House of Representatives

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The House and the Executive

The 41st Parliament opened in November 2004 after a general election on 9 October 2004 and subsequently, in July 2005, the composition of the Senate changed to reflect the election outcome. The executive's newly won dominance in both chambers of the federal Parliament caused disquiet in some quarters, often accompanied by a prediction that the Senate, as is alleged to be the case for the House of Representatives, would become hostage to a rampant executive. However, the enduring premise that the House is merely a rubber stamp, the tool of the executive, is, as ever, open to challenge.

Several events in recent times show that there is little evidence for, or prospect of, the imposition of absolute control of the House by the executive.

Opposition Commitment and Focus on the House — Consideration in Detail

An important implication for the House of Representatives of the government majority in both Houses, is that the opposition has become more active and focused in using proceedings in the House. In particular, there has been greater use of the detail stage in the consideration of legislation, and the opposition has more actively managed its role in the detail stage. The opposition has continued to use the detail stage to move amendments to proposed legislation, and now also routinely uses the detail stage to question Ministers in detail about the provisions of bills. Shadow ministers take the lead and the interchange between the opposition and the government can be extensive. In the 2006 Budget debate, time limits for the detail stage for each portfolio were agreed informally between the government and the opposition, facilitating the programming of questioning of ministers and parliamentary secretaries about proposed expenditures for portfolios.

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The RU486 Debate

In a strict sense the debate in February 2006 on the RU486 bill — the Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill 2006 — hinged on administrative process rather than moral issues. The purpose of the bill was to remove ministerial control of the approval process for making certain abortifacients available in Australia. In that light, then, the bill could have been treated as a matter of government policy and thus subject to declared party positions.

However, the bill was introduced and dealt with as a private member's bill, having originated in the Senate under the sponsorship of four Senators with differing party affiliations acting on their own initiative. Despite the technical nature of the bill, arguments on moral grounds were unavoidable and since none of the political parties had declared a position on the bill, members exercised a free vote throughout the debate.

So-called conscience votes are unusual in either chamber of the federal Parliament and proceedings attracted additional interest because the outcome was difficult to predict: there were no clearly demarked pro and anti blocs; indeed compromises were proposed and considered during the debate and in several cases individual voting intentions did not crystallise until just before the votes were cast.

The RU486 debate showed that the House can function effectively in an idealised environment free of party regimentation, no less through the good conduct of members during contentious debate than through its ability to deal with novel situations without becoming bogged down in procedural arguments.

A Snivelling Grub

While the House was dealing with government business on 25 May 2006, Kelvin Thomson, the shadow minister for public accountability, moved a procedural motion to bring on a debate about the sale of Australian Wheat Board shares by John Anderson, the former Deputy Prime Minister. Having failed on a point of order to curtail what was a lengthy motion — a speech crafted in the form of a motion, it was claimed — Tony Abbott, the minister whose additional role it is to manage the flow of government business (formally titled the Leader of the House), moved 'That that snivelling grub over there be not further heard'.

The standing orders allow a limited number of procedural motions to be moved without notice, in other words without prior arrangement, but the terms of each motion are quite specific. Mr Abbott's motion bore some resemblance to the variation of the gag known as 'closure of the member speaking', specifically: 'That the member be no longer heard'. It is used, obviously, to stop a member talking, usually to minimise incursions by opposition members on government business time.

Naturally, there were objections from the opposition. Mr Abbott subsequently withdrew the unparliamentary words in these terms: 'If I have offended grubs, I withdraw unconditionally'. In the concomitant disorder, it may be that one of the Deputy Speakers in the chair at the time, distracted but partially hearing the withdrawal, took it to be fully unconditional. The Chair put the closure motion to the House in the terms prescribed by the standing orders against a chorus of objections from the opposition.

After the vote on the motion had concluded, Mr Abbott's opposite number, Julia Gillard, the manager of opposition business, pursued the matter with the Chair and obtained a ruling that, in essence, Mr Abbott's motion had been put in order by his withdrawal of the offensive words.

The opposition supported a motion of dissent from the ruling which was debated and lost on party lines. At the end of proceedings, when the final vote had been taken to defeat Mr Thomson's original motion to bring on the debate about the sale of AWB shares, Mr Abbott came again to the despatch box and made a comprehensive withdrawal.

However, this was not the end of the affair and over the next few days the opposition waged a protracted campaign which not only attracted growing media interest and comment but culminated in a confrontation with the Speaker on 31 May.

While Mr Abbott was introducing a bill, Ms Gillard obtained the Speaker's call and moved 'That that snivelling grub over there be not further heard'. When the Speaker called on her to withdraw, she responded 'If I have offended grubs, I withdraw unconditionally'. Having persisted in refusing to make an unconditional withdrawal, Ms Gillard was named by the Speaker for defying the Chair and, on a vote of the House along party lines, suspended from the House for 24 hours.

The Speaker had been left with the invidious choice of acting on precedent, on the one hand, or, at least implicitly, repudiating a majority vote of the House — to support the original decision by a deputy that Mr Abbott's gag had been put in order — and allowing a member openly to defy him on the floor of the House, on the other. Of course no Speaker could allow his or her authority to be defied in such a calculated way. It was easy, but wrong, for some in the media to present this simply as a case of an opposition member being punished for what a minister could do with impunity.

From all this, the opposition might have claimed a tactical, if not moral, victory but the fallout was harmful, not least to the image of the House. From a procedural perspective, it is fortunate that the evolution of House practice follows more the maxim of 'circumstances alter cases' rather than an unyielding obligation to accidental precedents. A Chair in the future may find it appropriate to rule that a motion containing offensive words cannot be brought before the House.

The Main Committee

The House of Representatives subsidiary chamber, the Main Committee, was established in 1994 on the recommendation of the Procedure Committee, then chaired by Neal Blewett. Its mission was to mitigate legislative logjams by allowing parallel debate on bills. It was remarkably successful and soon won acceptance as an integral component of the legislature, attracting interest in other Commonwealth parliaments.

The 'second chamber', as it is informally known within the House, operates on the basis of cooperation between the government and opposition blocs. Its quorum requirements and restricted scope for dealing with disorder ensure that either side can bring proceedings to a halt in very short order. Anything which cannot be resolved in the committee must be referred back to the main chamber.

The Main Committee has matured rapidly over its relatively brief existence, taking on additional functions and developing its own corpus of practice and procedure. It remains a subordinate forum for debate on government business — mainly legislation — but also deals with other forms of business, including consideration of committee reports and the individual contributions of backbenchers by way of brief impromptu statements and speeches made in adjournment debate. The 'second chamber' additionally serves as a testing ground for new procedures.

One problem which has bedevilled the managers of business in the House for many years, especially since the major increase in committee activity following the establishment of general purpose standing committees in 1987, has been finding adequate time to consider committee reports. Typically, committees must vie for space in a packed program on sitting Mondays and the common fate of most reports, even those that have been many months in the making, is to be accorded ten minutes for a brace of short statements on tabling.

A recent initiative has enabled committee reports to be referred to the Main Committee for further consideration on the day of presentation. This involves convening a meeting of the Main Committee at short notice — not without overheads like the provision of support staff, broadcasting and Hansard facilities and security — but one of the committee's many virtues is its flexibility and so far the new measure has worked well.

As a subordinate body, the Main Committee has restricted powers. For example, business is not initiated there but must be referred to it from the main chamber. Standing orders cannot be suspended in the committee nor votes determined on division. The powers of the Chair are also limited and, as noted earlier, the committee is vulnerable to disorder. Until recently the Chair could not deal summarily with individual misbehaviour but was required to report the matter to the main chamber for action to be decided and taken there. In early 2006 the House extended the Speaker's sin-bin power to the Chair in the Main Committee: on a trial basis an offending member may be required to leave the committee for fifteen minutes.

Typical of the step-by-step adjustments which are made to the second chamber's operating procedures, and which over time augment its separate identity, is a recent measure to protect the total time allowed for members' three minutes statements from time lost for members to attend divisions in the main chamber. Previously, the time allotted for statements concluded at a fixed hour, now it concludes after members have spoken for thirty minutes.

The Main Committee is an example of an easily overlooked aspect of the day-to-day work of the House: the degree of cooperation which exists between players who all too often are seen by the public only when engaged in the combat of Question Time. The second chamber has taken on a life of its own and is neither hostage to the executive nor mere appendage of the House.

A Guillotine by Any Other Name

One of the indicators of the success of the Main Committee has been a marked decline in the use of the guillotine. In the three years preceding the establishment of the second chamber, 101, 132 and 111 bills, respectively, were declared urgent and subjected to limitation of debate. The number has not exceeded twenty in any year since and only five bills were guillotined in the five years from 2000 to 2004.

However, unilateral limitation of debate by procedural means — as opposed to mutual agreement to restrict the numbers of members speaking by business managers — is not a lost art. In the last couple of years a new mechanism has been refined, and increasingly used.

The traditional House of Representatives form of the guillotine, when applied to a number of bills together — its application to single bills being uncommon — entails three steps, each subject to at least one vote which may trigger a time-consuming division: first, a suspension of standing orders to enable the bills to be dealt with together; second, a declaration of urgency; and third, an allotment of time for debate on the various stages for each of the bills.

The new streamlined form collapses all the steps into one motion to suspend standing orders putting in place every detail of the procedure and reducing the potential division count from the usual five to a maximum of two.

The procedure was used on ten bills in the second half of 2005 and fifteen bills in the first half of 2006. Its first use in the second half of 2006 was to curtail debate on the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, a controversial bill on which three government members crossed the floor. The Government subsequently announced that the bill would not be proceeded with — the message transmitting the bill to the Senate was reported in the Senate and no further action on the bill was taken at the time.

Snowy Hydro

The proposal to sell the joint New South Wales, Victorian and Commonwealth ownership of the Snowy Hydro corporation emerged in late 2005. The Act which enabled the original corporatisation of Snowy Hydro required parliamentary approval of any subsequent sale of the Commonwealth's share in the corporation. In March 2006 both Houses of the federal Parliament passed separate resolutions authorising the disposal of the Commonwealth's holding.

The Senate passed its resolution on 29 March and the House on 30 March. The House's form of the resolution included an opposition amendment to the effect that a report should be made to the House on certain outcomes of the sale after five years. The opposition did not oppose the motion but some of its members expressed mixed feelings. One coalition member spoke against it. However, when votes were called on the amendment and subsequently the motion, as amended, only two independent members recorded their dissent, formal divisions not being called.

This issue did not die there and over the next few sittings members spoke about community concerns during various proceedings and asked questions without notice. The coalition member who had initially spoken against the proposed resolution, Kay Hull, the member for Riverina, was particularly active. She spoke about the reaction of constituents in a grievance debate and foreshadowed (and subsequently introduced) a private member's bill to prevent corporatisation. In passing, she declared that she would be prepared to cross the floor to reflect concerns among her constituents.

During Question Time on 30 May 2006, the Prime Minister fielded what the less charitable might have deemed a 'dorothy dixer' about protecting by legislation a privatised Snowy Hydro from foreign ownership. Tony Windsor, an independent member, later asked the Prime Minister a question about how binding the legislation could be. After Question Time, another independent, Peter Andren, moved a procedural motion to debate the matter which was allowed to proceed, members speaking to the motion, before debate was adjourned.

On 2 June 2006 the Prime Minister issued a media release announcing that the government had 'decided to withdraw its 13 per cent shareholding from the sale', the government having 'listened to the immense community reaction on this matter'.

It would be extravagant to claim that the sale of Snowy Hydro was defeated on the floor of the House. Nevertheless, a number of members kept the issue alive by raising awareness of the proposed disposal of the Commonwealth's share and used various forms of the House to express community concerns.

An interesting sidelight on this episode is that had the proposed sale not been withdrawn after having been questioned in the legislature, it may have been subject to scrutiny before the judiciary. There were doubts on constitutional grounds

whether the separate resolutions passed by the two Houses met the requirements in the principal legislation for parliamentary approval as expressed in section 1 of the Constitution.

The preceding vignettes are illustrative — but not exhaustive — evidence that members either as individuals or as a bloc may seize the initiative regardless of which side holds a majority on the floor of the House. Certainly, as shown by the development of the 'stealth' guillotine, the government of the day has an advantage in ensuring its business is treated with dispatch. However, the manifold forms of the House allow it to function beyond the constraints of party rule when occasion demands, as was seen in the RU486 debate. The opposition can tellingly make its presence felt in the consideration of legislation and as it did in the tactical skirmish over the 'snivelling grub' imbroglio. The 'local member' is still there fighting the good fight for constituents, even against an apparent fait accompli, like the proposed Snowy Hydro sale. Behind it all, the mill grinds on, with a good deal more constructive cooperation — exemplified by the work of the Main Committee and indeed other committees of the House — than is often credited to the institution.

Address by the Right Hon. Tony Blair, MP, Prime Minister of the United Kingdom

The Parliament and the House continued to be venues for national debate and commemoration. During 2006, examples were the address by the Prime Minister of the United Kingdom, the Right Hon. Tony Blair, MP, on 27 March, and the reception in honour of the Beaconsfield miners, their colleague who did not survive the accident, their rescuers and the community, held on 29 May. During the visit by Prime Minister Blair, Senators were invited to attend as guests at a meeting of the House of Representatives in order to listen to Mr Blair's and others speeches. The previous practice of having joint meetings in the House raised questions in some quarters outside the House about the authority of the Speaker over Senators attending the sitting.

Developments in Administration

The *Parliamentary Service Act 1999* was amended with effect from 1 April 2005. The amendments established the statutory position of Parliamentary Librarian within the Department of Parliamentary Services and gave statutory status to the Parliamentary Library, the several Library Committees and the Security Management Board.

Under the Act the Parliamentary Librarian is appointed for a fixed term of five years and the appointment is subject to termination by notice in writing from the Presiding Officers at any time. The Parliamentary Librarian must have relevant qualifications or experience in librarianship or information management, or the Presiding Officers must be satisfied that a person has suitable skills to perform the duties of Parliamentary Librarian. The Act is silent on whether the Parliamentary Librarian can be reappointed for an additional term of office, but in the absence of legislative prohibition, it would appear that the appointment would be renewable. Ms Roxanne Missingham was appointed as Parliamentary Librarian in January 2006.

The Act now establishes the several Library Committees, comprising members and senators severally and jointly, as statutory committees for the first time. Having no powers of inquiry or report, the Library Committees function as advisory bodies to the Presiding Officers in relation to the operations and administration of the Parliamentary Library.

Security of Parliament House and the Parliamentary Precincts

A program of major security enhancements was completed in September 2005, at a cost of more than $11m. These works included construction of a low wall around Parliament House, installation of fixed and retractable bollards, restricting access to car parks to pass holders, and installation of blast mitigation measures for certain ministerial wing windows. The works have resulted in changed access arrangements at Parliament House. To improve traffic flows and address some safety concerns resulting from the changes, the road which surrounds Parliament House, Parliament Drive, is to be made one-way from 22 August 2006.

Execution of Search Warrants in the Premises of Members and Senators

On 9 March 2005, the Speaker presented to the House a Memorandum of Understanding on the execution of search warrants in the premises of Members of Parliament between the Attorney-General, the Minister for Justice and Customs, the Speaker of the House and the President of the Senate and an associated Australian Federal Police National Guideline for the execution of search warrants where parliamentary privilege may be involved.

The MOU and Guideline have resulted from previous recommendations of the House and Senate Committees of Privileges. The guideline establishes rules for the protection of documents that may be covered by parliamentary privilege. They allow Members of Parliament to claim that documents are immune from seizure by virtue of parliamentary privilege, and allow such claims to be determined by the House concerned.

The Presiding Officers also wish to see similar guidelines agreed to cover the execution of search warrants in the premises of Members of the Commonwealth Parliament in relation to all Commonwealth law enforcement agencies and State and Territory police and law enforcement agencies. To date, the Tasmanian Government has finalised guidelines covering the Tasmanian Police. ▲

Publications

House of Representatives Practice, 5th edn, I C Harris (ed.), Canberra: CanPrint Communications P/L, 2005.

The revised edition of the definitive text on the parliamentary law, procedures and practices of the House of Representatives — this edition incorporates the redrafted and renumbered standing orders which came into effect in November 2004.

Guide to Procedures, 2nd edn, Department of the House of Representatives, Canberra, 2005.