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From the Tables*

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Australian Parliament

Former Speaker Peter Slipper tendered his resignation to the Governor-General on 9 October 2012 after months of controversy during which he remained the Speaker but did not preside over proceedings in the House of Representatives. That job fell to Deputy Speaker Anna Burke who was elected to the position on the same evening.

Slipper was the second Speaker to resign in 11 months, the first being Harry Jenkins, and the fifth time in the history of the House of Representatives that a sitting Speaker has resigned. The more usual course is for a Speaker to retire once the parliament has been prorogued for a General Election.

The House Committee of Privileges and Members' Interests continues to grapple with a proposed Code of Conduct for Members. This innovation arose from various agreements entered into by the Prime Minister with the Independents during the course of negotiations to form minority government following the 2010 August General Election.

The Joint Committee on the Broadcasting of Parliamentary Proceedings spent 12 months in consultation with media representatives, senators, members and parliamentary officers to revise rules governing media coverage of proceedings. This resulted in new media rules being tabled in the Senate and the House of Representatives on 28 November. The rules were last reviewed in 2008. The Usher of the Black Rod and Serjeant-at-Arms have responsibility for administering the rules which seek to balance the media's right to report parliamentary proceedings whilst respecting the privacy of senators and members and allowing them, other building occupants and visitors to Parliament House to go about their business. A

* *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)

new video on demand service, called *ParlView*, is also under consideration by the presiding officers.

In the Senate, a privileges matter was decided which addressed the hoary issue of senators (or members) seeking reimbursement for legal costs incurred during the course of their duties. The matter arose from an allegation by one senator against others concerning possible improper influence relating to political donations and the asking of a series of questions without notice by Australian Greens senators. The Committee of Privileges found no causal link between the two, but in the process of defending themselves, two senators incurred significant legal costs and sought to have them reimbursed. Ultimately, after considerable advice was taken and with due consideration to Privilege Resolution 2(11) dealing with costs incurred by witnesses before the Privileges Committee, the requests for reimbursement were declined.

Australian Capital Territory

A General Election on 20 October resulted in a dead-heat between the Labor and Liberal Parties with eight seats each, and the election of one Greens member. Former Speaker Shane Rattenbury was the sole Green who entered into negotiations with the ALP to form government and became a Minister in that government. The agreement entered into provides that the Auditor-General, Electoral Commissioner and Ombudsman will be Officers of the Parliament; pursuit with the Commonwealth Government of amendments to the *Self-Government Act* to allow the Assembly to determine its size (critical mass being an issue in the ACT); a degree of freedom for the Greens Minister relating to Cabinet solidarity and public statements unrelated to his portfolio areas; and holding an ‘older persons Assembly’ in 2013 and 2015.

Given the close numbers in the Assembly, an Opposition MLA was elected Speaker on 20 October.

Five General Purpose Standing Committees were established in November, each consisting of four members — two government and two opposition — with the Chair having no casting vote. This is a departure from previous practice and a reduction of one committee. Opposition members now Chair two committees, including the Public Accounts Committee, whilst government members chair the remaining three.

Standing Orders were amended to allow the Greens Minister to introduce business for one sitting hour on Thursday. This is known as Executive Members’ Business. A further amendment provided that proposed amendments to legislation must be lodged with the Clerk for circulation 24 hours prior to the sitting day on which they are proposed to be moved.

In a matter of reflecting on the Speaker, two Members of the Assembly were called to account for material contained in pamphlets which were party political in nature and therefore breached the Assembly's Code of Conduct. The material was circulated in July, a time when the Assembly was not sitting. Whilst the members were asked to, and ultimately did, apologise to the Speaker, the members concerned asked the Ombudsman to investigate the Speaker's Determination dealing with guidelines for electorate publications. The Ombudsman advised that he has no jurisdiction to investigate the actions of the Speaker, Ministers or Members of the Legislative Assembly, however he is able to investigate actions of the Office of the Legislative Assembly. The Members then sought to have a range of questions answered by the Clerk. Advice was sought from the Solicitor General whose view was that the Ombudsman had no jurisdiction over the Office of the Legislative Assembly and that any such investigation could be a breach of parliamentary privilege. The Ombudsman advised of closure of the complaint in December 2012 but requested that the Chief Minister ask the Assembly to consider his jurisdiction in relation to matters of this kind.

New South Wales

The Independent Commission Against Corruption (ICAC) has been investigating the matter of allegations concerning mining exploration licences (Operations Jasper and Acacia) and the provision of a motor vehicle to a former NSW government minister (Operation Indus). In the course of its investigation, the Commission sought to inspect interest disclosure returns made by members, and this gave rise to the question of whether such disclosures attract parliamentary privilege as a 'proceeding of parliament'. It was a difficult question and various authorities concluded that there was no clear basis for determining the question one way or the other. There were two methods of dealing with the matter: one was a judicial response, meaning that a court could decide; the other was a legislative one. The government went with the latter option and introduced the Independent Commission Against Corruption Amendment (Register of Disclosures by Members) Bill 2012 which provided that ICAC may use members' interests disclosure returns for any investigation and recommendation and that parliament is taken to have waived any privilege applying to the register for that purpose.

In August, Speaker Hancock made a considered ruling concerning a trend of Members refusing to withdraw offensive remarks under Standing Orders 72 and 73. She advised Members that she would be enforcing these Standing Orders and that refusal to withdraw, she would name Members under Standing Order 250(3) or have them removed under Sessional Order 249A. In the course of her ruling, Speaker Hancock pointed out to Members that the apology sought was not just for the Member who had been offended, implying that disrespect reflected on the House.

New Zealand

The Privileges Committee has been referred a matter by the Speaker which involves determining whether parliamentary privilege is attracted by statements made by an official to a Minister for the purpose of replying to questions which are not themselves part of parliamentary proceedings. This arises from the case of *Attorney-General and Gow v Leigh* [2011] NZSC 106 in which the court held that such statements did not attract parliamentary privilege and were therefore actionable. The question for the Privileges Committee is whether absolute privilege applies to advice which is given for the proper functioning of the House and has implications for advice provided by the Clerks, their staff, departmental officials and member of the public who engages in parliamentary proceedings. The Committee has also to examine the matter of comity — mutual respect and restraint between the legislature and the judiciary. No timeframe has been set for the Committee's report.

The same committee has been charged with examining three agreements with external law enforcement parties and how those agreements affect the privilege of the House. The agreements are: (1) with New Zealand Police on policing functions within the parliamentary precincts; (2) with New Zealand Police on procedures for execution of search warrants on premises occupied or used by Members of Parliament; and (3) an MOU with the New Zealand Security Intelligence Service on collection and retention of information about Members of Parliament.

Standing Orders were amended in 2011 to provide for extended sitting hours to deal with matters which have not been reached during a normal sitting period. These amendments were intended to reduce the number of bills going through the House on urgency. Since the amendments, of the 30 sitting weeks in 2012, 11 were extended and urgency has been used on only one occasion, which was passage of a bill necessary for the Budget.

New legislation, namely the *Legislation Act*, passed in December 2012. Its purpose is to modernise and improve the law relating to the publication, availability, reprinting, disallowance, revision and official versions of legislation and to bring the law relating to these elements of legislation into a single act.

Northern Territory

A General Election on 25 August resulted in a change of government and a surprise watershed result for the Country Liberal Party, which picked up three 'bush seats' hitherto considered Labor Party strongholds. Each party maintained its *status quo* in urban seats. The Country Liberals emerged with 16 seats to Labor's eight with the Independent Member for Nelson holding his seat after a particularly vitriolic campaign. Former Chief Minister Paul Henderson retained his seat but immediately stepped down from the leadership and sat in the Assembly without a shadow

portfolio. His former Deputy, Delia Lawrie, became Leader of the Opposition. Chief Minister Terry Mills has not enjoyed the usual honeymoon period for a new government; austerity measures introduced quickly have alienated the electorate and internal ructions within his own party have had a destabilising effect. Mills announced an interim ministry on 29 August in which he held 38 portfolios and his Deputy, Robyn Lambley, held two. On 3 September, he announced a more permanent arrangement, which was reshuffled on 2 October and again on 7 March.

A change to the Routine of Business in the Assembly has Question Time at 10am rather than 2pm. The capacity for an automatic adjournment at 9pm has been abandoned and the Legal and Constitutional Affairs Committee has been given responsibility for the Subordinate Legislation and Publications Committee, which has traditionally been a separate committee. The latter committee has received a reference from the Speaker in respect of e-tabling of documents and is expected to report in May.

Attorney-General John Elferink announced in November that he would appear before the Full Bench of the Supreme court as Counsel assisting the Solicitor General in a Crown appeal against a decision preventing relieving magistrate Sarah McNamara from hearing cases involving the Central Australian Aboriginal Legal Aid Service (CAALAS) because her husband is the Principal Legal Officer and there could, therefore, be a perception of bias. He appeared to misunderstand his status in the legal system. Being the Territory's first Law Officer, the Solicitor General appeared as Counsel assisting him. Elferink is the first Attorney-General to appear in a matter before the courts, although a predecessor, Shane Stone, appeared in a ceremonial sitting on the occasion of the retirement of Chief Justice Austin Asche in 1993. Other Attorneys have made appearances at similar ceremonial sittings.

Queensland

Speaker Simpson has confronted the same issues as NSW's Speaker Hancock in respect of Members refusing to withdraw offensive words. On 1 November, Speaker Simpson pointed out to Members that refusing to follow a direction from the Chair is, in fact, a reflection on the Chair and that the Chair has the right to require withdrawal of unparliamentary language without being prompted by an objection from another Member.

The issue of media access to the Chamber in the Queensland Parliament has resulted in suspension of media organisations from the Chamber following breaches of the guidelines and specific orders from the Chair in relation to filming activities in the public galleries and close-up photography of material on Members' desks. The first breach occurred during debate on the Civil Partnerships and Other Legislation Amendment Bill on 21 June 2012; the second occurred on 13 September.

In the period July to December 2012, 30 matters of privilege were raised by Members with the Speaker and were ruled upon and a further nine were referred to the Ethics Committee. The majority of complaints related to alleged deliberate misleading of the House. Most were dismissed, which prompted the Speaker on 11 September to remind Members not to use the privileges of the Assembly for trivial, tedious or political reasons. Eight matters remain before the Ethics Committee.

In May 2011, former Member Gordon Nuttall was found guilty of 41 counts of contempt of Parliament and was fined \$2000 for each count. By May 2012, nothing had been received by way of payment. Nuttall asked that the Parliament reconsider his submission (made in May 2011 when he appeared at the Bar of the House) for clemency based on his imprisonment and forfeiture of assets imposed by the courts. The Speaker informed the House on 7 June that she considered the failure to pay a matter of privilege and referred it to the Ethics Committee. That Committee noted that the Public Trustee was manager of Nuttall's estate and that sales of assets had taken place pursuant to the *Criminal Proceeds Confiscation Act*. The Public Trustee has informed the Committee that a small interim payment to all creditors can be made and that once Nuttall's remaining assets have been liquidated, all debts, including the fine owing to the Parliament, could be paid. On that basis, the Committee resolved that it was not necessary to determine whether Nuttall was wilfully disobeying an order of the House, which would be a matter of contempt. The Committee's report, Number 123, was tabled on 11 September.

In something of a departure from tradition, Cabinet documents were tabled in the House on 31 October by the Leader of the Opposition, Annastacia Palaszczuk. This followed a motion on 12 July by the Minister for Health, Lawrence Springborg, seeking the documents which related to the former Labor Government and Queensland's troubled IBM health payroll system. The motion was not an order of the House pursuant to the *Parliament of Queensland Act*, but called on the Opposition to provide the documents to him rather than the Parliament. In the event, the documents were tabled with the Opposition Leader indicating that this was a one-off event that she would be 'highly unlikely to ever do so again'. On the same matter, on 13 December the Government announced a Commission of Inquiry into the payroll system. The Commission will report to the Premier by 30 April 2013.

The *Criminal Code* has been amended to remedy collateral damage caused by a clash with the *Parliament of Queensland Act 2011* which gave rise to double jeopardy in certain circumstances. Sections of the *Code* were repealed as a result in 2006, but have left the Queensland Parliament vulnerable. For example, prior to the 2012 amendment, it was an offence under the *Criminal Code* to create a disturbance when Parliament was not sitting, but not when it is sitting, which is when most people take grievances to their elected representatives. The amendments, made on 2 August 2012, reflect the intention that freedom of speech and debate is abrogated to the extent required by the offence of giving false evidence to the Assembly or a Committee and clarify that the offence applies to Members of Parliament as well as non-members.

South Australia

With a General Election due in 2014, the parties are beginning to square off in preparation. Relatively new Labor Premier Jay Weatherill had a major Cabinet reshuffle in which he eased out a number of senior Ministers and reduced the size of the Cabinet from 15 to 13. Speaker Lyn Breuer was also replaced by former Attorney-General in the Rann Government, Michael Atkinson.

The Opposition, dogged by leadership rumours for the latter part of 2012, replaced its leader Isobel Redmond with Steven Marshall, rather than the much-mooted former Foreign Affairs Minister Alexander Downer who would have to have been parachuted in Campbell Newman style and lead the party from outside the parliament. Marshall similarly reshuffled his shadow ministry and reduced it to 12 Members.

Tasmania

In late August, a sessional order was created which provides for co-sponsorship of bills. This immediately gave rise to the Premier and the Leader of the Greens, who is also Education Minister, introducing a bill to provide for same-sex marriage. Usually, standing and sessional orders require reference to the Standing Orders Committee and require a two-thirds majority in the House for adoption.

In November, a disagreement between the Houses on the University of Tasmania Amendment Bill gave rise to the establishment of a Reasons Committee, a procedure which has not been used for some 20 years. At issue was an amendment to which the Legislative Council did not agree. The Reasons Committee reported the reasons why the House had voted for the amendment in the first instance. The report was considered by the Council on 15 November, the Council agreeing to a fresh amendment of the Assembly and dropping its insistence on the original amendments it had proposed.

Victoria

News for the second half of the year has been overtaken by very recent events in Victoria, including the resignation of Premier Ted Baillieu after controversial MP Geoff Shaw resigned from the Liberal Party, reducing the government's majority to potentially one. For his part, Shaw had been investigated by the Ombudsman for alleged misuse of his parliamentary vehicle. The Ombudsman recommended that the matter be referred to the Privileges Committee of the Legislative Assembly.

The new Premier is Dr Dennis Napthine, who was elevated to the job on his 61st birthday. Napthine was first elected to the Victoria Parliament in 1988 during the Kennett years. Following Kennett's defeat, he served as Leader of the Opposition.

Victoria has a new 'integrity' regime, which is headed up by the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Inspectorate, with IBAC being the principal body for receiving and investigating complaints about serious corruption in the public sector and police. The Office of Police Integrity has been abolished. The Victorian Inspectorate will oversee the day-to-day operations of IBAC, the Ombudsman and the Auditor-General. Three parliamentary committees have been formed to monitor the regime: (1) IBAC Committee, a joint committee, which reviews the performance of IBC, Public Interest Monitors and the Victorian Inspectorate; (2) Accountability and Oversight Committee (AOC), also a joint committee, which reviews the performance of the Ombudsman, Freedom of Information Commissioner and the Victorian Inspectorate's oversight of the Ombudsman; and (3) the Public Accounts and Estimates committee, which will review the performance of the Victorian Inspectorate's oversight of the Auditor-General's office.

A Social Media Inquiry has been completed by the Standing Orders Committee. This inquiry arose out of reflections on the Chair when a Member tweeted about the Speaker's impartiality late in 2011. The Committee's report, which has yet to be considered by parliament, did not recommend any changes to Standing Orders, but suggested guidelines for Members and people in the galleries. The Committee also found that the rules in relation to reflecting on the Chair are poorly understood and need to be both followed and enforced.

Western Australia

Parliament was prorogued on 14 December 2012 in preparation for the March General Election, which is expected to be comfortably won by incumbent Premier Colin Barnett's Liberal Party.

Prior to the prorogation, amendments were made to the *Electoral Act 1907* in relation to the identity of people seeking to enrol to vote to bring it into line with enrolling to vote in Commonwealth elections and abolishing the crime of electoral defamation.

On 3 December the Criminal Investigation (Covert Powers) Bill was passed by both Houses. The legislation protects an undercover operative and a person in a witness protection program from being asked questions by the Parliament or a Committee if a certificate is provided by the Police Commissioner to the relevant Clerk before the person gives evidence. It also makes it a criminal offence to disclose the identity of a person in a witness protection program. Parliamentary privilege is preserved in the legislation.

The issue of parliamentary privilege was also exposed in the Evidence and Public Interest Disclosure Legislation Amendment Bill 2011. This legislation contained provisions to regulate any proceeding before 'a person acting judicially' where a journalist has declined to disclose a source. It gave rise to the question of whether

Parliament or a Committee falls within the definition of ‘a person acting judicially’ and, if so, potentially removes the self-governing powers of the parliament to determine privilege matters. The Council referred the bill to the Standing Committee on Procedure and Privileges which now has before it a draft Standing Order which seeks to implement the broad aims of the bill without endangering parliamentary privilege and exposing parliamentary proceedings to the possibility of judicial review.

In October, the Legislative Assembly agreed to a proposal from the Council to establish a Joint Standing Committee on Audit which fulfils a requirement of the *Auditor General Act 2006* that a Committee be established to advise the Treasurer on the annual budget of the Office of the Auditor-General. The Committee will also undertake a review of the *Auditor-General Act*. ▲