

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

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AUSTRALIAN PARLIAMENT

The general election of 7 September 2013 resulted in a return to majority government, with the Liberal-National coalition winning 90 seats, the Australian Labor Party 55 seats, and the remaining seats held by independent members (two seats) and minor parties (one each to the Greens, Palmer United Party and Katter’s Australian Party). Tony Abbott was sworn in as Australia’s 28th Prime Minister on 18 September 2013. The new parliament was opened on 12 November 2013. The election delivered 42 new members, including two former members and three former Senators. At the first meeting of parliament, the Member for Mackellar, Bronwyn Bishop, was elected Speaker and the Member for Maranoa, Bruce Scott, Deputy Speaker. Upon being elected Speaker, Bishop declared that she intended to be impartial, recognising that the ‘responsibility...goes back to 1377’. She informed the House that the Chamber ‘is not a classroom; it is not a polite debating society. It is a place where we fight for ideas’ and that she intended to allow robust debate.² However, during her short time as presiding officer, she has repeatedly been called into question for her lack of impartiality, creative interpretation of Standing Orders and the ‘transgressions’ for which she ejects opposition members from the Chamber.

With the commencement of the 44th parliament, the new coalition government made changes to the Standing Orders, including:

- New meeting and adjournment times in the House and Federation Chamber and a reduction in the time allocated for the adjournment debate, the matter of public importance discussion and private Members’ business (by comparison with the 43rd parliament).
- Appointment of Chairs and Deputy Chairs of House committees by the Prime Minister and the Leader of the Opposition respectively (previously elected by committees) and an increase in the membership of House committees, from seven to 10 members.

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

2 ABC Online News, 12 November 2013

- Removal of the Speaker's discretion to allow supplementary questions during question time.
- Provision for interventions in the House (in addition to the Federation Chamber), allowing Members to ask short questions or make brief responses during other Members' speeches.

Former Prime Minister and Member for Griffith, Kevin Rudd, announced his retirement on 13 November giving rise to a by-election in his Queensland electorate, which was set down for 8 February 2014. The 12th of December was the final sitting day of 2013. After Question Time, Speaker Bishop announced the retirement of Bernard Wright as the Clerk of the House. The Prime Minister moved a motion thanking Mr Wright for his long and meritorious service to the parliament. The Leader of the Opposition and several other members spoke in support, after which the Speaker read a note from Mr Wright thanking those who had spoken. The motion was agreed to, Members rising in their places as a mark of respect. The Speaker then announced the appointment of Deputy Clerk, David Elder, as the Clerk of the House from 1 January 2014. The Prime Minister, Leader of the Opposition and Deputy Prime Minister made remarks on indulgence congratulating Mr Elder.

The General Election was also a half-Senate election. New Senators, most of whom do not take their seats until 1 July 2014, were sworn in on 7 September. Senator John Hogg (ALP, Queensland) was elected President in 2008 and there was no change to this arrangement. Two casual vacancies were created by the resignations of Senators Barnaby Joyce (LNP, Queensland) and Bob Carr (ALP, New South Wales). Carr's decision to retire required two resignations – one from the current term which ends on 30 June 2014 and one from the term commencing 1 July 2014 to which he had just been elected. The Carr situation was unique in Australian Senate practice and provided for the NSW parliament to make two appointments. For the current term, the Parliament selected Deborah O'Neill to fill the vacancy. The NSW parliament has not filled the vacancy commencing 1 July 2014, but Senator O'Neill was the nominee of her party to fill both vacancies. She was sworn in on 2 December. The Queensland casual vacancy had not been settled by year's end (see Queensland report below). The results of the Western Australia Senate election on 7 September headed for the Court of Disputed Returns following the loss of 1370 votes which could not be included in a second count (fresh scrutiny). The election was so close that the 1370 votes were argued to be critical to the outcome and an ordered recount was, therefore, jeopardised by the missing ballot papers. The recount was the second in the history of the Senate, the first also being in Western Australia following the 1980 election. Petitioners to the Court of Disputed Returns included the Australian Electoral Commission.

There were changes to the Senate Standing Orders, including temporary procedural orders modifying rules and time limits for Question Time and providing additional time for consideration of Private Senators Bills.

Parliament House, Canberra turned 25 in 2013. The anniversary was marked by a number of events throughout the year, including an open day on 24 August.

AUSTRALIAN CAPITAL TERRITORY

The Assembly passed the *Officers of the Assembly Legislation Amendment Bill 2013* which formally recognised the Auditor-General, the Ombudsman and the Electoral Commissioner as Officers of the Assembly, established the independence of these officers and created a clearer separation between those officers and the executive. The bill will commence on 1 July 2014.

The *Australian Capital Territory (Ministers) Bill 2013* was passed on 26 November. This bill provides for the number of Ministers of the Territory to be increased to enable the Chief Minister to appoint up to eight other Ministers. The ACT Cabinet presently has five Ministers who deal with 25 portfolio areas. Chief Minister Katy Gallagher is expected to appoint a sixth Minister in the new year.

In October, the Assembly adopted a Continuing Resolution which provides for the appointment of a Commissioner for Standards by the Speaker for the life of each Assembly. The resolution also provides:

- That the functions of the Commissioner are to investigate specific matters referred to the Commissioner by the Speaker in relation to complaints against Members and by the Deputy Speaker in relation to complaints about the Speaker;
- That the Commissioner report to the Standing Committee on Administration and Procedure on any complaints referred;
- That anyone may make a complaint in writing to the Speaker (or the Deputy Speaker in the case of a complaint about the Speaker) who, if she believes that the complaint is not frivolous or vexatious or for political advantage, may refer the complaint to the Commissioner for investigation and report.

By the end of the year, an expression of interest process was underway. The Assembly's Code of Conduct for members was then revised to provide that Members may make complaints to the Commissioner for Standards provided that they do so on reasonable grounds of suspected non-compliance, that complaints are not frivolous or vexatious, and that they are not motivated by political advantage. The revised code also provides that members must fully co-operate with inquiries undertaken by the Commissioner. Members of the Assembly then re-affirmed their commitment to the Code of Conduct by resolution of the Assembly in October.

NEW SOUTH WALES

A Standing Orders and Procedure Committee report entitled *Citizen's Right of Reply – Ms Lea Rosser* was tabled by the Speaker on 21 November 2013. The Committee's recommendation that Ms Lea Rosser should be given a response to references made about her in the House by the Member for Cessnock, Mr Clayton Barr MP, is the first such recommendation since the procedure was first adopted by the House on 27 November 1996. At issue were allegations made by Barr in relation to Rosser's performance as the General Manager of Cessnock City Council.

NEW ZEALAND

A fascinating tussle between the courts and the parliament has been bubbling away in New Zealand for some years, with the result being an erosion of the traditionally broad protection of parliamentary privilege by the introduction of the principle of 'effective repetition'³ in matters relating to defamation. The New Zealand precedents have had an impact in Australia where a number of matters have been originated but settled prior to adjudication in court. Pursuant to a Privileges Committee report tabled in June 2013, a Parliamentary Privilege Bill was introduced on 11 December. *Inter alia*, the bill seeks to ensure that no person may incur criminal or civil liability for making an oral or written statement that *affirms, adopts or endorses* words written or spoken in proceedings in parliament where that statement would not, but for the proceedings in parliament, give rise to criminal or civil liability. The bill has been referred to the Privileges Committee for detailed consideration and receipt of public submissions.

In November, the parliament passed the *Members of Parliament (Remuneration and Services) Act*, one of the provisions of which is to update the penalties for members who are persistently absent from their parliamentary duties without proper cause. Previously, a member could be fined \$10 for each sitting day that he or she was absent after being absent for 14 sitting days in a parliamentary session. Under the new Act, a member who has been absent from the House for more than three sitting days during a calendar year is penalised by an amount equal to 0.2 percent of the member's gross yearly salary for the fourth and each subsequent sitting day on which the member is absent. To complement these provisions, the House passed a Sessional Order, effective from 1 January 2014, which requires the Clerk to maintain a record of attendance, provides for members to be granted permission to be absent, and requires absences without permission to be recorded in the Journals.

NORTHERN TERRITORY

On 27 August 2013, leave of absence was sought for and granted to the Member for Sanderson, a government member, owing to ill health. Immediately after, leave of absence was sought for the Member for Barkly, an opposition member, owing to electorate business. Debate ensued, during which government members claimed that the Member for Barkly was engaged in remote mobile polling activities for the Member for Lingiari during the federal election campaign. After a division, leave was denied. Standing Orders provide that leave of absence can be moved without notice and that the cause and duration of the leave is given. Section 21(2)(c) of the *Northern Territory (Self-Government) Act* provides that a member who is absent without leave for three consecutive sitting days vacates his or her office as a Member. The Member for Barkly was present in the Assembly on Thursday

3 There are a number of cases in respect of this, the lead case being *Buchanan v Jennings* [2004] UKPC 36; [2005] 1 AC 115; [2005] 2 All ER 273; [2004] 3 WLR 1163; [2004] EMLR 412

29 August. This is the first occasion on which leave of absence has been denied to a Member of the Legislative Assembly.

The use of Committees by the Legislative Assembly has been scant in the past, and while it is available for the Assembly to refer bills to Committees for scrutiny, it has rarely been done. On two occasions during the period under review the independent Member for Nelson unsuccessfully sought to have bills referred to a committee. The first was on 28 November and concerned the Government's *Alcohol Protection Orders Bill* which replaced the former Government's Banned Drinkers Register. The second was on 4 December when the same Member sought to have the *Local Government Amendment (Restructuring) Bill* referred to a committee. Both motions were negatived and both bills passed. A submission dealing with committee reform is with Government for consideration.

On the final sitting day of the year, 5 December, Question Time was cut short when the Chief Minister moved a motion to establish an inquiry into the former government's granting of a crown lease to Unions NT on a heritage-listed site in the Darwin CBD known as the Stella Maris hostel. What was unusual about the motion is that the *Inquiries Act* makes it available for any minister to refer a matter for inquiry without a formal motion in the Assembly. It was also available for the Assembly to refer the matter to a committee for inquiry and report. On 18 December, the government announced that former head of the Australian Crime Commission, John Lawler AM APM, had been appointed to lead the inquiry, which would commence in January. No deadline or expected date for report was announced by the government.

QUEENSLAND

The filling of the casual Senate vacancy caused by the election of Barnaby Joyce to the House of Representatives in Tony Windsor's former electorate of New England was somewhat complicated. When parliament convened on 12 September to consider the matter, only one nomination was received. The Premier then moved that Mr Barry James O'Sullivan be elected to hold the place in the Senate. However at the time of the Premier's nomination, O'Sullivan was involved in an ongoing Crime and Misconduct Commission (CMC) investigation regarding electoral bribery. Accordingly, the Premier moved that the debate on the motion be adjourned and, further, that the meeting to elect a Senator be adjourned until 17 October 2013. This was to allow the CMC time to complete its investigation. On 17 October, the meeting was postponed again until 13 February 2014 as the CMC had still not completed its investigation. On 23 December 2013 the CMC announced that there was no offence of electoral bribery and the relevant parties had been notified of the finding. O'Sullivan's candidacy is expected to be confirmed when the parliament sits on 11 February 2014.

On 19 November 2013, the Ethics Committee tabled its report (No 139) into matters relating to the Member for Redcliffe, Scott Driscoll. The Committee recommended that the Member for Redcliffe be charged with a total of 49 counts of contempt for:

- failing to disclose interests in the Register of Members' Interests and in the Register of Related Persons' Interests; and
- deliberately misleading the House.

The Committee also recommended that the House move a motion to expel the member and declare the seat of Redcliffe vacant. Later that day, the Speaker informed the House that the member had tendered his resignation. The Assembly ordered the former Member for Redcliffe to attend the Bar of the House on 21 November 2013 to respond to the 49 charges of contempt in accordance with the Ethics Committee recommendation. The former member appeared at the Bar of the House, accompanied by his solicitor, who addressed the House on his behalf. The House debated a motion moved by the Leader of the House finding the former member guilty of the contempt charges and fining him \$90,000 in accordance with the Ethics Committee recommendations. Further, the House noted that the member had already resigned his seat, but endorsed the Ethics Committee recommendation that the cumulative effect of the contempt findings was conduct unbecoming of a member of the House and conduct which would have warranted expulsion from the Legislative Assembly. A by-election will be conducted in February 2014.

Prompted by the Member for Redcliffe's lengthy absence from parliamentary sittings between March and September 2013⁴, the Committee of the Legislative Assembly (CLA) conducted a review of Chapter 42 of the Standing Rules and Orders which relate to the absence of members from the House and vacating of seats by Members. In its report tabled on 11 September 2013, the day Driscoll appeared, the CLA recommended, in essence, that the timeframes for members to report absences from the house be significantly reduced. On 12 September 2013, the House subsequently amended Standing Orders 263A and 263B. Members are now required to notify the Speaker if they will be absent for four consecutive sitting days (reduced from 12 sitting days), or for more than four sitting days, within any period of nine consecutive sitting days. Members must advise the duration of and reason for the absence and provide appropriate evidence to support the absence. Upon receipt of written notification by a member, the Speaker must then report the member's absence or intended absence to the House. Standing Order 263B provides for the House to grant a member a leave of absence from attending the Legislative Assembly for 12 or more consecutive sitting days by motion without notice (reduced from 21 consecutive sitting days).

The Newman Government's approach to law and order has created tension between the Executive and the Judiciary, particularly in relation to legislation dealing with 'criminal organisations' and specifically motorcycle 'gangs'. Three bills – *the Vicious Lawless Association Disestablishment Bill*, the *Tattoo Parlours Bill* and the *Criminal Law (Criminal Organisations Disruption) Amendment Bill* – were introduced on 15 October and declared urgent. They were passed in the early hours of the following morning and received assent the following day. The bills amended the *Bail Act* to provide a presumption against bail for criminal motorcycle gang members and provided for mandatory sentencing in some cases.

4 Between 22 March and 11 September, Driscoll was absent for 27 sitting days, including seven days of Estimates in July.

On 31 October, Justice George Fryberg of the Supreme Court noted comments made by Premier Newman about the granting of bail during which he suggested that the courts should uphold community expectations. Justice Fryberg was concerned about the impact of those comments on the independence of the courts. His comments were made when he stayed an application for a review of a Magistrate's biker bail decision. Justice Fryberg's decision gave rise to an appeal by the DPP, which ultimately set aside Fryberg's decision so the matter could be heard and decided. Meanwhile, on 4 November, Chief Magistrate Tim Carmody issued a Practice Direction that all contested bail applications in relation to participants in criminal organisations were to be heard in Court 20 – *his* court. Matters were further complicated when the Acting Chair of the Crime and Misconduct Commission, Dr Ken Levy, wrote an opinion piece in the local newspaper supporting the laws which gave rise to an appearance before the parliament's Crime and Misconduct Committee.

In July 2013 Premier Campbell Newman announced the establishment of a tribunal to determine the future remuneration and allowances for Members of Parliament as it was no longer tenable for the salaries of the Queensland parliament to be linked to the salaries of Commonwealth Members of Parliament. This followed an outcry in May after it was announced that members would receive a 42 per cent increase. In October, the Remuneration Tribunal decided on an increase of just under nine per cent, bringing the base salary to \$148,848 or \$111,699. A number of allowances would be abolished from 1 January 2014 and the following established instead:

- electorate allowance to be set on the basis of a combination of electorate population and electorate size with three bands established ranging from \$27,500 to \$30,000 to \$34,000;
- information and communication allowance of \$34,000 per annum; and
- general travel entitlement, including motor vehicle allowance.

Allowances are paid on condition that the member accounts for the expenditure to the Clerk. The Clerk is required to report annually on each member's expenditure. Abolished allowances include home telephone reimbursement, daily travel allocation, rail and taxi entitlements, special car allowance, state functions, flights within electorates and entertainment expenses.

SOUTH AUSTRALIA

The last sitting day of the second session and last sitting of the 52nd Parliament was 28 November 2013. The session comprised 101 sitting days – the longest, in terms of the number of sitting days, of any session of the Parliament since the 126 sitting day session of 1872. A General Election will be held in March 2014.

VICTORIA

In August 2013, there was a Joint Sitting of the Victorian parliament to fill two casual vacancies. One was caused by the resignation of Donna Petrovich MLC from the Legislative Council to contest the federal seat of McEwen. The second was the Honourable David Feeney's resignation from the Senate to contest the House of Representatives seat of Batman. Amanda Millar was selected to replace Petrovich in the Council and Mehmet Tillem to replace Feeney in the Senate.

On 12 December 2013, the final sitting day before the end-of-year break, Philip Davis, a Member of the Legislative Council, announced his intention to retire from politics. Davis, a former Leader of the Opposition in the Council, did not formally resign so his successor will not be named until parliament resumes in the new year.

Numbers in the Victorian Legislative Assembly are delicately poised with a disaffected former government member – Frankston MP Geoff Shaw – holding the balance of power as an independent and appearing to have a particular animus for Speaker Ken Smith. During the sitting week of 12 November, the opposition spoke against the government's proposed business program, arguing that the House should instead devote its time to a no-confidence motion in Speaker Smith. Shaw agreed that the no-confidence motion should be a priority, saying he had lost confidence in the Speaker. The government business program motion was defeated, which caused the government difficulty in getting its scheduled bills through the Assembly. More significantly, Speaker Smith appeared to no longer enjoy the support of the majority of members. On the Thursday of that sitting week, the Assembly descended into such uproar at the start of the day that the Speaker left the Chair, adjourning the House until its next scheduled sitting day. In the next sitting week, two opposition members were named and suspended for six sitting days each (the rest of the sitting year) – while Shaw was absent from the Chamber – giving the government control for the last two sitting weeks. Meanwhile, the Baillieu government limps along with a General Election due in Victoria late 2014.

None of the Legislative Council's three Reference Standing Committees conducted inquiries during 2013. The Reference Committees are chaired by the opposition, with the Chair having both a deliberative and casting vote, therefore being opposition controlled. The Committees have no self-referencing powers and may only conduct inquiries by referral from an increasingly timid Council.

WESTERN AUSTRALIA

In December 2013, the Procedure and Privileges Committee tabled a report recommending that the Speaker's Procedural Rules relating to procedures for the formal examination of witnesses be amended. The Report included a requirement that witnesses be notified of significant adverse references and significant adverse findings made in the course of committee inquiries, and that witnesses be provided with an opportunity to respond to these significant references and findings. The report received bipartisan support, and the Speaker announced that he had made the recommended changes to the Speaker's Procedural Rules accordingly.

Malcolm Peacock retired as Clerk of the Legislative Council in October after nearly 30 years service in the Parliament. Nigel Pratt was named as his successor and will commence in the new year.

The Legislative Council Environment and Public Affairs Committee in July commenced an inquiry into the implications for Western Australia of hydraulic fracturing for unconventional gas (fracking). This is the first time that any parliamentary inquiry worldwide has inquired into the effects of fracking from an environmental perspective, and the Committee intends to hear from the community and stakeholders as well as conduct site visits during 2014.