

# The Governor-General and Parliament

**Sir David Smith\***

*The Governor-General is an important part of the parliamentary processes of the Commonwealth Parliament. The parliamentary cycle begins when the Governor-General calls the Parliament together following an election, and ends with the dissolution of the House of Representatives (and the Senate, when both Houses are simultaneously dissolved). In between these two events, all legislation must go to the Governor-General for the Royal assent before it becomes law; and all legislation for the appropriation of revenue must be recommended by a message from the Governor-General before it can be passed by Parliament.*

Australia's system of government is that of a constitutional monarchy. That means that the Monarch and her personal representative, the Governor-General, act in accordance with the Australian Constitution and on the advice of Ministers of the Crown, that is, the Executive Government of the day.

Australia is a parliamentary democracy, which means that our Parliament is formed as a result of elections in which all adult citizens take part. At these elections we choose those who will sit in Parliament and which of them will form the Executive Government. The members of the Government sit in the Parliament and are answerable to it. They remain in Government so long as they have the support of a majority in the House of Representatives.

Australia is a federation, which means that the six States together comprise the Commonwealth of Australia. The Queen is not Queen of six separate States but of the Commonwealth of Australia as a whole. She is represented in each State by a

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State Governor, and in matters that are the responsibility of a State Parliament, the Governor acts with the advice of State Ministers, just as the Governor-General acts in matters that are the responsibility of the Commonwealth Parliament and does so with the advice of Commonwealth Ministers.

The office of Governor-General of Australia was created by the Australian Constitution, a document drafted in Australia by Australians and approved by the Australian people more than one hundred years ago. The same Constitution created the Australian Parliament, and I have been asked to speak to you today about the relationships that exist between the Governor-General of Australia and the Australian Parliament.

Our Monarch is Queen Elizabeth II. Although Queen Elizabeth is Queen of the United Kingdom she is also the Queen of fifteen other monarchical countries including Australia. She is Queen of Australia by virtue of legislation passed by the Australian Parliament, and her powers and functions as Queen of Australia are set out in the Australian Constitution.

Under that Constitution the Queen is one of the three elements of the Australian Parliament, the other two being the Senate and the House of Representatives. As the Queen is not normally resident in Australia, the Constitution provides for her to appoint a Governor-General to be her representative. That appointment is made on the advice of the Prime Minister of Australia.

Although the Constitution describes the Governor-General as the Queen's representative, it also confers on the Governor-General the legislative and executive powers and functions of the Head of State. The Governor-General exercises these head of state powers and functions in his own right and not as a delegate of the Queen, and the Queen does not ever exercise them herself, not even when she is in Australia. In fact and in practice the Governor-General represents the Crown in Australia and is thus one of the elements of the Parliament, along with the Senate and the House of Representatives.

The direct relationship between the Governor-General and the Parliament is established right at the outset of each incoming Governor-General's term of office, for his ceremonial swearing-in takes place in the Senate Chamber, with the oath or affirmation of allegiance being administered by the Chief Justice or another Justice of the High Court of Australia.

The Governor-General is greatly involved in the ceremonies associated with the opening of a new Parliament. Under the Constitution it is the Governor-General who fixes the date on which a newly-elected Parliament is to meet. In summoning this first meeting of a new Parliament, the Governor-General does so on the advice of the Prime Minister.

The Constitution also allows the Governor-General to appoint Deputies and to authorise them to exercise whatever powers and functions he wishes to give to

them. Using this power, it is traditional for the Governor-General to appoint a Deputy (usually the Chief Justice or another Justice of the High Court) to declare open a new Parliament on the morning of its first day of sitting. The Governor-General's Deputy (and if necessary, two Deputies will be commissioned — one for each Chamber of the Parliament) will also administer the oath or affirmation of allegiance to Senators and Members.

On the afternoon of the first day of a new Parliament, the Governor-General makes a ceremonial visit to Parliament House. He is met at the front door by the Usher of the Black Rod (from the Senate) and the Sergeant-at-Arms (from the House of Representatives) and escorted into the building and along to the suite of the President of the Senate. When Senators and official guests have taken their places in the Senate Chamber, the Governor-General, accompanied by members of his Household, is led in by the Usher of the Black Rod and takes his place in the Vice-Regal chair. He then asks the Usher of the Black Rod to summon the Members of the House of Representatives, and when they have been seated with their Senate colleagues, the Governor-General reads the traditional speech from the throne, a speech prepared by the Prime Minister in which the Governor-General outlines to the Parliament what the new Government's legislative program will be.

During the Governor-General's visit to Parliament House, the President of the Senate and the Speaker of the House of Representatives will be presented to the Governor-General. These occasions provide the Governor-General with an opportunity to present to a new President and to a new Speaker their Commissions as Deputies of the Governor-General. These Commissions authorise the Presiding Officers to administer the oath or affirmation of allegiance to Senators and Members not present on opening day or who may subsequently be elected or appointed to the Parliament.

It is customary for each House of the Parliament, either on opening day or soon after, to move and debate what is known as "The Address-in-Reply" to the Governor-General's opening speech. The motions express the respective Houses' loyalty to the Queen and thank the Governor-General for his address, and become the vehicle for enabling Senators and Members to speak on almost any subject at all: for new Senators and Members it is their opportunity to make their first speech, or what used to be known as their maiden speech.

After each Address-in-Reply debate has been concluded and the Address agreed to, each House makes its own arrangements with Government House for a copy of its Address to be taken out to Government House by the President of the Senate or the Speaker of the House of Representatives, and presented to the Governor-General. The President or the Speaker, as the case may be, is generally accompanied by those Senators or Members who wish to attend.

These ceremonies associated with the opening of a new Parliament are just the beginning of the Governor-General's relationship with the Parliament — a relationship which is continuous and ongoing throughout the life of a Parliament.

Every proposed law, or Bill as it is known, that is passed by both Houses of the Parliament must be presented to the Governor-General for the Royal assent before it becomes law. After a Bill has been passed in the same form by both Houses of the Parliament it is sent to the Governor-General by the Presiding Officer of the House in which it originated. Each Bill carries a certificate from the Clerk of the originating House, certifying that the Bill has been passed by both Houses of the Parliament.

Under the Constitution the Governor-General may deal with each Bill in one of four ways. He may give the Royal assent and sign the Bill into law as an Act of Parliament; he may withhold assent; he may reserve it for the Queen to deal with; or he may return it to Parliament with recommended amendments. In deciding which of these options to exercise, the Governor-General acts on the advice of the Attorney-General.

In by far the vast majority of cases, the Governor-General would deal with a Bill by exercising the first option and give it the Royal assent. The Governor-General then advises each House by message of his assent to Bills, and the Governor-General's messages are announced in each House.

Bills are very rarely reserved for the Queen's assent. This procedure is used as a courtesy to the Queen for Bills which may be said to be of personal interest to her, or because she happens to be in Australia and in the opinion of the Attorney-General it would be appropriate for her to give the assent.

In returning a Bill with recommended amendments the Governor-General would similarly act on the advice of the Attorney-General. This procedure is also used very rarely, for example, when it has been discovered that the Bill as passed by both Houses contains an error. Once the Governor-General's recommended amendments have been considered and agreed to by both Houses, the amended Bill is reprinted and returned to the Governor-General for the Royal assent.

Under the Constitution the Parliament has ultimate control over government finances. This means that taxation may only be imposed by legislation which has been passed by Parliament, and government expenditure must also be authorised by legislation which has been passed by Parliament. On the other hand, there is also an important constitutional and parliamentary principle that the Executive Government is responsible for collecting and spending public money. In order to give effect to this principle, the Constitution provides that a Bill appropriating revenue or moneys may not originate in the Senate, and that such a Bill may not be passed by the House of Representatives until the purpose of the appropriation has been recommended to the House by a message from the Governor-General.

As such a message would not be sent to the Parliament by the Governor-General unless advice to send it had been given by a Minister, the two important constitutional principles that I have just mentioned are preserved and protected — Parliament must approve the raising and the spending of public money, and the Executive Government must tell Parliament what it intends to do with that money.

Bills presented to Parliament usually contain a reference to the day on which the Act, when passed, will come into operation. That day may be the day on which the Act receives the Royal assent from the Governor-General; or it may be a particular date or event specified in the Act; or it may be a date to be fixed by proclamation. If proclamation is the chosen method, this too involves the Governor-General, for such proclamations are issued by the Governor-General-in-Council, that is, the Governor-General acting on advice given to him by Ministers at a meeting of the Federal Executive Council.

The Constitution provides for the Governor-General to summon the Parliament to meet after the holding of an election, and for the Governor-General to prorogue the Parliament and to dissolve the House of Representatives. Each of these actions is the prerogative of the Crown, represented by the Governor-General. To dissolve the House of Representatives means terminating it with a view to setting in train processes for the holding of elections for a new House of Representatives: to prorogue the Parliament means to suspend all business until the same Parliament is summoned to sit again.

The proroguing of Parliament brings all proceedings to an end — resolutions or orders of each House cease to have any force (unless there are explicit provisions to give them continuing force); parliamentary committees continue in existence but may not meet or transact any business; and the Senate and the House of Representatives may not meet until the date nominated in the Governor-General's Proclamation.

Dissolution of the House of Representatives by the Governor-General terminates the Parliament. The Governor-General may also terminate the Parliament by simultaneously dissolving both the House of Representatives and the Senate. This is known as a double dissolution and is a very rare procedure, having been invoked only six times in the 102 years of Australia's existence as a federation.

Prorogation and dissolution Proclamations are issued by the Governor-General on the advice of the Government of the day. The Proclamations are read from the front of Parliament House by the Official Secretary to the Governor-General, and are published in the Commonwealth Gazette. When the House of Representatives is being dissolved, the Official Secretary is accompanied to the front of Parliament House by the Clerk of the House, the Deputy Clerk and the Serjeant-at-Arms, and after the Governor-General's Proclamation has been read, a copy is posted at the door of the House of Representatives Chamber by the Clerk of the House. When both Houses are being dissolved, the Clerk of the Senate, the Deputy Clerk and the

Usher of the Black Rod also attend, after which the Clerk of the Senate also posts a copy of the Proclamation at the door of the Senate Chamber.

When a Parliament has been terminated by the Governor-General by a dissolution Proclamation, or has come to the end of its maximum term of three years as specified in the Constitution, the Governor-General sets in train the procedure required to hold a national general election. This is done by the issue of writs by the Governor-General-in-Council for the election of Members of the House of Representatives. (Because of the origins and nature of Australia's federation, writs for the election of Senators are issued by State Governors, who are the representatives of the Crown under their respective State Constitutions.)

Eight writs are issued for a general election of Members of the House of Representatives — one for each of the six States and the two Territories. The writs are addressed to the Electoral Commissioner, and specify the dates by which the various steps in the electoral process must be taken. These are the date for the closing of the rolls of electors eligible to vote; the date by which candidates must lodge their nominations; the date on which the election is to be held; and the date for the return of the writs, that is, the date by which the Electoral Commissioner is to certify the name of the successful candidate for each Division and return the certified writs to the Governor-General. The certified writs are then sent to the Clerk of the House by the Official Secretary to the Governor-General, and are laid on the Table of the House by the Clerk prior to the swearing-in of Members.

In the case of the writs issued by State Governors for the election of Senators for their respective States, the practice is for the Governors to specify in their writs the same dates and polling place as are specified in the writs issued by the Governor-General. Writs for the election of Territory Senators are issued by the Governor-General. Senate writs are returned to a State Governor or to the Governor-General, as appropriate, and are then sent on to the Clerk of the Senate, and are laid on the Table of the Senate by the Clerk prior to the swearing-in of Senators.

The Constitution provides that, after the holding of a general election, the new Parliament must meet not later than thirty days after the day appointed for the return of the writs. As I said at the beginning of this article, it is the Governor-General, acting on the advice of the Prime Minister, who fixes the date of this first meeting, and so the parliamentary cycle starts all over again.

The Australian parliamentary cycle thus begins when the Governor-General calls the Parliament together, and ends when the Governor-General dissolves the House of Representatives, not more than three years later, or, in the case of simultaneous dissolutions, both houses. In between these two events, all legislation passed by the Parliament must go to the Governor-General for the Royal assent before it becomes law; and all legislation for the appropriation of revenue must be

recommended by a message from the Governor-General before it can be passed by the Parliament. During the life of a parliament we see a constant flow of messages between the Governor-General and the Presiding Officers of the Parliament — the President of the Senate and the Speaker of the House of Representatives — for the Governor-General is very much an important part of our parliamentary processes, and a vital element in our parliamentary system. ▲