

## The existing opening procedures

### Introduction

- 2.1 In one sense Parliament is an enduring institution. Its operating procedures change over time and periodically the body of representatives who serve in it is refreshed through general elections, the filling of casual vacancies in the Senate and by-elections in the House of Representatives. However the term 'Parliament' is also applied to the discrete formation of the institution during a certain period. This period, the life of a Parliament, is determined by section 28 of the Constitution. In effect, a Parliament ends when the House of Representatives is dissolved, that is, at the end of three years of its first meeting or sooner by action of the Governor-General.
- 2.2 To put it somewhat metaphysically, the Parliament of the Commonwealth of Australia dies when the House of Representatives is dissolved—the opening procedures contain the essential steps to reincarnate the Parliament. There is an echo, here, of the transfer of monarchy: 'The King is dead! Long live the King!'
- 2.3 In early 2001, the centenary year of the Commonwealth when this inquiry began, the 39th Parliament was about to be succeeded by the 40th.
- 2.4 The constitutionally essential elements of the opening procedures for a new Parliament are set out in sections 5, 6, 35 and 42 of the Constitution. The House of Representatives specifies its procedures for the meeting of a new Parliament in standing orders 2 and 4 to 8. The requirements of the Constitution and the standing orders are augmented by a number of procedures which are often adaptations of practice in the British Parliament.

*Historical note*

Redlich, in tracing the development of parliamentary procedure in Britain, has identified the constitutional forms which must be followed before the UK House of Commons can resume work as comprising 'the summons by the Crown; constituting the House, after a general election, by the swearing in of members and the choice of Speaker; and lastly the solemn opening of Parliament on the part of the sovereign or his representatives by the speech from the throne'.<sup>1</sup>

Similar constitutional forms are at work in the opening of the Australian Parliament.

## Summoning the new Parliament

- 2.5 When Australians have chosen their parliamentary representatives at a general election, the Governor-General is obliged by the Constitution to summon the new Parliament to meet no later than 30 days after the day set for the return of the election writs. The Governor-General does this by issuing a proclamation specifying the time and date for Senators and Members of the House of Representatives to assemble at Parliament House in Canberra. The proclamation is published in the *Commonwealth Gazette* and the Clerks of the two Houses notify Senators and Members.

*Historical note*

The Governor-General's role is another example of how power has been taken from the absolute grasp of the monarch. In the beginning, the monarch exercised an exclusive right to summon an assembly of lords and commoners for certain causes which he specified. Today the power to summon is restricted by the *Constitution* and the time, date and causes are established, in practice, by the newly formed Government.

## Assembly of Senators and Members

- 2.6 In recent years it has become usual for the Governor-General to fix 10.30 a.m. on a Tuesday as the time for Senators and Members to assemble at Parliament House in Canberra for the opening of a new Parliament. The
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1 Redlich II, 51

bells are rung in both Houses for five minutes before the appointed time and Senators and Members gather in their respective Chambers.

- 2.7 In each House, the Clerk of that House reads the Governor-General's proclamation summoning Parliament to assemble. In the Senate, a Deputy appointed by the Governor-General—usually the Chief Justice of the High Court—enters the Chamber and takes a seat on the dais.

*Historical note*

The sovereign is not usually present at the very opening of a new Parliament at Westminster and commissions five lords, led by the Lord Chancellor, to 'do all things in Her Majesty's name which are to be done on her Majesty's part'. The sovereign usually appears on a subsequent day when the causes of summoning Parliament are then declared. This cannot happen until the House of Commons has been constituted—that is, a Speaker elected by the House and approved, by Her Majesty often through the Commissioners acting on their commission, and Members sworn. It is open to the sovereign to commission the delivery of the opening speech, as well as the performance of earlier formalities, but usually the sovereign declares the causes of summoning Parliament in person.<sup>2</sup>

The Governor-General, too, does not appear until the House of Representatives is constituted and appoints a Deputy 'to declare open the Parliament' and separately authorises the same person 'to administer the oath or affirmation of allegiance'. In certain circumstances the Governor-General may appoint two Deputies, the senior of whom performs most of the delegated functions.

## **Declaration of the opening of Parliament**

- 2.8 From a seat in the Senate Chamber, the Governor-General's Deputy directs the Usher of the Black Rod to let Members of the House of Representatives know that he or she desires their attendance in the Senate. Black Rod proceeds from the Senate Chamber across the Members' Hall to the House of Representatives Chamber and delivers the message orally from the Bar of the House.
- 2.9 Members form a procession and, led by the Serjeant-at-Arms and House Clerks, make their way across the Members' Hall and assemble in the

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2 Redlich, II, 55-6; Anson, I, 61-2; May, 236; Lords Debates, 7 May 1997, 1

Senate Chamber. The Governor-General's Deputy addresses the assembled Senators and Members, informing them that the Governor-General, not thinking fit to be present in person, has appointed him or her as the Governor-General's Deputy to declare open the Parliament. This address is, in effect, the declaration of the opening of the new Parliament.

- 2.10 The Clerk of the Senate reads the instrument by which the Governor-General has authorised the Deputy to declare open the Parliament. The Deputy again addresses the assembled Senators and Members, advising them that following the swearing-in of certain Senators (those present whose six-year period of service has not continued from the previous Parliament) and all Members present, the Governor-General will declare the causes for calling Parliament together—that is, deliver the opening speech. The Deputy also directs Members of the House to choose some person as their Speaker and to present that person to the Governor-General. The Deputy concludes by indicating that he or she—or in certain instances a second Deputy—will attend the House of Representatives Chamber to administer the oath or affirmation of allegiance to Members.
- 2.11 Members then return in procession to the House of Representatives Chamber.

*Historical note*

In the UK Parliament, Members of the Commons are summoned to the bar of the House of Lords where the Lord Chancellor, on behalf of himself and four other lords commissioned by the sovereign to open Parliament, reads the commission and instructs Members to choose a Speaker. The fact that the Commons must attend the Lords reflects the exclusion of the sovereign from the Commons on the ancient principle that 'the Crown should have no current knowledge of the proceedings in the House of Commons'. That is to say there should be no interference in the House going about its business. The only violation of this principle occurred on 4 January 1642 when Charles I and an escort entered the House in an attempt to arrest five Members.<sup>3</sup>

The Australian Parliament has retained a convention that neither the sovereign nor the Governor-General enters the House of Representatives. However the Deputy of the Governor-General does routinely enter the House of Representatives Chamber to witness the swearing in of Members.

## Swearing in of Members

- 2.12 When Members have returned from the Senate Chamber, the Governor-General's Deputy is ushered into the Chamber by the Serjeant-at-Arms and conducted to the Chair. The Deputy hands the Clerk an authority from the Governor-General to administer the oath or affirmation of allegiance which the Clerk reads to the House. The Clerk then lays on the Table the returns to writs for the general election showing the Members who have been duly elected.
- 2.13 Members are called by the Clerk in groups of approximately ten to twelve, each taking a position around the Table. Each makes their oath or affirmation and signs an appropriate form. Ministers are usually sworn in first, then the Opposition executive and other Members according to where they are seated. Members taking the oath may do so while holding a holy book.
- 2.14 When all Members present have been sworn in, the Deputy signs attestation forms showing the numbers of Members who have made oaths or affirmations. The Deputy then retires from the Chamber. The entire process of swearing in Members takes approximately 25 minutes.

### *Historical note*

Religion and politics have played a large part in determining the obligation of members of the British Parliament to make an oath before taking their seats. The taking of an oath of allegiance has been traced from 1534. Other oaths were imposed at different times. Following the restoration of the Stuarts, members took three separate oaths: of supremacy, of allegiance and of abjuration. It was not until the middle of the nineteenth century that a single, simple oath of allegiance replaced the three. The option of making an affirmation dates from the same period, first for the benefit of specific religious groups like Quakers and subsequently to encompass anyone who had a conscientious objection to swearing an oath.<sup>4</sup>

In the House of Representatives, unlike the British House of Commons, Members are sworn in before proceeding to elect a Speaker. This flows from the Constitutional requirement (s.42) that, before taking their seats, Members must be sworn in.

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4 Walker & Wood; Wilding & Laundry; Redlich, 51; Anson, 63-4; Quick & Garran, 488; Perceval & Hayter, 85-90

## Election of Speaker

- 2.15 After the Deputy has retired from the Chamber following the swearing in of Members, the election of Speaker proceeds. During the election, the Clerk presides. The proposal of candidates comprises one or more motions that a particular Member ‘do take the Chair of this House as Speaker’, each motion being seconded. The Clerk asks each Member so proposed whether he or she accepts nomination. If there is only one accepted proposal the Clerk declares the nominated Member to have been elected as Speaker.
- 2.16 If there is more than one proposal debate may ensue with no Member speaking for more than five minutes and debate being relevant to the election. A Minister may move at any time ‘that the question be now put’. When debate has concluded the bells are rung for five minutes and a secret ballot—an exhaustive secret ballot if necessary—is held until one nominee has a majority of votes of the Members present.
- 2.17 The mover and seconder conduct the Member elected to the Chair. It is traditional for the Member to offer token resistance in symbolic recognition of the onerous, and once dangerous, nature of the position.<sup>5</sup> From the Chair, the newly elected Speaker acknowledges the honour conferred by the House. The Mace, a symbol of a fully constituted House, is taken from under the Table where it has rested since the start of the day’s proceedings and placed in the brackets on the Table. The Speaker is congratulated by the leaders and several other Members.
- 2.18 A Minister, usually the Prime Minister, informs the House of the time, later in the day, at which the Speaker should be presented to the Governor-General. The sitting is then suspended.

### *Historical note*

At least from the sixteenth century the Speaker was in practice a royal nominee. This reflected the Speaker’s role as the conduit between the Commons and the sovereign and the importance of his being acceptable to the latter. However, over centuries the roles of the Speaker as presiding officer of the Commons during its deliberations and the defender of its powers and privileges took on increasing significance. The loyalty of the office to the House rather than the Crown became more important. Nevertheless, in the British Parliament, the choice of the Speaker cannot take place until the Crown has given its leave or consent. On the other hand,

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5 Laundy (1964), 16

it has been the practice in the Commons at least since the early eighteenth century that proposals for Speakership are not made from the front benches.<sup>6</sup>

There is no convention in the House of Representatives that proposals should not be made from the front bench.

## Presentation of Speaker to the Governor-General

2.19 The sitting usually resumes at 2.30 p.m. Members reassemble in the Chamber and the Speaker takes the Chair. When the Speaker is made aware that the Governor-General is prepared, the Speaker rises from the Chair and invites Members to accompany him or her. The Speaker, preceded by the Serjeant-at-Arms bearing the Mace for the first time since the Speaker's election, accompanied by House Clerks, party leaders and other Members, leaves the Chamber to meet the Governor-General in the Members' Hall.

2.20 The Mace is left outside the Chamber, covered in green cloth, while the procession is moving into the Members' Hall.

### *Historical note*

Although it is a symbol of the Speaker's and the House's authority, the Mace also historically symbolised royal authority and thus is not taken into the presence of that actual authority be it the sovereign or the sovereign's representative.<sup>7</sup>

2.21 While presenting him or herself to the Governor-General, the Speaker receives an authority to administer the oath or affirmation of allegiance to Members not already sworn. After the Speaker and Members have been presented to the Governor-General they return in procession to the Chamber. The Speaker resumes the Chair and reports to the House that he or she has presented him or herself to the Governor-General as the choice of the House as its Speaker and that the Governor-General congratulated him or her. The Speaker announces that he or she has received the Governor-General's authority to administer the oath or affirmation. (The authority is exercised when Members not sworn in on opening day, including Members returned at by-elections, first take their seats.)

2.22 The House awaits the arrival of the Usher of the Black Rod.

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6 Laundry (1964), 13-6

7 Browning, 12

*Historical note*

An aspect of British practice is that the sovereign approves the House's choice of Speaker. The Speaker elect appears before the bar of the House of Lords to submit him or herself 'with all humility' for the sovereign's 'gracious approbation' and the Lord Chancellor, as the sovereign's Commissioner, assures the Speaker elect of the sovereign's approval and confirmation. At this point the House of Commons has a Speaker who then proceeds to 'lay claim, by humble petition' to the sovereign to all the House of Commons' 'ancient and undoubted rights and privileges' which are then confirmed by the Commissioner. However, it has been noted that Speakers have served without the approval of the sovereign and that the claim for privilege 'might probably be omitted without affecting the recognition of parliamentary privilege' by courts of law.<sup>8</sup>

The powers, privileges and immunities of the Parliament of the Commonwealth of Australia are enshrined in the *Constitution* and the *Parliamentary Privileges Act 1987*. Any symbolic gesture to reconfirm them would be superfluous. Similarly the *Constitution* requires that a Speaker be elected and no further authorisation or approval from the Crown is necessary.

## **Governor-General's opening speech**

- 2.23 Usually at 3 p.m., after the Governor-General has received the Speaker and Members of the House of Representatives, the Governor-General enters the Senate Chamber, takes the Vice-Regal Chair and directs the Usher of the Black Rod to let Members of the House of Representatives know that he desires their attendance in the Senate Chamber. Black Rod proceeds from the Senate Chamber across the Members' Hall to the House of Representatives Chamber.
- 2.24 When Black Rod arrives at the door of the House of Representatives Chamber, he or she knocks on the door three times with the rod. This House of Commons custom—apparently revived for ceremonial purposes in the House of Representatives in 1960 when the opening of a session of Parliament was first televised<sup>9</sup>—is said to symbolise 'that no stranger, low or high, dare enter their Chamber on the floor without permission,

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8 Redlich, II, 57; Anson, I, 67-8, 76-7; May, 239; Laundry (1964), 17; Lords Debates, 8 May 1997, 1

9 Odgers, 43



humbly asked for and expressly granted'.<sup>10</sup> The Serjeant-at-Arms informs the Speaker of Black Rod's presence and the Speaker directs that he or she be admitted.

*Historical note*

The fact that Black Rod does not knock on the door of the House of Representatives Chamber when he or she appears earlier to summon Members to hear the declaration of the opening by the Deputy probably reflects the principle that, at that stage, the House is not properly constituted.

- 2.25 Having been admitted, Black Rod tells the House that the Governor-General desires the attendance of Members in the Senate Chamber. A procession similar to that formed to meet the Governor-General for the presentation of the Speaker leaves the Chamber, crosses Members' Hall and approaches the Senate Chamber. The Mace is left covered outside the Senate Chamber. The Governor-General invites the Speaker to be seated at the Senate Table and Members take seats within the Senate Chamber.
- 2.26 The Governor-General delivers the opening speech, which briefly reviews the affairs of the nation and outlines the Government's legislative intentions, in essence declaring the causes for the calling of Parliament together. The speech normally occupies about 30 minutes. When the Governor-General concludes his speech a 19-gun artillery salute is fired outside Parliament House. The Governor-General's Official Secretary hands a copy of the speech each to the President of the Senate and the Speaker. The Governor-General retires from the Senate Chamber. The Speaker and Members return to the House of Representatives Chamber in procession, the Mace being taken up on the way.

*Historical note*

The declaration of the causes of summoning Parliament forms the legal basis for the ensuing deliberations of the House of Lords and the House of Commons. Both Houses debate the general substance of the speech and agree to a response, the address in reply. However neither House is limited in its deliberations by the declared causes.<sup>11</sup>

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<sup>10</sup> MacDonagh, II, 52

<sup>11</sup> Redlich, 61; Anson, 77

## Formal business: presentation of the privilege bill

- 2.27 When Members have again reassembled in the House of Representatives and the Speaker has taken the Chair, it is usual for the Prime Minister to inform the House about the ministry, ministerial arrangements and the government whips. Other party leaders inform the House of their leadership and whips.
- 2.28 A Minister, usually the Prime Minister, presents the ‘formal’ or ‘privilege’ bill. The presentation of this bill is an assertion of the House’s independence from the executive arm of government and of its rights with respect to the order and conduct of its business and proceedings. The bill is non-contentious: in recent Parliaments it has sought to replace gender specific language in the *Parliamentary Proceedings Broadcasting Act 1946*.
- 2.29 On presentation, the privilege bill is read a first time and the second reading made an order of the day for the next sitting. During the first few decades of the Australian Parliament, the privilege bill passed into law on 12 occasions. Since 1945, however, debate has not been resumed and the order has usually been listed toward the end of government business for the duration of the session. The bill lapses at prorogation or dissolution.

### *Historical note*

The practice of presenting a bill in the House of Commons without immediately addressing the sovereign’s causes for the calling of Parliament has been traced as far back as 1558 and became established by resolution of the House in 1604. Hatsell notes that the reading of the bill is ‘for form sake’ and that, unlike the House of Lords where it was written into the standing orders, there was no compulsion on the House of Commons to present such a bill.<sup>12</sup>

The position is reversed in the Australian Parliament: the transaction of formal business is required by the standing orders of the House of Representatives but there is no similar requirement in the Senate.

## Report of the Governor-General's speech: Appointment of Address in Reply Committee

- 2.30 When the formal business has been transacted the Speaker reports that the House had attended the Governor-General in the Senate Chamber and that the Governor-General had made a speech to both Houses.
- 2.31 On motion usually moved by the Prime Minister, the House appoints a committee comprising the mover and two other Members—usually new or relatively new Members of the government party or parties—to prepare an Address in Reply to the Governor-General's speech. This is purely a formal procedure as the form of the address, an expression of loyalty to the Sovereign and thanks to the Governor-General for his or her speech, has been standardised for many years. The proposed address is presented to the House later in proceedings by one of the committee and debate ensues over a number of days on the question 'that the address be agreed to'. The address is subsequently presented by the Speaker to the Governor-General in a formal ceremony at Government House.
- 2.32 After the committee has been appointed the sitting may be suspended for a brief period.

### *Historical note*

Redlich notes that in earlier times in the British Parliament the address in reply closely followed the points raised in the sovereign's speech but in time came to be a brief expression of the House's gratitude. However while the address itself became shorter the debate upon it grew lengthier, an outcome of the diminished opportunities for general political debate which resulted from the procedural reforms in the second half of the nineteenth century.<sup>13</sup>

With the adoption of a short resolution instead of a paragraph by paragraph answer to the sovereign's speech, the committee appointed in the House of Commons became redundant and its appointment was discontinued in 1888.<sup>14</sup>

From the early years, the address in reply provided an opportunity for wide ranging debate in the House of Representatives, new Members frequently making their first speeches during the debate.<sup>15</sup>

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13 Redlich II, 60

14 May, 246, footnote 1

15 HR Practice (2001), 229

## Election of Deputy Speaker and Second Deputy Speaker

- 2.33 About 5 p.m. the sitting is resumed and the House proceeds to elect a Deputy Speaker and a Second Deputy Speaker. This follows a similar course to the election of Speaker except in this case the Speaker presides. A ballot is conducted if there are two or more nominations. The nominee who attracts more votes than any other nominee is elected Deputy Speaker and the remaining nominee with more votes than any other is elected Second Deputy Speaker. If there is only one nomination then that Member is declared to have been elected Deputy Speaker and the position of Second Deputy Speaker remains unfilled.

### *Historical note*

The positions of Deputy Speaker and Second Deputy Speaker were established in the House of Representatives in 1994 as part of a range of reforms which, among other things, abolished the committee of the whole House. The latter was presided over by the Chairman of Committees who was selected by ballot at some stage of the opening proceedings after the election of Speaker. Before the 1994 reforms, the term 'Deputy Speaker' referred to any officer, either the Chairman of Committees or a member of a panel of Members appointed by warrant of the Speaker to do so, who deputised for the Speaker in the Chair. The Chairman of Committees, who in addition to presiding over committee of the whole would relieve the Speaker in the Chair, came to be known in general terms as 'Chairman of Committees and Deputy Speaker'. Following the 1994 reforms, the term 'Deputy Speaker' may refer to either the Member specifically appointed to the position of that name or any Member on the Speaker's Panel when deputising in the Chair.<sup>16</sup>

In the British House of Commons the Chairman of Ways and Means presides in committee of the whole and also deputises for the Speaker. The incumbent is appointed by motion, not elected by ballot.<sup>17</sup>

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<sup>16</sup> HR Practice (1981), 230-1; HR Practice (2001), 196

<sup>17</sup> May, 194-5

## **Other matters**

The committee appointed to prepare an address in reply may present its proposed resolution—in its standard form—to the House in which case its adoption is moved and seconded. The House usually then adjourns but on occasions condolence motions may be moved or other business transacted.