

Robyn Smith is Executive Officer, Office of the Clerk, Legislative Assembly of the Northern Territory

## **‘FROM THE TABLES’ A round-up of administrative and procedural developments in the Australasian Parliaments**

**Robyn Smith**

### ***Australian parliament***

In a dramatic final sitting day of the year, the Member for Scullin Harry Jenkins resigned as Speaker of the House of Representatives and, after considerable theatrics from the floor of the Chamber, was replaced by former Coalition MP and Member for Fisher, Peter Slipper. Amid much media speculation that the move was intended to shore up the numbers for the Labor minority government’s legislative agenda, the sleeping giant in the mix was the Member for Dobell, Craig Thomson, whose political future was in the hands of a second police investigation, this time in Victoria, and Fair Work Australia. The nature of the allegations against Thomson pre-date his entry into parliament, but under section 44(ii) of the *Australian Constitution*, any person who is convicted and sentenced for ‘any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer...shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives’. These events have yet to play out but render the tenuous Government numbers far from certain in a parliament which has until November 2013<sup>1</sup> to run.

Following a March 2011 report from the Joint Select Committee on a Parliamentary Budget Office, the Parliamentary Service Amendment (Parliamentary Budget Officer) Bill was passed by both houses during the final sitting of the year. This bill creates the Parliamentary Budget Officer, a fourth parliamentary department responsible to both houses. A Parliamentary Budget Officer will be appointed by the Presiding Officers subject to the approval of the Joint Committee of Public Accounts and Audit for a period of four years.

---

<sup>1</sup> The earliest date for an election is August 2013 unless there is an earlier dissolution of the House; the latest is November 2013. See AEC web site.

The House Committee of Privileges and Members' Interests, having received a reference in November 2010, presented a discussion paper on a Members' Code of Conduct in November 2011. The Committee did not make specific recommendations on either adopting or implementing a code of conduct, but made two significant observations: first, any code should be a broad guide to acceptable behaviour rather than a detailed, prescriptive document; and second, any code should be adopted by resolution of the House rather than a statutory instrument because the latter had the potential to expose the conduct of members to the scrutiny of courts.

A Joint Select Committee on Australia's Clean Energy Future was appointed by both Houses to inquire into and report on a suite of 19 bills which were introduced on 13 September 2011. The Committee was required to report by 7 October 2011 and did so out of session. The report included a minority report and a dissenting report.

A Joint Committee on Human rights was established to examine bills for compatibility with the seven core UN human rights treaties to which Australia is a signatory, and to inquire into any matters relating to human rights referred by the Attorney-General. The Committee is required to report to both Houses. Members introducing bills are now required to table statements of compatibility with the relevant UN treaties.

### ***Australian Capital Territory***

A Select Committee on Privilege was established following allegations of a possible interference in the free exercise of authority by the Standing Committee on Public Accounts during its consideration of the proposed nominee to the position of Auditor-General. The allegations arose because the Chief Minister had issued a media release in respect of the nominee at about the same time a letter from her advising of the nominee was received by the Committee. It was further alleged that approaches were made to the PAC Committee Chair by both the nominee and the Chief Minister whilst the Committee was considering the nomination. The Privileges Committee found that no contempts had been committed, however recommended that a resolution of continuing effect be developed to deal with practices in relation to the executive and legislature dealing with statutory appointments.

The first report of the Independent Reviewer of Government Campaign Advertising was presented to the Assembly by the Speaker in September 2011. The Reviewing officer is required to examine government advertising campaigns which cost in excess of \$40,000. During the period under review (February to June 2011), the Reviewer found 10 instances of expenditure over \$40,000 and reported that all were compliant with the *Government Agencies (Campaign Advertising) Act 2009* and regulations.

Following a recommendation of the Standing Committee on Administration and Procedure, Professor John Halligan of the University of Canberra undertook an

assessment of the three branches of government against the CPA's Latimer House principles. Professor Halligan's report, tabled by the Speaker on 20 November, found that the ACT performs strongly against the criteria, although he identified shortfalls and noted that there is considerable potential for improving governance in a number of respects. Arising from this report, the Standing Committee on Administration and Procedure announced a review of the Australian Capital Territory (Self-Government) Act.

### ***New South Wales***

During the period under review, Clerks Russell D Grove (Assembly) and Lynn Lovelock (Council) retired. Ronda Miller and David Blunt were respectively appointed in their stead.

The Joint Select Committee on the Parliamentary Budget Office (PBO) reported to both Houses on 2 December 2011. The Committee's report found that the PBO had been unable to provide a timely assessment of budget implications of election policies for the 2011 NSE election because parties either had not submitted any policies for costing or had failed to submit them within the required timeframe. The Committee recommended that parliamentary leaders be required to submit all publicly announced election policies for scrutiny by the PBO and that the PBO exist only for six months prior to a state election. The Committee made other recommendations in respect of the PBO, including oversight by a joint parliamentary committee.

The 2011 Budget Papers failed to include the Parliament (Appropriation) Bill, which has been a standard budget item since 1993. The Parliament is now funded under the standard Appropriation Bill in which it is treated as a government department.

A dispute arose between the Police Integrity Commission and the Inspector of the Police Integrity Commission whereby the Inspector was criticised for uploading reports and findings to his web site prior to their tabling in parliament. Each organisation is required by statute to report to parliament and there are provisions for tabling reports with Presiding Officers when the House is not sitting. The Inspector's reports have been critical of the Commission, in particular procedural fairness and natural justice. This has given rise to something of a turf war in which the weapons of choice are legal opinions, the Commission furnishing its advice from Bret Walker SC that the Inspector has no legislative authority to self-publish without the direction of Parliament. The Inspector's Annual Report, which included a number of 'complaint reports' as attachments, was presented to the Presiding Officers in September. The Commission argued that the Inspector had no power to make 'complaint reports'. The Speaker decided not to make the report public forthwith, as the Inspector had recommended, but sought her own advice from the Crown Solicitor who agreed that the Inspector has now power to make complaint reports. In the meantime, the Commission had furnished the Presiding Officers with

a number of 'special reports' in response. Ultimately, all reports were tabled on 11 October after the Presiding Officers wrote to the Inspector indicating regret that Parliament was the vehicle for pursuit of what was essentially a difference of legal opinion between the Inspector and the Commission. On 10 November, a Government review of the *Police Integrity Commission Act* was tabled in both Houses and recommended that the Act be amended to provide that the Inspector may report on any of his statutory functions if it is in the public interest.

The Joint Houses have referred a matter to the Independent Commission Against Corruption for investigation and report. It is the first time a matter has been referred under section 73(1) of the *Independent Commission Against Corruption Act*. For investigation are the circumstances surrounding the granting of a coal exploration licence to Doyles Creek Mining Pty Ltd in 2009.

Changes to the Council sitting pattern in 2012 resulted in the adoption of Sessional Orders setting down new times for meeting of the House, conduct of Question Time, debate on committee reports and adjournment of the House.

In August, the Council adopted a Sessional Order limiting time for debate on Government bills. Whilst itself controversial, the resolution followed debate on the Government's highly controversial Industrial Relations Amendment (Public Sector Conditions of Employment) Bill in May and June during which one Member spoke for five hours and 58 minutes amid claims by the Government that Opposition and minor parties were filibustering to delay the bill's passage.

For the first time in 154 years, the Legislative Council sought a free conference with the Legislative Assembly over differences arising from the Graffiti Legislation Amendment Bill.

For the first time since 2006, the Ethics' Advisor's post-separation employment advice was tabled in the Legislative Council. At issue was former Minister John Hatzistergos' offer of employment with the University of Technology, Sydney. The Ethics Advisor, pursuant to the *Code of Conduct for Ministers of the Crown*, endorsed the former Minister's proposed employment. Advice from the Ethics Advisor is not required in cases where former Ministers elect not to take up proposed employment.

Legislative Council General Purpose Standing Committee No 5 has commenced its inquiry into Coal Seam Gas. Of note in respect of this committee are the large numbers of people attending public hearings.

The Legislative Council established a Select Committee on the Kooragang Island Orica Chemical Leak in August and elected as its chair the Hon Robert Borsak. In November, however, Mr Borsak sought advice from the Clerk in respect of 'direct pecuniary interests' on the basis of companies in which he had interests. On the advice of the Crown Solicitor, Mr Borsak resigned as Chair of the Committee.

### ***New Zealand***

A general election on 26 November 2011 resulted in the re-election of a National-led Government, which, on its own, secured 59 of the 121 seats and entered into agreements with the ACT New Zealand and United Future parties. Agreement was also reached with the Maori Party. John Key secured a second term as Prime Minister.

On the same date as the election, a referendum was put to New Zealand voters about whether or not to retain the Mixed Member Proportional (MMP) voting system. The result was a 57.77% vote to retain the system compared with 42.23% who wished to change it.

Following a triennial review (unrelated to the election) of the Standing Orders, amendments to the Standing Orders were adopted. They include:

- provision (in Standing Order 54) for extended sitting hours.
- cognate bills (SO 266)—two or more bills that the Business Committee determines may be debated together at any or all of their first, second, and third readings.
- there will now be debates on instructions to select committees that reduce the time for report on a bill to less than four months, or that give committees special powers to meet while the House is sitting to consider bills.
- the Business Committee will be able to determine how the committee of whole House will deal with a bill, so that debate is not necessarily part by part.
- Members who wish to propose Members' bills can now lodge them at any time, and fair copies of proposed bills will be posted to the Parliament website.
- Members who wish to refer to matters before the court, or matters suppressed by a court order, must inform the Speaker in writing before doing so (SO 112).
- The Standing Orders Committee recommended the establishment of a published record of members' attendance at parliamentary business and approved absences, and provision for a streamlined procedure for the consideration of revision bills.
- The committee recommended that the House refer to a select committee an inquiry into Parliament's legislative response to a national emergency, particularly in terms of how it enables ongoing response and recovery. This followed concerns that were raised about constitutional issues arising from legislation to enable the recovery from the Canterbury earthquakes.
- The committee recommended that the *Legislature Act* 1908 be amended to improve legal protections for Parliament's proceedings, and that scrutiny by officials on Bill of Rights and other constitutional matters arising from Government bills be strengthened.

### ***Northern Territory***

The matter of statehood has stalled in the Northern Territory. Notwithstanding a public announcement made on 17 June 2011 about a constitutional convention to be held in April 2012, which had bipartisan support, debate in the Assembly on the bill to facilitate election of delegates to the convention in November resulted in the passage of the bill subject to the Opposition's conditions that election of delegates would not take place in conjunction with local government elections on 24 March 2012 (as proposed) and would not happen until after the general election on 25 August 2012. Effectively, this places the matter of statehood in the Twelfth Assembly, which has yet to be elected.

The Council of Territory Co-operation, a select committee established under the 'Parliamentary Agreement' between the Independent Member for Nelson and the Chief Minister, received a referral on 4 May 2011 in respect of animal welfare governance. The reference arose from 2009 complaints to various parties and ultimately an Ombudsman's Report, which was tabled in the Assembly in October 2010. At issue was animal cruelty and deaths (horses and cattle) at Mataranka Station near Katherine, an animal husbandry training facility of Charles Darwin University. The CTC established an Animal Welfare Governance Sub-Committee, which included Opposition Members.<sup>2</sup> The Sub-Committee reported in October 2011 and made 21 recommendations. During her tabling statement, Chair of the Sub-Committee Lynne Walker said the subcommittee found that 'systems and processes failed at all levels at Mataranka Station, the university and within government agencies'.

A Select Committee on Youth Suicides was appointed during the August sitting of the Assembly. The Committee has held extensive public hearings across the NT and its focus has been drawn to the alarming rate of youth suicides, particularly in Aboriginal communities. The Committee is expected to report during the March parliamentary sitting.

### ***Queensland***

Speaker Mickel made a statement to the House on 25 August to the effect that if a Speaker's ruling is not supported by the majority of Members, he does not consider this a reflection on the Speaker and does not consider that the Member presiding who made the ruling should resign in those circumstances. His views were similar in relation to dissent motions, citing judicial cases which go to appeal but do not result in the judge who presided over the original matter resigning.

The Member for Burnett was suspended from the service of the Assembly for five sitting days on 17 November in accordance with recommendations from the Ethics Committee arising from a breach of the *sub judice* rule. At issue was the tabling of

---

<sup>2</sup> Opposition Members resigned from the CTC proper in November 2010.

documents which failed to protect the identity of a child and tabling a document which was the subject of criminal proceedings before the District Court.

The Ethics Committee also considered a matter of privilege in which it was alleged that a Member deliberately misled the House. The Committee found that the Member's comments, which were factually incorrect, were reckless, which fell short of the standard required to hold a Member responsible for deliberately misleading the House and recommended that the Member correct the record and apologise to the House. The Member complied with the Committee's findings.

Standing Orders were amended to further clarify the role of the new Committee of the Legislative Assembly (CLA) in respect of monitoring and reviewing the business of the Assembly for the efficient discharge of business and similar monitoring and review of the referral of bills to Committees and, where appropriate, vary the time for reporting. Standing Orders were also amended to provide for statements in relation to fallen members of the military, which may be followed by Members rising and observing one minute of silence as a mark of respect.

The Committee of the Legislative Assembly (CLA) considered a proposal to make the Register of Related Persons' Interests a public document. The CLA decided against the proposal on the basis that there was no evidence that the current arrangement had failed and that the individuals involved had not been consulted. Further, the CLA was of the view that before the proposal was further considered, the individuals involved should be consulted and appropriate policy, legal and logistical advice should be sought.

Changes to the Members' Entitlements Handbook in 2011 resulted in the Premier tabling, for the first time, a report on the travel benefits for former Members. The document was tabled on 27 October 2011 together with the annual report on Members' daily travelling allowance claims.

### ***Tasmania***

There has been a significant increase in the number of Assembly Committees, which has strained staff resources. There are two joint committees; two standing committees; and seven select committees to which four officers work directly.

Debate continues on the number of Members in the Tasmanian Parliament. At present, the prevailing view appears to be that the number of Members in the Assembly should be restored from 25 to 35 if the economy improves sufficiently. There has been no indication that anything will happen prior to the 2014 general election.

Heather Thurstans retired as Second Clerk-Assistant in October 2011. Laura Ross was appointed in her stead in November.

## ***Victoria***

The Legislative Assembly Standing Orders Committee received a reference in respect of reflections on a ruling of the Speaker by the Member for Albert Park who posted comments on Twitter following Speaker Smith's ruling to disallow his question on the basis that it did not relate to Government business. The Committee, following its first meeting, stated its firm view that reflections on the Chair by any means were disorderly. The Member subsequently apologized to the Speaker in Chambers, and the Committee is considering wider issues in respect of the use of social media. The Committee has not yet released its expected reporting date.

Members who are suspended from the Assembly or Chamber are fined a day's pay for each day of suspension during a sitting period. The proceeds of these fines are donated annually to charities of the Presiding Officers' choice. Following doubt about whether parliament has the power to impose fines, the rules in relation to the new regime were incorporated into the *Parliamentary Salaries and Superannuation Act*. The first fine was imposed on the Leader of the Opposition in the Assembly in October. In the Council, no Member has yet been fined.

Arising from a debate on 7 December during which the Member for Yan Yean requested that the Attorney-General withdraw remarks on the basis that they were a personal reflection, the Speaker ruled that only comments which are a personal attack on a Member should be ordered withdrawn rather than remarks that have been made collectively.

The Council adopted a new Sessional Orders to alter the time for the interruption of business on Wednesdays if there is notification that a Standing or Select Committee is meeting that day, to alter speaking time limits for specific business and provide greater speaking times for the Greens, and to limit the opportunity for Members to seek explanations for unanswered questions on notice to Wednesdays only.

A question of *sub judice* arose in the Council in October when a Member gave notice of a motion seeking production of all documents relating to the prison transfer of the deceased prisoner Carl Williams whose accused murderer had been convicted but not sentenced. Citing *May*, President Atkinson ruled that debate should not proceed on the motion whilst the case was before the courts but could proceed when it was clear that there was no danger of the matter breaching the *sub judice* principle.

Two new joint investigatory committees have been appointed in the Victorian Parliament following the passage of bills late in the sitting year. One is charged with overseeing the Independent Broad-based Anti-corruption Commission; the other is charged with overseeing the Freedom of Information Commissioner's activities. This brings to 14 the number of joint investigatory committees in Victoria.



### ***Western Australia***

Two bills before the Council potentially encroach on parliamentary privilege. The first, the Evidence and Public Interest Disclosure Legislation Amendment Bill will provide 'shield' provisions for journalists in respect of disclosing their sources. Whilst this is becoming standard practice across Australian jurisdictions, this bill will apply, according to the Parliamentary Secretary representing the Attorney-General, to inquiries 'such as hearings before the Legislative Assembly or Legislative Council, or committee hearings of both Houses of Parliament'. Arising from concerns raised by the Clerk of the Council, the matter was referred to the Procedure and Privileges Committee which, in its report tabled on 29 November, recommended that either unmistakable language be incorporated into the bill to effect the qualification of parliamentary privilege or a prohibitive clause be incorporated to exempt proceedings of parliament. The Council has yet to consider the matter.

Similarly, the Criminal Investigation (Covert Powers) Bill protects covert operatives from having their identities revealed in court under certain circumstances. 'Courts' are defined in the bill as including 'commissions, boards or committees' established by the Governor or either House of Parliament. The bill has been referred to the Standing Committee on Uniform Legislation and Statutes Review.

In the first major review of Standing Orders since 1952, the Council reduced the number of Standing Orders from 438 to 240. The new Standing Orders reflect the Council's wish to: streamline and simplify the procedures of the House and its committees; rationalise the priority of business; adopted successful practices from Temporary and Sessional Orders; eliminate obsolete and unnecessary Standing Orders; retain the rights of all Members to contribute to proceedings in the House and committees; use plain English and gender-neutral language; and re-order the Standing Orders in a user-friendly sequence. ▲