

‘From the Tables’ – a round-up of administrative and procedural developments in the Australasian parliaments¹

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AUSTRALIAN PARLIAMENT

In the House of Representatives, the Committee of Privileges suspended its inquiry into matters concerning the Member for Dobell, Craig Thomson, after formal charges were laid in relation to other inquiries. The Chair of the Committee advised the House that there would be no further proceedings until the external matters had been concluded. In June, the Procedure Committee reported to the House in relation to a review of Standing Orders and, more interestingly, the introduction of electronic voting in the House. The next Procedure Committee is expected to undertake a more detailed inquiry into the implementation of such a system. Also in June, the Standing Committee on Social Policy and Legal Affairs invited community participation in its deliberations on the Australian Constitution via social media. This strategy was promoted in social media. During a roundtable discussion with the committee, tweeters commented on the proceedings, proposed questions for roundtable participants to consider and tweeted responses to questions asked by committee members. A compilation of tweets was published with the transcript of the Committee’s hearing.

In the Senate, production of material arising from the mining tax created a challenge when the Minister for Finance informed the Senate that information on revenue raised could not be provided because of confidentiality provisions in the *Taxation Administration Act 1953*. This and the provisions of the *Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010* prevented officers of the ATO from reporting to the Minister. Instead of ordering the minister to produce information which it would have been unlawful for the Tax Office to provide, the Senate, on 6 February, ordered the Tax Commissioner to produce the information directly to the Economics References Committee which would then determine whether to publish it. In agreeing to the order, the Senate noted that the information concerned the tax affairs of companies and would not breach the confidentiality of natural persons. The committee received and published the information on 8 February, following the Treasurer’s announcement of the figure after the receipt of further legal

1 *From the Tables* is compiled from material supplied by each House/jurisdiction for *Parliament Matters*, the biannual newsletter of the Australian and New Zealand Association of Clerks at the Table (ANZACATT).

advice. The 153rd Report of the Senate Committee of Privileges was an assessment of how well the Government Guidelines for Official Witnesses before Parliamentary Committees assisted officials in understanding their rights and obligations. The inquiry arose from concerns expressed by the Senate Foreign Affairs, Defence and Trade References Committee about directives, apparently relying on the government guidelines, requiring official approval of all Defence witnesses appearing before parliamentary committees and clearance of their evidence. In its report, the committee repeated its longstanding concerns about the lack of knowledge among officials – including statutory officers – about their obligations to the parliament and its committees and foreshadowed updating its general report to include more comprehensive guidance for officers and others appearing before committees and otherwise providing information to the Senate or to senators. This report will be useful to a number of jurisdictions where there seems to be a growing view that appearing before a parliamentary committee is optional and subject to information filtering by departmental officials and/or Ministers. At issue is the hoary old chestnut of the power struggle between the Executive and the Parliament (see NSW Legislative Council and SA Legislative Council below).

AUSTRALIAN CAPITAL TERRITORY

In February, the Assembly adopted a Standing Order requiring the circulation of a proposed amendment to a Bill to all Members 24 hours prior to it being moved. This allows all Members to give consideration to the amendment prior to its debate in the Chamber. Also in February, the Assembly adopted a Resolution of Continuing Effect which provides the Assembly with independence from any religious faith, allowing instead of prayers each day the practice of silent contemplation. Effectively, this resolution provides the separation of Church from State. The Assembly established a Select Committee on Estimates for the 2013–14 financial year. The Leader of the Opposition was elected Chair of that Committee. Included in the resolution was an order for sufficient funds for the Committee to engage necessary expertise to analyse the budget and report to the Assembly. In March, the Assembly passed a bill which was introduced by Greens Minister Shane Rattenbury. The bill related to limitations on the gaming machine industry and was facilitated by the 'parliamentary agreement' between Rattenbury and the Government which allows him to introduce legislation without reference to Cabinet or the Minority ALP Government's policy platform. Critical mass in respect of the number of Members in the Assembly has been an issue for some time. In May, the Chief Minister presented a report to the Assembly which recommended that the number of Members in the Assembly be increased from 17 to 25 (the same number as in the Northern Territory Legislative Assembly) at the 2016 General Election and 35 Members in 2020. The report included alternatives to those propositions in the event that they were not adopted. No decision had been made by the end of the reporting period. Also in May, the Leader of the Opposition introduced a bill to provide an increase in the number of Ministers in the Assembly from five to six. The *Australian Capital Territory (Self-Government) Act 1988* provides for five Ministers but provides for the Assembly to legislate to alter that number.

NEW SOUTH WALES

In the Legislative Council, upon receipt of correspondence from the Independent Commission Against Corruption (ICAC) in March which specifically identified documents in the ICAC's possession in relation to Mount Penny Coal Mine that may have fallen within the terms of a 2009 Committee order for papers, the Council referred the matter to the Privileges Committee. In its report of April 2013, the Privileges Committee found that at least 124, if not all, of the documents identified by the ICAC as being absent from the return to order should, *prima facie*, have been provided to the House in 2009. In May, the Council referred new terms of reference to the Privileges Committee for inquiry into the reasons for the failure to provide documents in 2009 and related matters. Guidelines in the use of social media have been settled by a Committee of Chairs of Standing, Joint and Joint Select Committees. The guidelines remind Members that any comments made on social media are not covered by parliamentary privilege, and that social media should not be used to reveal confidential information (such as evidence at *in camera* hearings or site visits, or matters discussed during deliberative meetings). The guidelines are to be implemented on an interim basis until the Privileges Committee can consider the matter and put in place permanent guidelines.

NEW ZEALAND

A decision of the Supreme Court in September 2011 in *Attorney-General and Gow v Leigh* [2011] NZSC 106 held that statements made by an official to a Minister for the purpose of replying to questions for oral answer are not themselves parliamentary proceedings and are therefore subject to court proceedings (in this case, defamation proceedings) because they are not protected by absolute privilege. In June, the Privileges Committee respectfully disagreed with this and other court decisions affecting parliamentary privilege in New Zealand (such as *Buchanan v Jennings*). In particular, the committee considered that the court was wrong to apply the common law test of necessity to ascertain the scope of Parliament's privilege of freedom of speech. The committee recommended to the Government that it introduce a Parliamentary Privilege Bill to clarify for the avoidance of doubt the nature of parliamentary privilege in New Zealand.

NORTHERN TERRITORY

The Auditor-General entered into an arrangement with the Speaker in February that he would furnish one hard copy only of his reports to the Assembly. The arrangement included the caveat that once a report had been tabled, it would be uploaded to the Auditor-General's web site for anyone to access. This gave rise to a referral of the matter by the Speaker to the Subordinate Legislation and Publications Committee, which, during the 12th Assembly, is assigned to the Legal and Constitutional Affairs Committee. The Committee reported on 14 May and noted that the notion of electronic tabling received enthusiastic and unanimous support from government agencies which responded to the

call for comments, all of which identified the cost of printing as a major consideration. Arising from the Committee's report, staff of the Legislative Assembly have been directed to prepare a business case for the creation and maintenance of a tabled papers database. During the first part of 2013, Assembly staff undertook a comprehensive review of Standing Orders with the view to removing dated and unused orders, updating language to plain English, considering a re-ordering of how the orders are presented for ease of use, with the most frequently used orders appearing towards the front of the document, and incorporating resolutions of continuing effect which have been in place for a number of years. The review will be put to the Standing Orders Committee together with a request about how they would prefer to receive and deal with proposed changes.

QUEENSLAND

In March, the Speaker advised the House about an alleged interference with the deliberations of the Parliamentary Crime and Misconduct Committee (PCMC). The Leader of the Opposition claimed the Premier had committed a contempt by prejudging issues currently the subject of that committee's inquiry and attempting to threaten the members of the PCMC and to unduly influence their conduct in relation to that current inquiry. Standing orders do not provide a role for the Speaker with respect to such an allegation whilst the committee is in existence. Whilst the PCMC appeared to have resolved not to report the Leader of the Opposition's concerns to the Ethics Committee, the Chair of the PCMC, in a statement at a Committee hearing, said: '... any improper interference with the free exercise by this committee of its authority or functions will in future, be actioned'. On 21 May, the Speaker advised the House about a matter of privilege referred to the Ethics Committee by the Registrar of Members' Interests. The matter related to an alleged failure to register an interest in the Register of Members' Interests by the Member for Redcliffe. Madam Speaker advised that she had received advice from the Chair of the Ethics Committee stating that as there was a joint investigation being undertaken by the Crime and Misconduct Commission (CMC) and the Queensland Police Service relating to the matter referred to the committee, they were suspending their inquiry pending the outcome of the CMC investigation. In March, the Chair of the Parliamentary Crime and Misconduct Committee (PCMC) was advised by the Acting Chairperson of the Crime and Misconduct Commission (CMC) that two pressing matters had emerged: the public release of confidential Fitzgerald Inquiry documents; and the destruction of original Fitzgerald Inquiry documents held by the CMC that were to be perpetually preserved. The Fitzgerald Inquiry was a Commission of Inquiry established in 1987 regarding possible illegal activities and associated police misconduct. Much of the evidence gathered during the inquiry remained confidential. Upon receiving this advice from the CMC, the PCMC immediately began an investigation, issuing summonses and hearing *in camera* evidence on 6 and 7 March. On 8 March, following the urgent passage of the Crime and Misconduct Commission (Administrative Negligence Rectification) Amendment Bill, the House resolved to refer certain matters to the PCMC for inquiry and report. The committee tabled its report on 5 April. It made 22 findings and 24 recommendations. The report was debated in the House on 18 April and 2 May.

SOUTH AUSTRALIA

The Select Committee on the Inquiry into the Corporation of the City of Burnside encountered problems with key witnesses. Among its desired witnesses was a former Chief Executive of the Council who proved to be difficult to locate and, once located, failed to respond to the Committee's communications. The Committee eventually made contact by sending an envoy to discuss his appearance before the Committee because he had cited personal/ medical grounds for his refusal to appear. The Committee considered the matter carefully and exercised its discretion to no longer insist on his appearance giving due credence to his concerns. Further, the Committee called for current Council personnel, namely the Chief Executive and the Mayor, to appear. While accepting the Committee's initial call and appearing a first time, both the Mayor and the Chief Executive were instructed by Resolution of the Council to 'not accept the Select Committee's invitation' to give evidence. Ultimately, both gave evidence, however when the Committee called on the two witnesses to appear again, correspondence was received from solicitors engaged by the Council indicating that the witnesses would not again be appearing before the Committee and that the earlier Resolution of the Council would stand. Further, any communication on the matter should be directed to the solicitors. Having considered the matter judiciously the Committee decided to not report the matter to the Legislative Council but instead to simply remind the correspondents of the Committee's powers and authority and that of the Parliament should it wish to escalate the matter. The Committee also swiftly resolved that a summons be issued by the Clerk under Standing Order 429 and delivered directly to the two persons by the Usher of the Black Rod. Following receipt of the Summons, the two witnesses attended the Committee, accompanied by a QC and assisting solicitor. The witnesses were instructed that only they could answer the Committee's questions and so evidence was given, albeit *in camera*.

TASMANIA

No reported changes to Standing Orders or procedure.

VICTORIA

In April, Andrew McIntosh, the Minister responsible for the Independent Broad-based Anti-corruption Commission, Chair of the Privileges Committee and Leader of Government in the House resigned his positions after revealing he had leaked confidential material to the media about the operations of the Privileges Committee in respect of its inquiry into the conduct of the Member for Frankston, Geoff Shaw. Mr McIntosh gave a personal explanation to the House during which he admitted he was the unnamed coalition member of the Privileges Committee who had spoken to a Fairfax journalist and by doing so had brought into question the fairness and integrity of the committee's private deliberations and the right of a member appearing before the committee of their natural justice. McIntosh resigned his

position on the Privileges Committee and other committees of which he was a member and resigned as a minister of the government. He apologised to the House, the Premier and the government for any embarrassment he may have caused. In June, McIntosh was appointed as a member of the Accountability and Oversight Committee and IBAC (Independent Broad-based Anti-corruption) Committee. The Family and Community Development Committee's Inquiry into handling of child abuse by religious and other organisations is one of the largest inquiries a Victorian parliamentary committee has ever received. Nineteen people have worked in the secretariat during the course of the Inquiry. As well as ongoing Committee staff, special advisers (including a former Supreme Court Judge and a former Police Commissioner), a Crown Prosecutor, Senior Counsel from the Victorian Government Solicitor's Office, a media manager, community engagement officers, several researchers, solicitors and other administrative staff have also worked on the Inquiry. The Committee is in the deliberation phase of the inquiry and will report by 30 September.

In the upper house, the Accident Compensation Legislation (Fair Protection for Firefighters) Bill 2011 was introduced into the Legislative Council by Australian Greens Member, Ms Colleen Hartland, on 7 December 2011. In February, when the bill was read a second time, the President expressed concerns about the constitutionality of introducing the Bill in the Legislative Council because of financial implications contained in the Bill. Ultimately, the President ruled that the Bill was in breach of section 62 of the *Constitution Act 1975* which states that 'a Bill for appropriating any part of the Consolidated Fund or for imposing any duty, rate, tax, rent, return or impost must originate in the Assembly' and ordered the bill be withdrawn. On 17 April, the bill was referred to the Economy and Infrastructure Legislation Committee which received conflicting evidence about the Council's capacity to deal with it. The Committee concluded that the President should not be placed in the difficult position of being required to make decisions on matters of constitutional law and recommended that in future when Bills potentially infringing on section 62 of the *Constitution Act 1975* are introduced into the Council, the President should report his concerns and the Council should determine whether to allow the Bill to proceed. If the Bill passed the Legislative Council, it would then be up to the Assembly to decide whether it is willing to entertain the Bill. A similar question arose during debate on the Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013. In this case, however, the President considered that Council amendments proposing to increase taxi licence fees were permitted because they fell under section 64(1) of the *Constitution Act 1975*, which specifically allows for bills to include the appropriation of fees for licenses without the requirement that they originate in the Assembly. The Bill was read a third time and passed, then returned to the Assembly for consideration of the Council's amendments, which were subsequently agreed to.

WESTERN AUSTRALIA

No reported changes to Standing Orders following the General Election in March.