

Playing with the Rules

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Abstract

It has been proposed that in Westminster the government of the day allows itself to be constrained by parliamentary procedure though it has the power to change procedural rules at its convenience. Is it different in Australia? A recent parliamentary committee report examines procedural reform in the Australian House of Representatives and offers incidental insights into the extent to which the government of the day controls the formulation of parliamentary procedure in the House. Australian governments have been more reluctant than their British counterparts to suffer procedural constraints on the passage of government business. However, through the establishment of the Procedure Committee, ordinary Members are offered a greater role in determining the conduct of other business.

Prologue

It is wise to avoid using coherent scientific theories to explain the messy behaviour of human institutions. However, applied with a little caution and a very broad brush, the principles of evolution, plate tectonics and chaos theory — to choose but three versatile explanatory tools from the natural sciences — may be deployed to foster insights into the internal workings of a modern legislative chamber like the House of Representatives.

For instance, a dash of Darwin may help us to isolate by analogy the processes at work when a legislature's operating procedures change over time. Accordingly, one might ask does parliamentary procedure evolve? Or is it, contrariwise, principally the object of intelligent design?

Certainly there are echoes of natural selection in the way procedures persist, degenerate or mutate. Consider, for example, the 'urgency debate'¹ in the House of Representatives. It may be argued that what began over one hundred years ago as a

procedural mechanism to expedite debate on immediate concerns has in recent years become a weapon of accountability wielded by the Opposition as a more effective extension of Question Time.² An old form has mutated to survive new environmental demands.

Similarly, much as the Cro-Magnons are supposed to have supplanted the Neanderthals, a recently appearing hybrid procedure in the House of Representatives may be crowding out the guillotine as the principal mechanism for asserting the primacy of government business in the House's proceedings.³ A new form is replacing an old, presumably because it is better adapted to the existing environment.

Thus it can be said that at least some procedural change does follow a broadly Darwinian line of gradual undirected development based on natural selection. On the other hand it can be shown that, unlike in the natural world, organic change in the House of Representatives is more than the labour of a Dawkinsian blind watchmaker. In fact most procedural change is driven by conscious intention, by a desire to achieve anticipated ends, and is not merely the survival of better fitted procedures or reflexive adaptation to changing circumstances.

Procedural reform provides the backdrop to a recent parliamentary committee report. The House of Representatives Standing Committee on Procedure presented a commemorative report of the first two decades of its operation in *A history of the Procedure Committee on its 20th anniversary*⁴ to the House on 28 November 2005.

The *History* highlights what the committee has achieved since it was first established in 1985 but also examines, in passing, the ambit of 'practices and procedures', their development in the House of Representatives and the need for an effective agency for procedural reform in the House. In addition, the report describes some of the processes by which parliamentary procedure is formulated and tacitly invites reflection on the extent to which the government of the day determines the rules and conduct of the House's business.

A Shorter History of the Procedure Committee

The *History* begins with a discussion on the scope of the Procedure Committee's area of responsibility, specifically the 'practices and procedures' of the House, and proposes that the committee's purview is unconstrained by any formal definitions of those terms. In practice, so to speak, it is left to the committee itself to range responsibly over the House's green swards. After these preliminaries, the scene is set for some history.

Australia's Constitution conferred on each of the two Houses of Parliament the power to make its own rules and orders in conducting its business and proceedings.⁵ The House of Representatives did not rush into exercising that power. Edmund Barton, as Prime Minister, presented 'temporary' standing orders shortly after the

Parliament opened in 1901 and they were not superseded until the House adopted permanent standing orders in 1950.⁶

Barton claimed that the temporary standing orders were a selection of ‘what appeared to be the most workable and reasonable rules in the various Legislative Assemblies’ of the Australian colonies.⁷ The temporary orders had been drafted by a former clerk of the South Australian legislature⁸ and so were not a direct implementation of current practice at Westminster but rather a localised adaptation shaped by the experience of colonial self-government.

The temporary standing orders did not go unchanged during the five decades of their operation. There were additions, which while few in number, were nevertheless substantial in their impact on the conduct of business. Two procedural motions to curtail debate — the ‘gag’ or closure of question and its sibling, closure of Member — appeared in 1905. Speech time limits were introduced in 1912. And the guillotine arrived in 1918. There were other minor changes but they were mainly of a housekeeping nature. The common characteristic of the substantial changes was the effect of enhancing executive convenience.

The delay in adopting permanent standing orders was not the fault of the agency responsible for preparing them, the Standing Orders Committee. That committee, established in the very first Parliament of the Commonwealth and reappointed in each succeeding Parliament until 1985, had presented several reports over five decades containing on each occasion a complete set of recommended standing orders. Successive failures to adopt the committee’s proposals may have been due to a combination of factors including institutional inertia or the pressure of other business — or perhaps it was simply that Members had become comfortable with the provisional rules.⁹

The pattern of effecting procedural change to meet executive convenience continued after the permanent standing orders had at last been adopted. Most notable were the reforms of 1963 which saw a streamlining of the House’s financial procedures, especially in the passage of budget legislation.¹⁰ The frequency of procedural change increased but by the late 1970s a general mood of dissatisfaction had emerged including a sense that the standing orders and the practices and procedures they embodied were by now antiquated, as well as a feeling that ordinary Members were increasingly little more than undistinguished cogs in the executive’s lawmaking machine.

A 1976 general inquiry into the parliamentary committee system delivered an unflattering finding on the state of procedural reform in the two Houses of the Australian Parliament: ‘There have been few notable achievements made by either Standing Orders Committee’.¹¹ This was perhaps unfair given repeated efforts by the House’s committee in the first five decades to bring in permanent standing orders and the role the committee had played in framing the 1963 reforms. An outcome of the 1976 inquiry was a recommendation that each House establish a committee on procedure.

Unfairly criticised or not, it was certainly the case that the House's Standing Orders Committee had been hampered by structural problems. Its leadership was appointed *ex officio* and its members, being parliamentary and party office holders, probably were far too busy with their other responsibilities to dedicate the time needed to attend to the minutiae of procedural housekeeping. The recommendation for a procedure committee included a stipulation that its members not be office holders.

Almost a decade passed before the House appointed the Standing Committee on Procedure.

More Than a Few Notable Achievements

Having provided some background to the committee's domain — that is, the House's practices and procedures — and the prelude to the establishment of the committee, the *History* then outlines the Procedure Committee's tentative beginnings, its journey to permanency and describes in some detail the committee's activities over two decades.

The joint parliamentary committee which recommended the establishment of a procedure committee in each House proposed that the respective standing orders committees would be retained and that in each House the two committees would coexist — it was not specified how the committees would share responsibility for procedural reform. When the House of Representatives' Procedure Committee was established in 1985, however, the Standing Orders Committee was effectively placed in suspended animation from which it was never to be revived.¹²

The Procedure Committee has been reappointed in each new Parliament¹³ since its inception in the 34th Parliament and is in its eighth formation in the current 41st Parliament. In the twenty years to March 2005, it met 259 times for a total of about 300 hours and presented forty-four reports.

In analysing the committee's impact, the *History* categorises the forty-four inquiries underpinning the reports according to four types: substantial inquiries, rapid reactions, campaigns and reviews. Each inquiry in the first category was wide-ranging, was completed over a lengthy period and eventually delivered significant procedural outcomes. The second category, rapid reactions, comprises the committee's bread and butter, entailing responses to existing or emerging problems typically needing prompt attention and delivering recommendations which are usually adopted by the House. Campaigns are instances where the committee pursues an objective over several inquiries, sometimes succeeding but often facing a lack of response because of the complex, contentious or indeed intractable nature of the issues. Reviews occur when the committee revisits an earlier inquiry to assess how successfully the adopted recommendations have worked.

There are only four inquiries in the first category but each has had a significant impact. The *Days and hours* report of 1986 led to a reversal of the slow decay of private Members' business over preceding years, the House adopting recommended new procedures in 1988 for arranging private Members' business and the consideration of committee reports. The 1993 *About time* report led to changes in sitting hours, rostering of Ministers for Question Time¹⁴ and, most importantly, the establishment of the Main Committee to share the legislative workload of the Chamber. *It's your House*, presented in 1999, took a multifaceted approach to improving community involvement in the activities of the House and its committees. The remaining substantial inquiry, *Revised standing orders*, resulted in the adoption of redrafted and reorganised standing orders which came into operation from the opening of the 41st Parliament on 16 November 2004.

Eighteen of the Procedure Committee's forty-four inquiries are classified as rapid reactions. They have ranged over practical issues like the time for ringing the bells for divisions and quorums and allowing electronic lodgment of questions and notices, to resolving problems in the interpretation and application of specific standing orders. While the substantial inquiries have delivered notable outcomes, it is in day-to-day problem-solving that the committee plays an indispensable role. And like the substantial inquiries, the rapid reactions have achieved a high success rate.

Though it may claim more notable achievements than the Standing Orders Committees which operated from 1901 to 1984, the Procedure Committee is not always successful in achieving its objectives. There are several issues which it has examined more than once and on which it has made recurrent recommendations. Some may seem trivial in the scheme of things, like the matter of who presides before the Speaker has been elected.¹⁵ But others involve ongoing quandaries which confront the House, including the conduct of Question Time, procedures for opening Parliament and the pros and cons of electronic voting. The committee's approach to these issues falls under the third category, campaigns.

As for the fourth category, the committee has conducted reviews of the outcome of most of its substantial inquiries as well as some of the rapid reactions. For example, the implementation of some of the recommendations in the *About time* report referred to earlier were reviewed in *Time for review*. A further review, *Second Chamber*, assessed the success of another outcome of *About time*, the establishment of the Main Committee. Often a review leads to recommendations for further fine tuning but on at least one occasion, concerning a trial to streamline the conduct of divisions, it resulted in the abandonment of a proposed innovation and a return to the status quo.

The committee's standing terms of reference have never been overly prescriptive. Until the 2004 revision of the standing orders, the committee was required 'to inquire into and report upon the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures'. This was simplified in the revised standing

orders: 'to inquire into and report on the practices and procedures of the House and its committees'. The role for the committee which emerges from the achievements of twenty years can be summarised as: innovation, renovation and repair.

In concluding the *History*, the committee went some of the way to evaluating its performance and identifying the key determinants of its influence on the development of parliamentary procedure. In doing so it attempted to avoid seeming fulsome in its own estimation. By and large, it restricted its assessment to what could be inferred from empirical evidence and left it to others to be more adventurous.

Beyond the History

The *History* is very much a view from inside the institution, presented in the first instance for an internal readership. As such, it offers privileged insights into the day-to-day activities of the agency which is charged with maintaining the House's operating procedures. From the Procedure Committee's standpoint, there is great value in acquainting Members more generally with the valuable function it performs in preserving and promoting their interests.¹⁶ For interested observers outside, however, it also provides a springboard for a more speculative or values-based assessment of procedural reform in the House.

Behind the near view which the *History* provides of procedural reform as it happens, lurk at least two fundamental questions which are beyond the scope of the *History* but which might be explored from a sufficiently remote vantage point: (1) how important are the rules which govern the way the House operates and (2) who really determines the rules.

The latter question invites us to speculate on power relationships between the executive and the legislature at a general level and the government of the day and the House (and its committees) at the particular. The actual ownership and control of parliamentary procedure are critical to its maintenance and improvement. But first, we should appreciate what is at stake, the role of the rules.

The Importance of Parliamentary Procedure

If there is indeed a common view among citizens that parliamentary proceedings consist of little more than self-serving grandstanding, gratuitous divisiveness and futile point-scoring¹⁷ then the holders of that view might be better disposed if they understood the practice of democratic party politics by way of analogy with continental drift and the principles of plate tectonics.

Newton's third law of motion applies too, albeit in a superficially asymmetrical way, in the world of politics: for every action, there is an equal and opposite reaction. Upheaval occurs in the natural world when large geophysical masses moving in different directions encounter each other. When continents collide, the

earth convulses and mountains rise and humans can do little to prevent the natural disasters which collaterally afflict them. On the other hand humans have developed elaborate measures for coping with the potential upheavals from various sociopolitical actions and reactions at work within their communities.

Politics is in part the art of mitigating the conflicts which occur when different interests collide in the daily life of civil society. Communities reach a certain level of maturity when 'winner takes all' gives way to the pursuit and capture of consensus. Part of the bargain of sharing power is the acceptance of and respect paid to stable rules of conduct. Parliamentary procedure is part of the buffering that prevents political cataclysms following the collision of political movements. Parliamentary procedure ensures that, though superficially the existence of a majority and a minority implies that the reaction is mostly not equal and opposite to the action, nevertheless contending forces are balanced and a state of social equilibrium is maintained.

It has been said that in parliamentary procedure the existence of the rule is more important than the rule itself (to paraphrase Hatsell 1818, II 207–8). However this is but a thread in a complex tapestry. Parliamentary procedure is multifunctional and multifaceted, better apprehended by using multiple perspectives to capture its essence in the manner of cubist art. For example, it may be analysed from the constitutional approach of Erskine May, the goal orientation approach of Jeremy Bentham or the social context approach of Josef Redlich (O'Brien 1989). It is sufficient here to liken parliamentary procedure to a web that not only holds the institution together but anchors it to the rest of the sociopolitical infrastructure.¹⁸

At a less exalted level, the rules allow the players to feel that each has some part in the game. And even the rules' imprecision in certain areas may be seen as a design feature and not a system bug. This final point on the role of the rules entails viewing the House as behaving like a complex system and not just a black box.

Despite the public availability of procedural manuals like *House of Representatives Practice*, guides like the *Guide to Procedures*, information sheets and the standing orders themselves,¹⁹ Parliament is to most external observers indeed like a black box. Taxpayers' money goes in, laws come out and the internal workings are exemplified by the brief snatches of Question Time shown on television news and current affairs. How it all works is a mystery.

In the way it behaves a legislature may be seen as a typical nonlinear dynamic system — inasmuch as its outputs are not proportional to the effort invested in their delivery — and its internal workings are thus amenable to examination in terms of chaos theory. Nonlinear systems may display high sensitivity to changes in initial conditions.²⁰ That is, a slight change in the normal way of doing things could lead to wildly unpredictable outcomes.

However a legislative chamber like the House of Representatives is not truly chaotic because, by allowing a little latitude in the adherence to its operating procedures, it successfully dampens its sensitivity to small variations, such as the random acts of Members. An inflexible application of the standing orders could lead to disorder and strict adherence to practice may be exploited to induce chaos.²¹ In other words operating procedures should contain procedural safety valves to enable presiding officers to make broad or discretionary interpretations and reduce the risk of breakdown.²² While too much flexibility makes rules worthless, striking the right balance ensures stability. Its self-organising ability, a characteristic of complex systems, keeps a legislature from the edge of chaos.

The Ownership and Control of Parliamentary Procedure

Given that its operating procedures are crucial to the efficacy of a legislature, who is the custodian of the practices and procedures of the House of Representatives? The Constitution implies that it is the House. But when it comes to the essence of the House itself, is there a whole that is greater than the sum of its parts? The Constitution is elemental on the composition of the House, recognising the atoms (Members) but not the molecules (factions) and compounds (parties). The power and influence of a disciplined majority — a concomitant of responsible government — diminishes the effect of the whole.

For most of the last century the government of the day has exercised a controlling interest in the practices and procedures of the House. This is but another example of how the theory of the separation of powers lives uneasily with the practice of responsible government. It may be in the interests of fairness for the rules to be entrusted to some body with less of a stake in the outcomes, for example the Speaker, supported, perhaps, by a panel of experts. This was probably the rationale for the structure of the Standing Orders Committee in the first place. Can the Procedure Committee take up the burden?

The sense of the House as an entity with its own persona and ethos does not pervade the institutional culture of the Australian Parliament to the same extent as it does the English.²³ Part of the reason for this may lie in the extent to which Australia's written constitution represents a breach in continuity. The UK House of Commons grew organically over many centuries; the House of Representatives is a creature of the Australian Constitution, its powers, privileges and immunities conferred, not won in its own right. And so the Australian institution is more obviously manmade, less autochthonous.

Further, the frequently observed strength of party discipline vitiates the individual Member's loyalty to a higher collective. This lack of House corporeality is perhaps why the government of the day accepted by default, at least for the first eight decades, the de facto role of custodian of the practices and procedures of the House of Representatives.

So it might be argued that the apparent self-serving nature of procedural change initiated by successive governments — the persisting emphasis on meeting executive convenience — was not so much an act of deliberate arrogation as the natural outcome of the failure of that ghostly entity, the House, to assert itself. By the 1980s, governments had grown accustomed to their possession of procedural initiative.

What of the Speaker? Ideally the Chair's occupant is disinterested, above the fray and seemingly a more trustworthy steward than some direct beneficiary like the majority party. To some extent the Speaker does 'make' practice inasmuch as he or she is called upon to give rulings which may stand as precedents. In a sense this is analogous to the lawmaking role of judges in the development of common law and the interpretation of statute law. But just as statute law prevails over common law, the black and white provisions of the Constitution, standing orders and recorded practice of the House rob the Speaker of any fundamental power to control or reform parliamentary procedure. Moreover, the majority of Members in attendance at any time can overrule the Speaker by way of dissent from ruling.²⁴

Here it might be timely to make brief mention of the clerks. No one should suggest that they could have a principal part in the actual determination of practices and procedures — they are after all mere servants.²⁵ Nonetheless, by dint of continuous service²⁶ they are repositories of procedural knowledge and serve as procedural advisers. They are a necessary adjunct to procedural innovation, renovation and repair.

Where does the Procedure Committee fit? As has been noted already, the committee is not particularly constrained by its standing terms of reference. Its ability in practice to range over a wide field of House activities, not just practices and procedures strictly defined, has enabled it to approach its inquiries with a broader outlook than could, perhaps, the more narrowly focussed Standing Orders Committee which preceded it. Nevertheless, there are limits to where the committee may prudently venture.

In retrospect it may appear that the Procedure Committee was exploring the boundaries of its domain when, in its 1985 *Days and hours* report, it recommended the establishment of a Business Committee comprising both government and opposition members to program all business, including government business. The recommendation was dismissed out of hand.²⁷ Governments of the day have also consistently avoided supporting major Procedure Committee proposals toward modernising procedures for the opening of Parliament and reforming the conduct of Question Time. Though none has ever explicitly stated as much, there is a suggestion that successive governments of the day see some aspects of the operation of the House as being out of bounds.

The notion that the House is the master of its own operating procedures is not borne out by the realities of procedural change in the House. The usual pattern²⁸ is for the Procedure Committee to present reports containing recommendations to which in

due course the Government responds. If the Government supports a proposal it is put to the House for adoption. If the Government does not support, or ignores a proposal then it lapses.²⁹ Other avenues for procedural change, especially by way of private Member's motion, lack even this chance of eventual success.³⁰

The *History* suggests that the committee has become increasingly sophisticated in the way it overcomes the limitations which majoritarianism imposes on House autonomy. Where once the committee delivered a report and passively awaited a response, it now follows up its recommendations with a range of promotional measures including advocacy in the party rooms (HRSCP 2005: 119). The committee maintains close ongoing links with the Leader of the House and his or her counterpart the Manager of Opposition Business as well as the whips and the PLO.³¹

The Standing Orders Committee which formed in each of the Parliaments until the 34th (1984–87), was powerful in structure³² but cumbersome in action. The composition of the Procedure Committee, on the other hand, has been almost exclusively from the ranks of non-office holders. While this has demonstrably led to a more active committee, it has also meant that recommendations have not received the early intimations of high level acceptance which office holders serving on the committee might have provided. In recent years this does not seem to have diminished the committee's success.

However, at various times during the twenty years of the committee's operation the rather indeterminate manner of responding to its recommendations led to deep dissatisfaction. There were times when the committee was not well informed of the state of affairs, whether recommendations were supported, opposed or simply forgotten. Part of the problem was the lack of a consistent response process. Being a commemorative report, the *History* makes no recommendations but it does contemplate a mechanism for delivering a whole-of-House position on its recommendations.

In short the committee suggests that rather than recommendations being met with solely a government response,³³ a conference comprising the Speaker and the two business leaders — the Leader of the House and the Manager of Opposition Business — with input from parties, independents and other individual Members, might prepare a consolidated House response which would indicate which recommendations had sufficient support to be submitted for the House's approval (HRSCP 2005: 128).

Epilogue

Lord Norton, in observing the operation of parliamentary procedure in Westminster, identified an apparent paradox: if procedure constrained government and government had the political resources to change procedure why did procedure

endure as it did. He concluded that the price of institutional change, both in political and ethical terms, can be too high (Norton 2001). Kennon has presented a complementary argument that a House lacks the power to reform itself and change can only occur with the active support of the majority party (Kennon 2000).

One might read between the lines in the *History* to discern an even heavier hand on the part of the Australian government of the day in reforming parliamentary procedure, especially in the House of Representatives.³⁴ But the same document presents evidence that by replacing the Standing Orders Committee with the Procedure Committee, one government of the day laid the foundations for two decades of notable achievements in procedural reform, not least an enhanced role for those unacknowledged legislators, the humble backbenchers.

Evolution in nature is an amoral process. Reform, on the other hand, is implicitly teleological. The Constitution imbues the Australian Parliament with ‘the power to make laws for the peace, order, and good government of the Commonwealth’. If parliamentary procedure serves to mitigate the tectonic shocks of conflicting political movements and to prevent the chaos of cascading lawlessness, then procedural reform cannot be an amoral process.

The *History* is very much a view from the coal face. By virtue of authorship and primary audience it does not overreach itself by addressing the larger question of where procedural reform fits into the wellbeing of Australian parliamentary democracy. That is a task for the disaffiliated and detached in academia. For them the *History* is a useful starting point on that enterprise. ▲

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Endnotes

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- ¹ The existing procedure, the discussion of a matter of public importance (MPI), is still occasionally referred to — mainly in the media and rarely in the House — by the name of its earlier form, the 'urgency debate'. In the order of business on Tuesdays, Wednesdays and Thursdays, the MPI follows shortly after Question Time. Often the Opposition will ask a series of questions without notice to set the scene for a concerted attack on the Government or an individual Minister during the MPI. Technically, the MPI is a discussion and not a debate (as there is no question before the House while it is being dealt with) but its earlier form was a special application of the motion 'That the House do now adjourn', allowing a formal debate to proceed without the usual impediments of relevance. See Pettifer 1981: 503–6 for details on the development of the MPI.
- ² This perception rests on seeing one niche in the political landscape disappearing (limited forums for public debate on topical issues — in 1901 the Prime Minister or the Leader of the Opposition spoke to the public by way of press reportage of proceedings in the Chamber; in 2001 they were more likely to do so on talk-back radio) and another emerging (the opportunity for an Opposition to sustain an attack on the Government after the skirmishing of Question Time during which the Opposition is constrained by there being more rules governing the form of questions than the form of answers).
- ³ The purpose of the guillotine is to limit debate to a prescribed timetable. Its most common use in the House of Representatives is to expedite the passage of a number of bills together. This entails three procedural steps: suspending standing orders to enable a number of bills to be dealt with together; declaring the bills to be urgent; and, allotting

time for debate on the successive stages of the bills. However, several times in 2005 the Government used a streamlined procedure which collapsed those three steps into one multi-part motion to suspend standing orders and impose a timetable, thereby minimising time-consuming divisions.

⁴ HRSCP 2005.

⁵ Commonwealth of Australia Constitution, s. 50.

⁶ See Reid and Forrest 1989: 132–68 for commentary on the development of the standing orders of the House of Representatives.

⁷ House of Representatives Debates (Hansard), 6 June 1901, 782. The eclecticism of the temporary standing orders is not universally accepted (for example, Weatherston 1975: 19 and Souter 1988: 39).

⁸ E. G. Blackmore. See Millar 2000: 377–82 for a short biography highlighting his contribution to the constitutional conventions of the 1890s and the nascent Parliament of the Commonwealth.

⁹ And see the Norton dictum cited in footnote 16.

¹⁰ As the *History* notes, there were critics who saw the reforms as a further surrender of power by the House to the executive (HRSCP 2005: 16).

¹¹ The Joint Committee on the Parliamentary Committee System was first appointed in 1974 but had presented only an interim report when the Parliament was dissolved, coincident with ‘The Dismissal’, in 1975. The committee was reappointed in the new Parliament and delivered its final report, JCPCS 1976, on 26 May 1976.

¹² The Procedure Committee was established for the first time by a resolution of the House on 27 February 1985. Later on the same day the House suspended standing order 25, by which the Standing Orders Committee was appointed. The Procedure Committee was reappointed by sessional order in each of the two following Parliaments and standing order 25 was suspended on each occasion. The Procedure Committee achieved permanency on 15 October 1992 when the sessional order was made a standing order and standing order 25 was deleted.

¹³ Parliaments are reckoned by terms of the House of Representatives, the first Parliament existing from 9 May 1901 to 23 November 1903.

¹⁴ This was a controversial innovation which was abandoned at the change of government in 1996.

¹⁵ The House of Representatives retains the practice of the UK House of Commons followed in 1901: when the office of Speaker is vacant, as it is at the opening of Parliament, the Clerk of the House chairs the meeting of the House until a Speaker is elected. The Procedure Committee has more than once recommended an arrangement similar to that adopted by the House of Commons in 1972 under which a senior Member presides.

¹⁶ The *History* reproduces an observation made about Members of the UK House of Commons: ‘Members of Parliament are rarely prepared to invest intellectual resources in order to know in detail the rules and procedures that govern their proceedings or the rationale that underpins them’ (Norton 2001: 26). The same observation and ‘perfectly rational’ justification for Members having other priorities may also apply to Members of the House of Representatives. A better understanding within the institution of the committee’s purpose and achievements can only enhance its effectiveness.

¹⁷ There is some dispute over popular perceptions of the political process; see, for example, Brett 2002, Goot 2002.

- ¹⁸ The House's practices and procedures, including its standing orders, deal not only with the internal operations of the House but also its formal transactions with external entities, not least the Senate and the Governor-General.
- ¹⁹ All are available on the House's website at <http://www.aph.gov.au/house/pubs/index.htm>.
- ²⁰ Traditionally exemplified by the variable flaps of the wings of an overworked butterfly in the Amazonian jungle.
- ²¹ In the late 19th Century, the Irish Nationalists reduced the conduct of business in the House of Commons to 'parliamentary anarchy' by exploiting the House's existing practices and procedures (Redlich, I, 133–63). This led to major procedural reforms.
- ²² Oppositions invoke grudging acknowledgment of their discontents by disruptive misuse of procedural forms like motions without notice to suspend standing orders or calling for quorum counts (Harris 2005: 267, 332). These usages can of course be seen in Darwinian terms as environmental adaptations. Following the example of Speaker Brand's unilateral refusal to accept further obstruction of House of Commons business by the Irish Nationalists (see footnote 21), Australian Speakers from time to time have acted beyond the standing orders in countering perceived obstructionism (Harris 2005: 188, 268–9, 333).
- ²³ Based on a presumption that the strength of the corporate *persona ficta* may be gauged from the extent to which expressions like 'wish of the House', 'this House believes' or 'dignity of the House' are current in parliamentary discourse.
- ²⁴ The ability for the House to dissent from a ruling from the Chair is not held in other major Westminster chambers like the UK or Canadian House of Commons. The Procedure Committee itself recommended in 1986 that the provision be removed. While it certainly prevents the Speaker from being accorded the authority enjoyed by a Speaker of the UK House of Commons, the right of the House to overturn rulings asserts the constitutional power of the House, as a whole, to make its own rules.
- ²⁵ A point made plainly on the floor of the Senate during a kerfuffle over the purported exercise of a 'clerkly agenda'. See Senate Debates (Hansard), 21 December 1990, 6272–3; 19 February 1991, 817–8; 14 May 1991, 3312–4, 3315–7; 15 May 1991, 3336–40, 3419–23. Also see O'Keefe 1989.
- ²⁶ In characterising the staff of the House of Representatives, early editions of *House of Representatives Practice* reproduced a description of officers of the UK House of Commons as 'rigidly, almost religiously, non-political' and 'able to devote the whole of their lives to their task' (Pettifer 1981: 238). It remains to be seen whether changing career patterns will continue to deliver persons with sufficient length of service to have 'extensive knowledge of, and experience in, relevant Parliamentary law, procedure and practice' (*Parliamentary Service Act 1999*, section 58).
- ²⁷ In response, the government asserted 'that the programming of the House must remain the prerogative of the Government of the day — both to carry out its policies and to respond to contingencies' (House of Representatives Debates (Hansard), 15 September 1987, 77).
- ²⁸ Occasionally procedural change is negotiated through less formalised means such as by consultation and correspondence between the committee and major players like the Leader of the House, Manager of Opposition business and party whips.
- ²⁹ This is not peculiar to the House of Representatives. Kennon observes of the UK House of Commons: 'A common misunderstanding is that the House has the ability to reform itself.' and identifies the hurdles between Commons committees making recommendations and the House of Commons adopting them (Kennon 2000: 2).

- ³⁰ One Member in particular — see, for example, House of Representatives Debates (Hansard), 15 February 1999, 2705 — has lodged notices of motions on several occasions proposing new and amended standing orders. However because of the constraints under which private Members' motions are dealt with (Harris 2005: 562–5) these motions have never been put to a vote of the House.
- ³¹ The Parliamentary Liaison Officer is an employee of the Department of the Prime Minister and Cabinet who assists the Leader of the House in managing government business (Harris 2005: 64).
- ³² The Standing Orders Committee in the 33rd Parliament comprised the Speaker, Chairman of Committees (now known as the Deputy Speaker), the Leader of the House and the Deputy Leader of the Opposition as *ex officio* members and the Government Whip, three Deputy Speakers (now known as members of the Speaker's panel) and the Opposition Leader of the House (now known as the Manager of Opposition Business) among the 7 other members. In other words only three of the eleven members on the committee were not office holders of some sort.
- ³³ Occasionally the Speaker also responds to certain recommendations but this is not common.
- ³⁴ One especially interesting period in the committee's operation was the final stages of the inquiry leading to the *About time* report which included the controversial recommendation, supported by the government of the day (and as noted earlier abandoned at the next change of government) for the rostering of Ministers at Question Time. A member of the committee at the time later implied that the committee's report had been used virtually as a Trojan horse for Prime Minister Keating's desire to attend fewer Question Times (House of Representatives Debates (Hansard), 2 February 1994, 826). This is a rare instance of there being any suggestion of government interference with the committee's activities.