

PARLIAMENTARY CHRONICLES

‘FROM THE TABLES’

A round-up of administrative and procedural developments in the Australasian Parliaments

— October 2010 to March 2011

Robyn Smith*

The Australian Parliament

The hung parliament following the August 2010 federal election resulted in yet more ‘parliamentary agreements’ (the primary one being called the ‘Parliamentary Reform Agreement’) in Australia and changes to a range of parliamentary business, including Private Members’ Business, a reduction in the number and membership composition of General Purpose Standing Committees in the House of Representatives, the establishment of a Regional Australia Committee, a revived Selection Committee to which more bills will be referred and a change of Chair of the Joint Committee on Public Accounts from a Government to an Independent Member.

The number of Joint Standing Committees has not changed, but there has been an increase in the number of Joint Select Committees. The Joint Select Committee on Cyber Safety has been reinstated and two new committees on Gambling Reform and a Parliamentary Budget Office have been established.

The House has also established an Appropriations and Administration Committee which will be chaired by the Speaker and which is intended to assist in the appropriation of budget funds for the Department of Parliamentary Services.

Question Time has been considerably tightened under the Parliamentary Reform Agreement. Time limits have been introduced: a global limit of 90 minutes; 45 seconds for a question; and four minutes for an answer. Further, there is now a requirement that answers must be *directly* relevant to the question. Standing Orders have been amended to provide for one point of order only on the matter of relevance per answer. One supplementary question is allowed per Question Time and the Speaker has issued guidelines on how this regime will operate. Early assessments indicate that Question Time is now more business-like.

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The parliamentary agreements have also given rise to consideration of a Code of Conduct for Members and an Integrity Commission to oversee it. The Committee of Privileges and Members' Interests has received a reference to develop a draft Code of Conduct for Members of Parliament and has been tasked with reporting to the House by the end of the Autumn 2011 sitting.

Continuing with a current parliamentary trend, the Committee of Privileges and Members' Interests resolved to publish Statements of Members' Interests on the Australian Parliament web site, commencing with the 43rd Parliament. The Senate did likewise.

Other reforms include an acknowledgement of country prior to prayers on each sitting day, and the reduction of time from 20 to 15 minutes for second reading speeches.

Senators elected at the August 2010 election will begin their terms on 1 July 2011. There are 12 Senators-elect. After their swearing in, the Greens will hold the balance of power in the Senate.

Parliamentary agreements have given rise to reforms in the Senate, too, including increased time allocated to Private Senators' bills in addition to what is already allocated for General Business.

Australian Capital Territory

No reported changes to Standing Orders.

New South Wales

Joint Houses of the New South Wales Parliament established a Select Committee on Parliamentary Procedure. This was directly in response to both the Australian Parliament's various reforms and those negotiated in other jurisdictions where there is a Minority Government. The Committee reported in October 2010, finding that some reforms had already been instituted in New South Wales. However, there were some recommendations specific to Committees in both Houses upon the resumption of Parliament following the March 26 election.

A Parliamentary Budget Office has been established in New South Wales following the passage of the *Parliamentary Budget Officer Act* in October last year. This independent officer has the unenviable task of providing costings of election promises in the period prior to a general election, to cost proposed policies of Members of Parliament and to provide financial advice and analysis to Members.

New South Wales has amended its *Constitution Act* to provide for an acknowledgement of country in Parliament. The amendment received assent in October last year.

An exposure draft Parliamentary Privilege Bill was tabled by the Speaker in the NSW Legislative Assembly in December 2010 with the object of being considered during the life of the new Parliament following the election. Clause 7 of the bill includes this subsection:

- (4) For the avoidance of doubt, it is declared that subsection (3) extends to any reference, affirmation or adoption outside a House by a member of words spoken or written, or actions taken, in the course of proceedings in Parliament by that member, provided that the reference, affirmation or adoption is made without elaboration.

It will be interesting to study debate on how this clause sits with uniform defamation legislation adopted by the states some years ago.

New South Wales also changed Standing Orders to provide for time limits for answering questions (now limited to five minutes) in an attempt to encourage relevance in answers from Ministers.

A legal and practical dilemma arose when Parliament was prorogued on 22 December (some three months out from a State Election), throwing into doubt the capacity for an Upper House Standing Committee to continue its inquiry into reforms of the electricity industry. Conflicting advice about the Committee's status in respect of parliamentary privilege was provided by the Clerk of the House and the Crown Solicitor. In short, the former argued that the latter's advice was based on a narrow reading of the powers of the Council. Some attempt was made to compel witnesses to appear, however the uncertainty of the legal position of witnesses caused the President of the House to err on the side of caution and not to seek a court order in those terms.

New Zealand

The *Civil List Act* provides authority for payments, allowances and expenses to Members of Parliament. Increased public scrutiny combined with media stories in relation to misuse of entitlements led to an inquiry by the Auditor-General, which found that the existing Ministerial Services system was 'unsatisfactory'. She recommended a new, transparent system which had clear and easily understood rules and guidelines. In December 2010, the Law Commission recommended that the Civil List Act be repealed and replaced by a new statute and that an independent Remuneration Authority be established to determine travel, accommodation, attendance and communications for Members. The Prime Minister has indicated his acceptance of the recommendations and has undertaken to consult with stakeholders with a view to enacting legislation before the end of the year.

A Sessional Order has been adopted which strengthens reporting requirements by Members in respect of pecuniary interest declarations. Members are now required to declare interests in trusts of which they are trustees without having a beneficial interest and they must declare a beneficial interest in a trust whether or not it is a fixed or discretionary interest. Reporting requirements relating to real property and additional income have been clarified. Further, a Member may request that the Registrar conducts an inquiry into another Member's compliance if the complaining Member has 'reasonable grounds' to believe the alleged offending Member has not been compliant. The Registrar is appointed by the Clerk subject to the agreement of the Speaker.

Northern Territory

Standing Orders were changed to reflect the Fifth Report for the Eleventh Assembly of the Standing Orders Committee, whose brief was to examine the mechanics of Estimates Committee hearings and make recommendations for improvement. Essentially, the global time limit for Estimates has been increased by 10 hours, and the hearing dates extended to be over two weeks on Tuesday, Wednesday and Thursday, rather than being held over four days as has been the case in the past. The number of Assembly sitting days has been reduced to accommodate the extra Estimates days.

In other changes, Standing Orders have been amended to provide – for the first time – for a citizen's right of reply in the Assembly in a limited set of circumstances.

Queensland

The Integrity, Ethics and Parliamentary Privileges Committee has a statutory responsibility to review the ethics code for Members on a regular basis. The Committee tabled its draft Code, which is intended to supersede the 2004 Code of Ethical Standards, in October 2010. The Premier has provided an interim response, which indicated that the draft Code had already been superseded by contemporaneous changes to Standing Orders.

Following a March referral by the Speaker to the Standing Orders Committee, in September 2010, Standing Orders were amended over a range of areas. These included: unless otherwise provided by the Standing Orders, a motion need not be seconded; an amendment in the House or in consideration in detail of a Bill need not be seconded; petitions can now be lodged by a principal petitioner directly with the Clerk (paper petition) or sponsored by the Clerk on behalf of a principal petitioner (e-petition).

In October, further amendments to the Standing Orders were made to harmonise Schedule 2 of the Standing Orders, which deals with the Register of Members' Interests, with Part 2A of the *Parliament of Queensland Act 2001*. This change

reflects that Members' obligations in respect of declaring interests are now statutory, pursuant to the Act, rather than appearing only in the Standing Orders.

Queensland has undergone a mid-term review of its Register of Members' Interests. The last review was undertaken in 2005. The Integrity, Ethics and Parliamentary Privileges Committee found that the Queensland model benchmarked highly by comparison with other jurisdictions, so made no major recommendations for change and seven relatively minor recommendations to tighten the process. Of those, the Premier supported five on the basis that Standing Orders would be amended to cover one of the recommendations and that change was unnecessary in respect of the other (relating to blind trusts).

South Australia

No reported changes to Standing Orders.

Tasmania

Practicality resulted in amendments to the House of Assembly Standing Orders whereby division bells will now ring for up to five minutes (up from two) to accommodate Members who have been relocated to 10 Murray Street from the Parliamentary Annexe, which will be demolished. The arrangement similarly applies to quorums with capacity for the bells to cease ringing if the Whips are satisfied that all Members are present before the expiration of five minutes.

Some changes have been made to Question Time to accommodate the changed party situation. The new regime is: Opposition 7; Greens 3; and Government backbenchers 3. A global time limit of one hour applies or, in the alternative, until the question quota has been achieved.

Victoria

A Standing Orders Committee report tabled in December 2009 recommended changes to Opening Day procedures for Members of the Legislative Assembly. Essentially, the changes streamlined procedures for the swearing of new Members and removed a requirement for Members of the Assembly to proceed to the Legislative Council to hear the Opening Commission. The Council amended its Standing Orders accordingly, and both were achieved in the last sitting week of the 56th Parliament.

A further change removed the requirement for the Assembly to introduce a Privilege Bill on the first day of a new Parliament. The Standing Orders Committee report recommended that the House should assert its right to conduct business by doing so prior to the Governor's speech.

In the Upper House, a report of the Standing Orders Committee was unanimously supported on 6 October 2010. This report, which was tabled on 5 May 2010, recommended a new committee structure which included: the establishment of three pairs of committees, each consisting of a Legislation Committee and a References Committee; that this twin committee structure encompass three broad subject areas of Economy and Infrastructure, Environment and Planning, and Legal and Social Issues; a membership of eight per committee, consisting of four Government members, three Opposition and one from minority parties/independents; the chairs of Legislation Committees to be Government Members and the chairs of References Committees to be drawn from non-Government ranks, with all chairs to have both deliberative and casting votes; the capacity for substitute members to be appointed to committees with full voting rights, and for participating members to exercise the same rights as normal members, except the right to vote; the three Legislation Committees to have self-referencing powers in relation to annual reports and departmental/agency performance, as well as the role of scrutinising bills referred to them by the House; and References Committees only to conduct inquiries referred to them by the House.

The Legislative Council also adopted a raft of other changes to Standing Orders, primarily procedural, which were last amended in 2006.

Western Australia

No reported changes to Standing Orders.

Publication of Members' Interests on web sites

Of the Australian and New Zealand jurisdictions, the table below shows the present case.

Of those listed which do publish, these take a variety of forms. Some Houses publish the returns themselves; others publish summaries of the declarations made by Members. There are also variations between the jurisdictions about whether Members' declarations extend to the interests of spouse and/or dependant children.



House	Publish	Don't publish
Australian House of Representatives	<input type="checkbox"/>	
Australian Senate	<input type="checkbox"/>	
New Zealand House of Representatives	<input type="checkbox"/>	
Australian Capital Territory Legislative Assembly	<input type="checkbox"/>	
New South Wales Legislative Assembly		X*
New South Wales Legislative Council		X
New Zealand House of Representatives	<input type="checkbox"/>	
Northern Territory Legislative Assembly		X
Queensland Parliament	<input type="checkbox"/>	
South Australia House of Assembly	<input type="checkbox"/>	
South Australia Legislative Council		X
Tasmania House of Assembly		X
Tasmania Legislative Council		X
Victoria Legislative Assembly	<input type="checkbox"/>	
Victoria Legislative Council	<input type="checkbox"/>	
Western Australia Legislative Assembly		X
Western Australia Legislative Council		X

* There was a recommendation to the NSW Legislative Assembly from the Standing Committee on Parliamentary Privilege and Ethics in December last year that Members' interest disclosures be published on the Parliament's web site. That recommendation was not adopted by the House. A recommendation to the Upper House was made in similar terms by the Legislative Council Privileges Committee. That recommendation was not adopted, either.