

‘From the Tables’ – a round-up of administrative and procedural developments in the Australian parliaments

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AUSTRALIAN PARLIAMENT

Allegations of the use of the closed circuit television (CCTV) system at Parliament House to monitor people providing information to senators were made during Estimates hearings of the Finance and Public Administration Legislation Committee in May by Senator John Faulkner. At issue was parliamentary privilege. The allegations received prominence more recently in respect of the potential appointment of a new Clerk of the House of Commons. Two issues of privilege were identified for investigation as possible contempts: the possible interference or attempted interference with a senator in the free performance of his duties as a senator; and whether disciplinary action was taken against a person in connection with the provision of information to a senator. The Privileges Committee is investigating and has announced no date for reporting.

In the House of Representatives an outstanding matter of privilege has yet to be resolved. The outcome of the Privilege Committee inquiry relating to the former Member for Dobell, Craig Thomson, is again in abeyance until an appeal to the Melbourne Magistrate’s Court has been heard and decided. The appeal is set down for November 2014. The Privileges Committee was required to determine ‘whether, in the course of his statement to the House on 21 May 2012, and having regard to the findings of the Melbourne Magistrates Court of 18 February 2014 in relation to Mr Thomson, the former Member for Dobell, Mr Craig Thomson, deliberately misled the House’.

Western Australian electors returned to the polls on 5 April following the half-Senate election of 7 September 2013 being declared void by the Court of Disputed Returns. The fresh election resulted in the largest crossbench in Senate history with 17 senators representing minor or micro-parties and one independent senator. These senators, along with those elected at the September 2013 poll, were sworn in on 7 July 2014 to begin their six-year fixed term.

House of Representatives Standing Order 1, which sets down speech time limits, was amended in March to allow for an additional category of debate: the suspension of standing orders on notice relating to the programming of government business. The amendment provided for the whole debate on such motions not to exceed 25 minutes, with a maximum of 15 minutes for the mover, 10 minutes for the Member next speaking, and a five minute limit for any other Member. Prior to this change, there was no limit applied because motions to suspend were treated as debates ‘not otherwise provided for’ by the standing orders.

Senate Standing Orders have undergone a number of changes, including: changes to the membership of the Privileges Committee; the adoption of three-tiered speaking time limits for the open-ended adjournment debate on Tuesdays (5 minute speeches are followed by 10 minute speeches, before the 20 minute speeches wrap up the day); removal of the last gender-

specific terminology; changes requested by the Scrutiny of Bills Committee to update its powers and practices and to better integrate its work with the work of the legislation committees; permanent adoption of temporary rules for questions without notice providing for shorter time limits on questions and answers and direct relevance of answers; changes to strengthen the rights of minorities in the estimates process following dissatisfaction with the conduct of the 2014 Budget estimates hearings; and strengthening of resolutions expressing the Senate's expectations of accountability from ministers and officers and new measures to encourage timely production of answers to questions taken on notice at estimates.

AUSTRALIAN CAPITAL TERRITORY

The Legislative Assembly adopted a report of the Standing Orders Committee in March which dealt with consideration of draft reports by Committees. The new Standing Orders are: (i) if the Committee cannot agree on which draft report to consider the Chair's draft will have precedence; (ii) at the conclusion of the consideration and any reconsideration of the draft report selected by the committee the Chair shall move 'That the report (as amended) be agreed to'; and (iii) if the committee is unable to agree upon a report, the Chair of the committee must present a written statement to that effect, along with the minutes of proceedings. This arose from a matter in February when the Chair of the Select Committee on Regional Development — which has two government and two opposition members without a casting vote for the Chair — presented a Special Report to the effect that the Committee was unable to agree on a report. The new Standing Orders were required in May when the Standing Committee on Planning, Environment and Territory and Municipal Services reported that it was unable to agree on a report.

NEW SOUTH WALES

Premier Barry O'Farrell resigned in sensational circumstances on 17 April 2014 following evidence to the Independent Commission Against Corruption (ICAC) that he had not received a gift of wine from Nick Di Girolamo, an executive of Australian Water Holdings. Mr O'Farrell attributed his resignation to a 'massive memory fail' [155](#). Mike Baird became the state's 44th Premier. O'Farrell was not the only Liberal Party casualty of ICAC hearings. This year, Chris Hartcher moved to the cross-bench in February; Darren Webber moved to the cross-bench in February and in June announced he would not contest the 2015 General Election; Chris Spence moved to the cross-bench and in June announced he would not contest the 2015 General Election; Maria Ficarra moved to the cross-bench of the Upper House in April; and Mike Gallacher resigned as a Minister in May and moved to the cross-bench [156](#).

In June, the Legislative Council Privileges Committee reported on matters recommended by the Independent Commission Against Corruption (ICAC) in its October 2013 report Reducing the opportunities and incentives for corruption in the State's management of coal resources. The Council Committee recommended: (1) the adoption of a new clause in the Code of Conduct for Members dealing comprehensively with improper influence by members; (2) amendment of the interest disclosure regime to require disclosure by members of the interests of their spouses/partners and dependent children, together with a range of other measures to increase the timeliness and accessibility of interest returns by members; and (3) the adoption of a Commissioner for Standards in New South Wales, based on the model adopted in the UK Parliament. The Legislative Assembly Privileges and Ethics Committee reported in similar terms in July, but proposed a different mechanism for the disclosure by members of the interests of their spouse/partner and dependent children, together with the appointment of an Ethics Commissioner rather than a Commissioner for Standards.

Also in June, John Evans PSM was appointed Parliamentary Ethics Adviser. Mr Evans, who was Clerk of the Parliaments and Clerk of the Legislative Council from 1989 to 2007, succeeds Ian Dickson who retired in December 2013. The Parliamentary Ethics Adviser is appointed on the resolution of both Houses and provides advice, on request, to Members of Parliament on ethical issues and to Ministers on post-separation employment.

Tension continues between the Parliament and the Executive in respect of production of documents ordered by the Legislative Council. The most recent incident occurred in March, April and May when the government failed to produce all documents ordered, relied on legal advice from the Solicitor-General and was subjected to a further order to produce the documents sought. The initial requirement was an order made in March for documents from the office of the former Minister for Finance and Services and Minister for the Illawarra and documents concerning reform of planning laws in New South Wales. Upper House Committees experienced similar difficulties in ordering documents from the Executive.

Condolence motions were passed in both Houses of the Parliament in May after the former Premier, the Honourable Neville Wran, died on 20 April 2014 at the age of 87. Mr Wran entered Parliament in 1970 and served as Premier from May 1976 to July 1986. Mr Wran was the second longest serving Premier in NSW after Bob Carr.

NEW ZEALAND

The Parliamentary Privilege Bill introduced and referred to the Privileges Committee at the end of 2013 is expected to be passed in August 2014 before parliament is dissolved for the General Election. The bill has broad coverage and seeks to restore and reaffirm understandings of the scope of aspects of parliamentary privilege, and to consolidate and modernise existing legislation. It will form part of New Zealand's constitutional framework and arises from a number of recent defamation cases in which the courts rejected traditional parliamentary privilege and introduced the notion of effective repetition. The bill defines 'communication' and 'communication to the public', and seeks to provide future-proof definitions by covering in a technology-neutral way all communications in any form. It also provides for a stay of court or tribunal proceedings that are commenced on the basis of a proceeding in Parliament, or a document related to a proceeding in Parliament, communicated under the authority of the House, for example broadcasts made under the authority of the House.

A triennial review of Standing Orders was completed by the Standing Orders Committee, which reported in July. Matters covered in the report include the Business Committee having authority to make arrangements for 'state occasions', the right for Members to address the House in sign language, whether scrutiny of bills is applied in accordance with the Bill of Rights Act 1990, the introduction of revision bills in the new Parliament, a rationalisation of financial scrutiny procedures, protection of Committee proceedings along the lines of the Parliamentary Privilege Bill, webcasting Select Committee proceedings, and amendments to provisions in respect of the Register of Pecuniary and Other Specified Interests of Members of Parliament.

NORTHERN TERRITORY

John Lawler's report into the ALP Government's granting of a crown lease on the Stella Maris hostel was tabled in June after passage of the Budget. The report found that former Lands Minister Gerry McCarthy and former Treasurer Delia Lawrie had acted against the public interest in granting a lease to Unions NT and that Mr McCarthy's conduct was 'not

accountable or responsible'. Mr Lawler found no evidence of corrupt conduct, and that neither Mr McCarthy nor any member of Cabinet received any financial benefit or personal advantage as a result of the decision. Specifically, he recommended: (1) that the NT Government immediately request Unions NT to relinquish any interest it may claim in the Stella Maris site and invite Unions NT to join a future expression of interest process; (2) that the site be reopened as soon as practicable to a formal expression of interest process; (3) that consideration be given to a partnership arrangement with the City of Darwin, with a view to including in the formal expression of interest process; and (4) that the Legislative Assembly consider whether there has been an alleged breach of the Northern Territory of Australia Legislative Assembly by Delia Lawrie and Gerry McCarthy, and whether under the provisions it wishes to refer any alleged breach of the code to the Privileges Committee¹⁵⁷.

A major review, the first in 20 years, of Standing Orders has been underway. The Standing Orders Committee is expected to report to the Assembly before the end of the year and it is anticipated that a new set of Standing Orders will be recommended.

A by-election in the division of Blain was held on 12 April. The vacancy was caused by the resignation of former Chief Minister Terry Mills. The status quo was maintained when the seat was won by the CLP's Nathan Barrett.

Preparations are underway for events in November which will commemorate the 40th anniversary of the first sitting of the Legislative Assembly in 1974 and the 20th anniversary of the opening of Parliament House in 1994.

QUEENSLAND

Standing Orders were amended in February to provide for a 'party vote' during divisions based on a similar practice in the Legislative Assembly of Victoria. Under the changes made in February, Members remain in their seats while party whips and independents report their votes directly to the House. Effective from 2 June, only whips for the government and official opposition report their votes directly to the House while Members of minor parties and independents report to the Clerk who relays that information to the House.

In April, the Assembly adopted a motion to trial a new process for estimates hearings. In recent years, estimates have been held over seven days, with one committee meeting each day. The 2014 trial process requires all seven portfolio committees to meet concurrently on two days in July.

Between January and June, the Ethics Committee reported on four matters of privilege, including but not limited to: alleged intimidation of a Member by a legal firm; alleged failure to declare an interest; alleged offence against the Criminal Code by the Acting Chair of the Crime and Misconduct Commission which resulted in suspension of an inquiry by the Select Committee on Ethics while a police investigation took place.

Two by-elections were held: one in the division of Redcliffe and one in Stafford. Both seats were won by the Labor Party from an Independent in the case of Redcliffe and an LNP Member in the case of Stafford. The LNP retains an overwhelming majority in the Queensland Parliament.

SOUTH AUSTRALIA

Malcolm Lehman, Clerk of the House of Assembly, resigned in May after seven years in the job. Prior to his appointment, Mr Lehman served as Deputy Clerk. Deputy Clerk Rick Crump has been acting in the position, and no successor had been named at the time of going to print.

TASMANIA

Both Houses of Parliament were recalled early for an unscheduled sitting on 28 January to consider the Pulp Mill Assessment Amendment Bill 2014. The bill passed the Assembly unamended on that day and was passed, unamended, by the Council on 29 January. It received assent on 11 February. The bill amended the Pulp Mill Assessment Act 2007 to provide certainty about the status of the Pulp Mill Project in anticipation of it being purchased by a new proponent.

Premier Lara Giddings announced in January that Tasmania would face a General Election for the House of Assembly on 15 March 2014. On 12 February the Parliament was prorogued and the House of Assembly dissolved. The Liberal Party won the election for the first time in 16 years, securing an additional five seats, and formed Government with a majority of 15 of the 25 seats in the House of Assembly. The new Parliament opened on 6 May when Elise Archer was elected Speaker.

Following the election, changes to Standing Orders were made including: a reduction in the number of opportunities for non-Government Members of the House other than the Opposition to raise a Matter of Public Importance from one per sitting week to one every second sitting week; an increase in the number of opportunities for Government Private Members to raise a Matter of Public Importance from none to one every second sitting week; a reduction in Private Members time from 4½ hours to 2½ hours per sitting week, with Opposition Members allocated 1½ hours per sitting week, down from 2½ hours per sitting week, and Members other than the Opposition allocated one hour per week, down from two hours per week; moving Question Time to the commencement of each sitting day immediately following Prayers; an increase in the number of Questions Without Notice that can be asked by Government Private Members from three up to four per sitting day and a commensurate decrease in the number that can be asked by Greens Members from three down to two per sitting day; lapse of a Notice of Motion within three months of it being given if it has not been brought on for debate; re-introduction of provisions that allow for the attendance of, and participation in, Question Time in the House of Assembly by Members of the Legislative Council who are Ministers; and removal of the provision permitting two or more Members to jointly initiate a Public Bill.

On 16 July, Peter Bennison OAM retired as Deputy Clerk of the House of Assembly after serving with the Tasmanian Parliament for 34 years.

VICTORIA

Following an exceedingly well publicised political spat with the Member for Frankston Geoff Shaw, Speaker Ken Smith resigned at 3pm on 4 February. He is the first Speaker in the Victorian Assembly to have resigned mid-term since 1942. The Assembly was suspended for an hour before Christine Fyffe, the Deputy Speaker, was elected Speaker. Paul Weller was subsequently elected Deputy Speaker. The closeness of the numbers in the Victorian

Assembly means that the Speaker has been required to use his/her casting vote on a number of occasions during 2014.

The Privileges Committee tabled its report into the Member for Frankston's use of his parliamentary vehicle in May. In June, following passage of the budget bills, the Premier moved an 11-part motion in respect of penalty, which included: repayment of over \$5,000, being the amount the Privileges Committee determined related to improper use of his parliamentary vehicle; payment of an additional \$1,619.69, being a 25% loading on the total amount of improper use of his parliamentary vehicle (including an amount he had already repaid); and apologise to the House and the people of Victoria for his breach of the Code of Conduct. The motion required the Speaker to name the Member for Frankston after which he was suspended from the service of the House for 11 sitting days during which he was prohibited from using his electorate office budget to travel interstate or overseas. The Member, Geoff Shaw, cannot return to the Assembly until 2 September. It is noteworthy that the Premier's motion was successful only because the Speaker used her casting vote to defeat an Opposition amendment to expel the Member rather than suspend him.

A General Election will be held in Victoria on 29 November. Three Legislative Council Members tendered their resignation in the January to June 2014 period, bringing the total number of casual vacancies in the 57th Parliament to five. The retiring Members were Phillip Davis, Peter Hall and Candy Broad. Replacement Members arising from Joint Sittings were, respectively, Andrew Ronalds, Daniel O'Brien and Margaret Lewis.

Wayne Tunnecliffe retired as Clerk of the Legislative Council on 25 July 2014 after 47 years of distinguished service. He was appointed Clerk of the Legislative Council in December 1999. The new Clerk of the Upper House is Andrew Young.

WESTERN AUSTRALIA

Following passage of the Evidence and Public Interest Disclosure Legislation Amendment Act 2012, the Legislative Assembly amended its Standing Orders in June to include:

Disclosure of the Identity of Journalists' Informants

314. If the Assembly is considering whether to require a journalist to disclose an informant's identity it shall have regard to the public interest of having a free press when it does so.

The purpose of the amending legislation was to provide protection for journalists which, in certain circumstances, would preclude them from being compelled to give evidence and revealing sources. The intention was for the shield laws to apply in courts, tribunals and inquiries, such as hearings before the Legislative Assembly, Council or their committees. Following passage, however, different views were expressed about whether the provisions satisfied the requirement for 'unmistakeable language' by which the privileges of the Parliament may be qualified or abrogated and that the legislation could impinge on parliamentary privilege itself. The matter was referred to the Procedure and Privileges Committee, which reported in May, it found, inter alia, that journalist shield provisions should apply to parliamentary proceedings under Standing Orders.

The Legislative Council Procedure and Privileges Committee reported in May on its review of parliamentary privilege and contempt laws arising from a 2009 Select Committee Report. The Procedure and Privileges Committee considered each one of the Select Committee's six recommendations and: (1) found that the Legislative Council had amended its Standing

Orders in 2012 to better clarify and define what may constitute a contempt of parliament, in accordance with Recommendation 1 of the Select Committee; (2) disagreed with Recommendation 2 of the Select Committee to repeal ss 55 to 59 of the Criminal Code dealing with offences in relation to Parliament; (3) recommended retention of the Legislative Council's power to imprison, contrary to Recommendation 3 of the Select Committee; (4) agreed that the Parliamentary Privileges Act 1891 should be amended to provide that each of the Houses may impose a fine for any amount either House considers to be appropriate in relation to any breach of privilege or contempt of Parliament; (5) agreed that the power of each of the Houses to expel its Members should be abolished; (6) agreed that the parliamentary precinct of the Parliament of Western Australia should be clearly defined by statute. The Committee then recommended that the Legislative Assembly be acquainted with its report and that Parliamentary Counsel be instructed to draft appropriate amending legislation. The report has not been debated by the Council.

The Joint Standing Committee on Delegated Legislation is inquiring into fee structures, proclaimed this year, that are applicable to a number of Courts, a matter on which the Committee has previously reported.

The Legislative Council Standing Committee on Environment and Public Affairs reported on its Inquiry into the sandalwood industry in Western Australia in May, which coincided with significant regulatory action and appears to have facilitated a Departmental review into the industry and its regulation.

The Council's Standing Committee on Public Administration tabled a major report on its Inquiry into Pastoral Leases in Western Australia. The report highlighted significant issues surrounding the administration of Pastoral Leases over Crown Land in WA and made recommendations which have been substantially adopted by Government.

The Council's Standing Committee on Estimates and Financial Operations has launched a self-referred inquiry into The Provision of Information to Parliament.