1.

¹¹ Like the term ‘gag’, ‘guillotine’ is parliamentary slang. In the form used by the House of Representatives, it comprises a separate declaration of urgency followed by a motion to allot time. It is mostly used for expediting the passage of bills but may also be applied to other proceedings such as debate on a motion.

¹² HR Deb (19.9.1918) 6256.

¹³ HR Deb (4.10.1918) 6684.

¹⁴ HR Deb (4.10.1918) 6682–5, (9.10.1918) 6715–53, (16.10.1918) 6967–78.

1918 the House agreed to a motion that the Electoral Bill (1918) be considered an urgent bill.¹⁶

- 3.11 The introduction of the guillotine was the last significant procedural change to the ‘temporary’ standing orders until 1950. There were a number of minor changes in the meantime which, though of moment in an institutional sense, exerted limited influence on the practices and procedures of the House.
- 3.12 A standing order was adopted on 5 October 1927 to depute the Clerk’s powers, functions and duties if the office became vacant.¹⁷ Adoption of the new standing order was agreed to without debate when Prime Minister Bruce, in moving its adoption by leave, noted that following the recent death of the Clerk there was no one to certify the passage of a bill which had just been read a third time. (The Parliament sat in Canberra for the first time on 9 May 1927. The Clerk of the House of Representatives, Mr W. A. Gale, died on 27 July before the House met again. His successor, Mr J. R. McGregor, died during the very next sitting on 28 September.)¹⁸
- 3.13 On 26 June 1931, the House adopted a new standing order—recommended by the Standing Orders Committee—to streamline the provision of answers to questions on notice. Previously, Ministers had read answers aloud in the Chamber, or, if reading was inconvenient, obtained leave for them to be incorporated in *Hansard*. Under the new provision Ministers would deliver answers to the Clerk, who would arrange for copies to be forwarded to the Members who asked the questions, and for their incorporation straight into *Hansard*.¹⁹
- 3.14 The House changed the procedure for electing the Speaker by amending the standing orders at the last sitting of the Fourteenth Parliament on 15 September 1937.²⁰ Again this followed a recommendation of the Standing Orders Committee, one of whose members noted that the proposal was but one element of yet another hopeful attempt for wholesale replacement of the temporary standing orders:

The House realizes of course, that we have had no complete revision of the Standing Orders since first we provisionally adopted Standing Orders in 1901. All attempts at a complete

¹⁵ VP 1917-18-19/318-9.

¹⁶ VP 1917-18-19/345.

¹⁷ VP 1926-27-28/366; HR Deb (5.10.1927) 247.

¹⁸ VP 1926-27-28/354, 359.

¹⁹ VP 1929-30-31/693; HR Deb (26.6.1931) 3127-9.

²⁰ VP 1937/120-2.

revision have been fruitless. It is realized—I realize at any rate—that the whole of the proposed new Standing Orders are not likely to be speedily passed by this Parliament, but I do think, from my own experience in this House and elsewhere, that it would be excellent to adopt this Standing Order, which provides for the election of the Speaker.²¹

- 3.15 Minor embellishing of the standing orders continued in the 1940s. A new standing order was added to allow for the appointment of a Deputy Chairman of Committees.²² The Committee of Privileges was established for the first time by virtue of a standing order adopted on 7 March 1944.²³
- 3.16 Throughout these tumultuous decades in Australia's history, the temporary standing orders continued to prevail despite the efforts of the Standing Orders Committee to furnish a replacement. With an enlarged House looming,²⁴ the committee tried again in 1949. In the report it presented on 7 October 1949, the committee recapitulated the labours of almost half a century:

The present Standing Rules and Orders of the House of Representatives are those which were adopted temporarily in 1901 as amended from time to time in specific instances.

In 1902, 1903, and again in 1905, amended Rules and Orders were recommended to the House after review by the Standing Orders Committee but on each occasion the proposals lapsed at Dissolution.

The 1905 proposals, together with amendments considered by the Committee in 1929 and such alterations as had been made to the 1901 Standing Orders, formed the basis of the deliberations of the Standing Orders Committee in 1937. This Committee brought down a comprehensive report in June of that year but no further action was taken.

In 1943, the Standing Orders Committee reviewed the 1937 Report. Standing Orders were rearranged and renumbered, unused Orders, e.g. Returns, Previous Question, etc., were omitted and new Orders framed to declare existing procedure based on

²¹ HR Deb (15.9.1937) 1143.

²² VP 1940/23.

²³ VP 1943-44/80.

²⁴ The *Representation Act 1948* increased the number of Senators from 6 to 10 for each of the original States. Consequentially through the nexus provision in section 24 of the Constitution, membership of the House increased from 75 to 123.

established precedents. On 12th February, 1943, a Schedule of Standing Rules and Orders was submitted to the House with a recommendation that it be adopted. The Report was taken into consideration in Committee of the Whole on 1st April, 1943, progress being reported on proposed Standing Order No. 1. Consideration was not resumed and lapsed at Dissolution.

The present Standing Orders Committee has considered the 1943 proposals and has made further amendments which it considers are required to provide a procedure adequate to meet the needs of the enlarged House to be elected this year.²⁵

- 3.17 The committee concluded its report by recommending that the proposed standing orders be adopted before the forthcoming dissolution. The report was not considered before the House was dissolved on 31 October 1949.
- 3.18 The House, having been enlarged from 75 to 123 Members, met for the first sitting of the 19th Parliament on 22 February 1950. The Standing Orders Committee met a number of times to make several changes to the 1949 proposals and then presented its report on 16 March 1950. The latest revision was adopted at the next sitting after a short debate. While a large number of the old orders were retained either unaltered or redrafted, thirty new orders were made and twenty-one culled as unused or unnecessary. Again the emphasis was on streamlining the passage of government business, a prominent feature being a general reduction in speech time limits.²⁶ At long last on 21 March 1950 the House adopted 'permanent' standing orders.
- 3.19 There may be many reasons for the House taking half a century to adopt permanent standing orders. Perhaps there was always something more urgent to attend to, at least from the Government's standpoint. Maybe Clerk Blackmore's provisional standing orders were a less than ideal springboard for procedural innovation. It may have been that the primacy of the Commonwealth was still emerging. At the outset, Prime Minister Barton had alluded to likely hindrance because of interstate rivalry:

I take it that this Commonwealth Parliament does not want to slavishly adhere to the practice of any one House among the States Houses. If we adopted the standing orders of New South Wales entirely, we should possibly find that that was unsatisfactory to

²⁵ SOC (1949), 1.

²⁶ See VP 1950-51/34, 36; HR Deb (21.3.1950) 942-54; SOC (1950); *Table XIX* (1950) 63-7 and Reid & Forrest, 156.

members from Victoria, and the same thing would happen if we adopted the standing orders of Queensland or South Australia.²⁷

Half a century later, prior service with State legislatures would not weigh so heavily on the spirit for procedural reform.

- 3.20 The tendency for incremental change continued for another decade or so. The MPI was introduced in 1952.²⁸ Standing order 1A providing for Her Majesty to open a session of Parliament was added in 1953.²⁹
- 3.21 The next major change to the standing orders came in 1963 in response to a 1962 report of the Standing Orders Committee. Given the fundamental importance of financial procedures in the operation of Parliament, this of all the Standing Orders Committee's proposals was arguably to have the most far-reaching impact on the House's practices and procedures.
- 3.22 In 1960 the Standing Orders Committee of the 24th Parliament started a review of the standing orders, the purposes of which were:
- As a general principle, the elimination of unnecessary form and the adoption of procedures allowing more effective consideration and debating time;
 - The establishment of new simplified procedures appropriate to the modern needs of the House;
 - The omission of obsolete provisions long since discarded by the House of Commons, and their replacement, where necessary, by Orders expressing modern practice;
 - The definition of established practice not stated in existing Orders;
 - The amendment of Orders which do not clearly express their purpose or which are in conflict with the practice of the House.³⁰
- 3.23 The report the committee presented on 28 August 1962³¹ recommended among other changes a major streamlining of the House's financial procedures. Some measure of the scope of the committee's recommendations, which but for some minor changes were adopted by

²⁷ HR Deb (6.6.1901) 782.

²⁸ VP 1951-52-53/334-5. The discussion of a matter of public importance (MPI) was a refinement of the 'urgency debate' allowed under the guise of a motion 'That the House do now adjourn'. See HR Practice (1st edn), 503-6 for a brief history of the procedure.

²⁹ VP 1953-54/66. The Queen opened the third session of the Twentieth Parliament on 15 February 1954.

³⁰ SOC (1962), 3.

³¹ VP 1962-63/201.

the House on 1 May 1963,³² may be seen in what the report enumerated as ‘the most important of the changes’, dealing with: (a) new financial procedures, (b) giving notice of motion, (c) giving notice of intention to present a bill, (d) first reading of a bill, (e) second reading of a bill, (f) supersession of the committee stage in certain cases, (g) grossly disorderly conduct, (h) casting vote by Deputy Speaker and (i) presentation of papers.³³

- 3.24 The 1963 changes involved the amendment of 101 of the 403 existing standing orders, the omission of 60 and the insertion of 59 new or substitute orders and of course significant renumbering.³⁴ On this one outcome alone, the 1976 Joint Committee on the Parliamentary System was perhaps a little harsh in downplaying the achievements of the Standing Orders Committee.³⁵
- 3.25 As notable an achievement as they were, the 1963 changes could also be seen as conforming with the persisting pattern of adapting procedure to support the Government in the House. One of the most trenchant critics of the changes remarked that:

The Australian House of Representatives on May Day 1963, after sixty-two years of confused application and misunderstanding, abolished much of the ancient financial paraphernalia and the mysterious jargon of financial control it inherited from the Imperial Parliament. But with that abolition have gone many of the parliamentary aspirations in finance that the Imperial procedures symbolised. And now, bereft of the ancient forms, the procedures remaining illustrate in stark relief a brute authority that the Executive wields in finance over the lower House.³⁶

- 3.26 Over the next two decades, most of the changes amounted to tinkering with the sitting days and hours and routine of business. The focus for innovation within the operations of the House shifted from procedural reform to the delegation of work to House committees. There was a brief experiment with legislation and estimates committees in the late 1970s but by 1981 this had been abandoned.³⁷

³² VP 1962-63/455.

³³ SOC (1962), 3.

³⁴ For a fuller description of the 1963 changes see SOC (1962); HR Practice (1st edn), 345–6 and articles by A. G. Turner in *Table XXXI* (1962) 85–7 and *Table XXXIII* (1964) 37–47.

³⁵ See the Foreword.

³⁶ Reid, 11.

³⁷ A brief description of the inception and operation of estimates and legislation committees appears in HR Practice (1st edn), 331–2 and 359; their demise is reported in HR Practice (2nd

- 3.27 The Committee of Members' Interests was created on 9 October 1984.³⁸ This was a recommendation of the Standing Orders Committee and, in effect, its last gasp. The report *Possible changes to the standing orders in respect of declaration and registration of private interests of Members* (Part 1) was its first report in about five years and the last report it ever presented.³⁹
- 3.28 The changes in the House's procedures to this point are relatively well recorded. In the background, changes to practices were occurring too. But these, naturally, were less visible and their observance relied on the memories of long-serving Members and the clerks. The next logical step after regularising procedure was some attempt at articulating practice.
- 3.29 The inexorable drift from Westminster ways and the need for new procedural authorities had been noted in 1979:
- Reliance on May, particularly in the early years of the Parliament, is attributable to the requirements of section 49 of the Constitution and standing order 1. However, there has been a steady increase over the years in the body of House of Representatives practice and procedure, precedent and case history which has led to less reliance being placed on Westminster practice. Indeed today the need to resort to the procedure and practice of the House of Commons is infrequent, except in relation to privilege.
- Over recent years there has been some criticism inside and outside the House regarding the reliance on Commons' practice and procedure expressed in May's *Parliamentary Practice*. At the same time the need for a reference text on the practice and procedure of the House has been regularly expressed. The lack of a comprehensive and authoritative work has posed difficulties for Members, officers and others with a serious interest in the workings of the House. House of Representatives Practice will aim to meet this deficiency.⁴⁰
- 3.30 The first edition of *House or Representatives Practice* was published in December 1981. Earlier that year, Speaker Snedden had made his feelings on the pace of procedural reform known to the House:

The recent reforms of Parliament's procedures have not been great. The parliamentary institution has exhibited a resistance to

edn), 394 and 423.

³⁸ VP 1983-84/943-4; HR Deb (9.10.1984) 1867-76.

³⁹ VP 1983-84/762; presented 7 June 1984; PP 144 (1984).

⁴⁰ DHR (1979), 7.

change and the fact that there has been reform at all is a major advance. We must ensure that we continue to examine critically our own procedures and proposed avenues of parliamentary reform. We must implement revised practices where necessary. We must ensure that our procedures, or initial moves toward reform, are not allowed to atrophy.⁴¹

3.31 In the meantime there was action to establish a procedure committee.

⁴¹ HR Deb (24.3.1981) 817.