

# The role of the Speaker in minority government – the case of the Australian House of Representatives 2010–2013

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## INTRODUCTION

The role of the Speaker is a significant one in Westminster parliaments.<sup>1</sup> In a minority parliament, it can be even more significant to the operation of the House.<sup>2</sup> This article examines the experience of the Speakership in the 43rd minority Parliament in the Australian House of Representatives.

Between 2010 and 2013 there was a minority government in Australia with no single party or party grouping able to command a majority on the floor of the House. The result of the August 2010 election, which gave rise to a hung parliament, is illustrated in Figure 1 below.

**Figure 1: Numbers – August 2010**

Australian Labor Party	72
Liberal/National Party	72
Others	6*

\* Bandt (Greens), Crook (WA Nat), Katter (Ind), Oakeshott (Ind), Wilkie (Ind), Windsor (Ind)

The Australian Labor Party, led by Julia Gillard, was able to form government with written agreements with the Australian Greens (Mr Adam Bandt) and three independent members (Mr Rob Oakeshott, Mr Andrew Wilkie, Mr Tony Windsor). These agreements guaranteed the government supply and support in non-confidence motions in return for various undertakings from the government. In addition, the government committed to a program of parliamentary reform. On all other matters, there was no commitment on the part of the non-aligned members to vote with the government. Once the various agreements

- 1 Hon Margaret Wilson, former Speaker of the New Zealand House of Representatives, notes the significance of the role of Speaker in Westminster constitutional arrangements, but also that it has not been the subject of great analysis. M Wilson, 'The role of the Speaker: perceptions and realities', *Public Law*, July 2010, pp 565–582, at p 565.
- 2 A colourful account of the minority government in New South Wales in the early 1910s, including the significance of the role of the Speaker can be found in A Twomey, 'How to succeed in a hung parliament', *Quadrant*, November 2010, pp 36–40.

had been concluded that enabled the Gillard government to be formed and the non-aligned members had indicated which party or party groupings they would support, the numbers of the respective parties are illustrated in Figure 2. These were the numbers prior to the election

of a Speaker, who, under the Australian Constitution, has a casting vote only when the numbers in a division are equal (section 40). Thus, with the election of a Speaker, the total voting numbers would reduce to 149 with a consequent effect on the balance of numbers between the two sides as the Speaker's deliberative vote would be lost from the party or party groupings from which he or she was drawn.

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**The Speakership has, arguably, evolved in a particular way in the Australian context, especially in the House of Representatives**

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**Figure 2: Numbers – September 2010 (prior to first meeting of the House)**

Australian Labor Party	72
+ Bandt (Greens), Oakeshott (Ind), Wilkie (Ind), Windsor (Ind)	= 76
Liberal/National Party	72
+ Crook (WA Nat), Katter (Ind)	= 74

## THE ROLE OF THE SPEAKER

As noted by May in *Parliamentary Practice*, 'The Speaker ... is the representative of the House itself in its powers, proceedings and dignity'.<sup>3</sup> However, the Speakership has, arguably, evolved in a particular way in the Australian context, especially in the House of Representatives, as articulated by former Speaker Neil Andrew:

... the essence of the Australian speakership is impartiality which is the formal expression of the Aussie 'fair go' and that there is an important distinction between impartiality as Australian Speakers seek that goal and the structural independence model which has evolved in the United Kingdom ... impartiality is the defining characteristic of the speakership in Australia.<sup>4</sup>

The Agreement for Parliamentary Reform, which was part of the process of the formation of government, recognised the important role the Speaker would play in the forthcoming minority parliament. Indeed, the following references from the Agreement indicate the central position the Speakership was expected to take:

For the improvements to work ... there will need to be a recognition by all ... to allow a Speaker (in particular) to rule with a firm hand as debate tests the boundaries of the standing orders.<sup>5</sup>

3 May, *Parliamentary Practice*, 24th edn, p 59.

4 Hon Neil Andrew, *The Australian Federal Speakership – the first hundred years and some future directions*, Paper for presentation to a Conference on Constitutional and Parliamentary Reform, University of Adelaide, 17–18 August 2002, p 1.

5 *Agreement for a better Parliament: Parliamentary reform*, p 1.

The Speaker will be independent of government.<sup>6</sup>

The Speaker will rigorously enforce the standing orders on his or her own motion.<sup>7</sup>

It is interesting that these references reflected some of that tension in the model of Speakership that former Speaker Andrew referred to between the 'impartial' and the 'independent' Speaker. This tension would also play out in the way the role of Speaker was performed over the course of the 43rd Parliament. In the case of the hung parliament in the Australian House of Representatives, there were two reasons why the Speakership would be central:

- the closeness of the numbers meant that the loss of a deliberative vote by having a member take up the office of Speaker was going to be significant; and
- the Speaker would play a key role, even more important than that usually played by a Speaker, in how minority government would function as the reforms were, in part, built around an independent and assertive approach being taken by the Speaker.

## ISSUES BEFORE THE HOUSE SAT

The Speakership had become embroiled in controversy before the House had met over particular provisions of the Agreement for Parliamentary Reform as follows:

If the Speaker is drawn from a political party then the Deputy Speaker will be drawn from an alternate political party and both the Speaker and Deputy Speaker will:

- abstain from attending their respective party rooms; and
- when in the Chair, be paired for all divisions.

If the Speaker is non-aligned, then the same pairing arrangements will apply [emphasis added].<sup>8</sup>

The purpose of these provisions was to neutralise the voting implications of a member taking the Speakership by 'pairing' the Speaker with the Deputy Speaker from an opposing political grouping in any division in the House. Questions were raised about the constitutionality of this provision. Section 40 of the Constitution provides:

Questions arising in the House of Representatives shall be determined by a majority of votes other than that of the Speaker. The Speaker shall not vote unless the numbers are equal, and then he shall have a casting vote.

The government sought an opinion from the Solicitor-General on the constitutionality of any pairing arrangement involving the Speaker.<sup>9</sup> The Solicitor-General concluded that there was not any necessary constitutional impediment to a pairing arrangement between the

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<sup>6</sup> *Ibid*, p 2.

<sup>7</sup> *Ibid*.

<sup>8</sup> *Ibid*.

<sup>9</sup> In the matter of the Office of the Speaker of the House of Representatives, Opinion, Stephen Gageler, Solicitor-General, SG No. 37 of 2010.

Speaker and another member from an opposing political party if the arrangement had a fixed operation irrespective of any particular vote, with two provisos:

1. The arrangement could not give the Speaker a deliberative vote and could not deprive the Speaker of a casting vote.
2. Adherence to the arrangement by the other member could only be voluntary.<sup>10</sup>

In explaining his conclusion the Solicitor-General noted:

Although not inappropriately described as ‘pairing’, the arrangement, in substance and effect, would involve nothing more than the other member choosing not to exercise that member’s constitutional entitlement to cast a deliberative vote and to maintain that choice without regard to the question for determination.<sup>11</sup>

The Coalition Opposition parties sought an opinion on the same matter from its Shadow Attorney-General, Senator George Brandis SC. Senator Brandis concluded in his advice:

In my opinion, pairing arrangements cannot be extended to the Speaker. Pairing arrangements contemplate that a vote (commonly described as a ‘deliberative vote’, although that term is not included in section 40) *could* have been cast and, indeed, but for the existence of the pairing arrangement, would have been cast. However, section 40 provides, in terms which do not admit of ambiguity, that the Speaker may not vote on the question before the Chair, unless the numbers are equal, in which event he has a casting vote.<sup>12</sup>

As the Opposition, relying on the legal advice from Senator Brandis, did not agree to pair the Speaker, no ‘pairing’ arrangement was put in place involving the Speaker during the course of the Parliament. But the debate around this issue was a significant pointer towards the importance of the vote that could have been exercised by the person chosen as Speaker. Upon their election, this person’s vote was not available to their own party grouping.

## THE ELECTION OF THE SPEAKER

Before the House met for the first sitting there was considerable speculation in the media about Opposition or independent members being nominated by the government for the Speakership to overcome the problem of the loss of a vote. However, when the House convened for its first sitting on 28 September 2010, Mr Harry Jenkins, a member of the government and the Speaker in the previous Parliament, was nominated by the government and was elected unopposed as Speaker. The government nominated an Opposition member, Mr Peter Slipper, for the position of Deputy Speaker. In the ballot for the Deputy Speakership, Mr Slipper prevailed over the Opposition’s nominee, Mr Bruce Scott. The previous evening, when there was speculation that he could be the government’s

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<sup>10</sup> *Ibid*, pp 1–2.

<sup>11</sup> *Ibid*, p 19.

<sup>12</sup> George Brandis SC, Opinion, re: Section 40 of the Commonwealth Constitution, Ex parte Oakeshott, 20 September 2010, p 3.

nominee for Deputy Speaker, Mr Slipper issued a statement that he would not support the government in guaranteeing supply or confidence motions, nor would he enter into any pairing arrangement with the Speaker.<sup>13</sup> The election of Mr Jenkins as Speaker, with no pairing arrangements in place, left the numbers at the start of the 43rd Parliament as shown below in Figure 3. The government had the slimmest of a majority.

**Figure 3: Numbers – September 2010 (after election of Speaker Jenkins)\***

Australian Labor Party	72
+ <i>Bandt (Greens), Oakeshott (Ind), Wilkie (Ind), Windsor (Ind)</i>	76
Less Speaker Jenkins	= 75
Liberal/National Party	72
+ <i>Crook (WA Nat), Katter (Ind)</i>	= 74

\* It is worth noting that if the 'pairing arrangement' of the Speaker and Deputy Speaker referred to earlier had been agreed, the numbers would have been Australian Labor Party (plus non-aligned supporters) 75 and Liberal National Party (plus non-aligned supporters) 73 as neither the Speaker nor the Deputy Speaker would have voted in divisions.

## SPEAKER JENKINS

Speaker Jenkins indicated, in acknowledging his election as Speaker, the significant role that parliamentary reform could play in the minority Parliament:

The whole House – each of the 150 members – has an opportunity presented by a minority government in this 43rd Parliament of getting effective, positive changes to the way in which this place operates. But I would hope that we do that in a way that enables those changes to be sustainable – that those changes would continue under differing circumstances of numbers within the chamber.<sup>14</sup>

Mr Jenkins indicated early in his Speakership that he would permit one supplementary question to be asked each Question Time as provided for in the Agreement for a better Parliament.<sup>15</sup> In addition, Mr Jenkins sought during Question Time to take a firm approach to adherence to the standing orders, particularly direct relevance of Ministers in responding to questions.<sup>16</sup> Mr Jenkins also absented himself from attendance at party meetings in accordance with the Agreement. The circumstances of minority government created particular challenges for the Speaker. On two occasions Speaker Jenkins made important statements in relation to legislation that was considered to have breached constitutional provisions or principles relating to the financial initiative of the House of Representatives and of executive government. For the purposes of this article, the details of these two cases will not be

<sup>13</sup> Statement by Peter Slipper MP regarding the Deputy Speakership, 27 September 2010.

<sup>14</sup> House of Representatives Debates, 28 September 2010, p 11.

<sup>15</sup> House of Representatives Debates, 20 October 2010, p 859.

<sup>16</sup> One of the changes made to the standing orders as a result of the 'Agreement for a better Parliament' was to tighten the requirement that answers be 'relevant' to the question to answers being 'directly relevant' to the question.

canvassed as they are well covered in a paper prepared by the House of Representatives Clerk's Office on 'The Law Making Powers of the Houses – Three aspects of the Financial Initiative'.<sup>17</sup> The significant issue was that the Speaker intervened to place a limit on the ability of private members to pursue matters of considerable interest to them and sought the support of the House for his position. In the context of minority government, this was a testing situation and left the Speaker's position with some vulnerability. In the event, the House supported the Speaker on both these matters. The vulnerability of the Speaker's position in minority government also was exposed in relation to the maintenance of order in the House. One of the more dramatic moments in Speaker Jenkins' speakership arose when a member was 'named' for disorderly behaviour.<sup>18</sup> In accordance with the standing orders, the Leader of the House moved a motion to suspend the member from the House. This motion was defeated in the subsequent division. Speaker Jenkins advised the House that 'After Question Time, I will be taking time to consider my position'. The Leader of the Opposition immediately moved a motion of confidence in Mr Jenkins' Speakership and this motion was seconded by the Prime Minister and carried on the voices.<sup>19</sup> In supporting Speaker Jenkins, Mr Abbott in particular noted that Mr Jenkins had performed his duties 'with commendable impartiality and with considerable forbearance'.<sup>20</sup> Mr Jenkins remained in office.

On another dramatic day in the 43rd Parliament, the final sitting day in 2011, Speaker Jenkins took the Chair as usual at the commencement of proceedings and announced to the House that he would be resigning as Speaker that day.<sup>21</sup> Both the Prime Minister and the Leader of the Opposition referred to the exemplary service that Mr Jenkins had performed as Speaker. In particular there was reference again to Mr Jenkins embodying that impartial model of Speakership which Speaker Andrew had referred to. The Prime Minister stated:

On all occasions Harry Jenkins, as Speaker of this House, has carried out his duty with honour, with dignity, with a strict non-partisan approach which brought him credit from all sides of the Parliament.<sup>22</sup>

The Leader of the Opposition stated:

[Mr Jenkins] has been in my judgment one of the very best Speakers to grace the chair of this Parliament. Certainly he is the equal of the best of Speakers that I have served under in my 18 years in this Chamber.<sup>23</sup>

<sup>17</sup> The most recent version of this paper is available on the Parliament House website at [http://www.aph.gov.au/About\\_Parliament/House\\_of\\_Representatives/Research\\_and\\_Education/Procedural\\_publications](http://www.aph.gov.au/About_Parliament/House_of_Representatives/Research_and_Education/Procedural_publications).

<sup>18</sup> The process of naming a member is effectively an appeal from the Speaker to the House for support in maintaining order. A member whose conduct in the chamber is disorderly can be 'named' by the Speaker. A motion is then moved to suspend the member from the House. The Speaker would be expecting the support of the House for this motion as a demonstration of confidence in the Speaker's authority to maintain order.

<sup>19</sup> See House of Representatives Debates, 31 May 2011, pp 5283–86 for the details of this incident.

<sup>20</sup> House of Representatives Debates, 31 May 2011, p 5284.

<sup>21</sup> House of Representatives Debates, 24 November 2011, p 13741.

<sup>22</sup> House of Representatives Debates, 24 November 2011, p 13790.

<sup>23</sup> House of Representatives Debates, 24 November 2011, p 13791.

Later that day the election took place for a new Speaker. The government nominated the Deputy Speaker, the Hon Peter Slipper MP, a member of the Opposition Liberal Party. The Opposition claimed that the nomination by the government of a non-government member was unprecedented and contrary to Westminster tradition.<sup>24</sup> Mr Christopher Pyne, the Manager of Opposition Business, sought to nominate a number of government members for the position, but each of them declined to accept the nomination, leaving Mr Slipper to be elected unopposed.<sup>25</sup> Ms Anna Burke, from the Labor Party was elected as Deputy Speaker.<sup>26</sup> The significance of the election of Mr Slipper as Speaker for the balance of numbers in the House is illustrated in Figure 4. The government had improved its margin from one to three votes.<sup>27</sup>

**Figure 4: Numbers – November 2011**

Australian Labor Party	72
+ Bandt (Greens), Oakeshott (Ind), Wilkie (Ind), Windsor (Ind)	= 76
Liberal/National Party	73*
+ Katter (Ind)	= 74
Less Speaker Slipper	= 73

\* Note that Mr Crook in the meantime had formally joined with the Nationals

## SPEAKER SLIPPER

Speaker Slipper made his intentions about his speakership clear from the outset and expressed them in terms of taking an ‘independent’ approach. In his remarks on his election as Speaker he stated:

I do intend to be an independent Speaker in the Westminster tradition and I hope that this is establishing a principle which will be followed by Speakers in other parliaments.<sup>28</sup>

Speaker Slipper advised the House that he would be relinquishing his party membership and would be an independent member of the House.<sup>29</sup> As he would be an independent member, the issue of him attending party meetings did not arise. Speaker Slipper thus set about doing the unusual in the Australian context of endeavouring to be an ‘independent’ Speaker. On the first sitting day back in 2012, Speaker Slipper indicated his intentions

24 See the remarks of the Manager of Opposition Business, Hon Christopher Pyne MP, House of Representatives Debates, 24 November 2011, p 13784.

25 House of Representatives Debates, 24 November 2011, pp 13784–90.

26 House of Representatives Debates, 24 November 2011, p 13790.

27 Some of the media commentary at the time was to the effect that this was a ‘strategic victory’ for the government; that it afforded ‘another level of protection’; and that it made it ‘considerably safer’ for the government. See Chris Johnson, ‘Slipper sinks Abbott’s hopes’, *Canberra Times*, 25 November 2011, p 1; Mark Kenny, ‘Key vote ripped from Abbott’, *Adelaide Advertiser*, 25 November 2011, p 9, and Michelle Grattan, ‘PM’s bait and switch for power’, *Age*, 25 November 2011, p 15.

28 House of Representatives Debates, 24 November 2011, p 13797.

29 *Ibid.*



about a number of matters that asserted his desire to pursue an independent approach.<sup>30</sup> In relation to Question Time he had made proposals to further reduce the time limits for questions and answers. With the support of the House the time limits were reduced from 45 seconds to 30 seconds for questions and from four minutes to three minutes for answers. He also proposed to increase significantly the number of supplementary questions that he would permit under the discretion available to the Speaker within the standing orders. The maximum number of supplementary questions permitted each day rose from one to up to five, with shorter time limits for both supplementary questions and answers. Speaker Slipper also said that he wished to maintain order in the chamber and so advised members that it was not his intention to warn members before directing them to leave the chamber for one hour under standing order 94A. Although members usually would be warned before being named, this would not always be the case. Finally Speaker Slipper indicated he would abide by the principles set out in *House of Representatives Practice* in his use of the casting vote (see below for further discussion of the casting vote). He also announced that he would introduce a Speaker's procession once a week which would take in a route that could be viewed from some of the public areas of the building.<sup>31</sup> This attracted considerable media attention at the time. Speaker Slipper's early actions in implementing the stricter regime he promised as Speaker attracted favourable comment from the media:

It was only day two and dangerously early to rush to judgment, but no one looking on could help but notice that order has replaced chaos in Federal Parliament.

And while it is obviously unwise to make too much of it yet, a fair portion of the credit for this should go to the new Speaker, Peter Slipper.<sup>32</sup>

By the end of his first period of sittings as Speaker, much media reporting on Mr Slipper's performance continued to be favourable. One commentator noted:

After five weeks of his [Mr Slipper's] stewardship, the result is a markedly different Parliament.

Shorter questions, shorter answers, a much more tightly policed relevance rule have ensured that ministers stay closer to the subject asked. Question Time has become a more controlled event.<sup>33</sup>

And another commentator:

If Slipper continues as the disciplinarian he has been thus far, it is possible, just possible, that Question Time could once again become a forum where oppositions seek information and governments sometimes provide it. And that would be a very good thing ...<sup>34</sup>

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30 House of Representatives Debates, 7 February 2012, pp 12–13 and pp 112–113.

31 House of Representatives Debates, 8 February 2012, p 195.

32 Geoff Kitney, 'Libs sloppy as Slipper fits into role', *Australian Financial Review*, 9 February 2012, p 5.

33 Mark Kenny, 'Lion tamer Slipper brings some order to political circus', *Adelaide Advertiser*, 24 March 2012, p 48.

34 Lenore Taylor, 'Taking a Slipper to the mob at Question Time', *Sydney Morning Herald*, 24 March 2012, p 17.



However, the Speakership in the 43rd Parliament was about to be rocked by dramatic allegations against Mr Slipper. On 21 April 2012, while Mr Slipper was overseas leading a parliamentary delegation, the *Daily Telegraph* published an article which indicated Mr Slipper would face allegations of sexual harassment in relation to one of his staff and allegations of misuse of taxi vouchers.<sup>35</sup> On the following day, Mr Slipper issued a statement saying that allegations had been made against him, which he denied. The allegations were both of a criminal and a civil nature. The statement indicated Mr Slipper believed it appropriate to stand aside as Speaker while the criminal allegation was resolved. In the meantime, the statement indicated, the Deputy Speaker, Ms Anna Burke, would act as Speaker during this period.<sup>36</sup> The statement appeared to be invoking the provisions of section 36 of the Constitution which provide that 'Before or during the absence of the Speaker, the House of Representatives may choose a member to perform his duties in his absence.' Standing order 18(a) provides that 'If the Speaker is absent the Deputy Speaker shall be the Acting Speaker.' Thus the House, in electing a Deputy Speaker (Ms Burke), had made provision for a person to perform the duties of the Speaker in the absence of that person. In a further statement on 29 April 2012,<sup>37</sup> Speaker Slipper indicated that the criminal allegation against him 'has been shown to be a fabrication and there is no longer any reason to step aside [as Speaker]'. Nevertheless, he said that to uphold the dignity of the Parliament when the House resumed its sittings on 8 May he would make a short statement and then invite the Deputy Speaker to take the Chair as Deputy Speaker. This is what occurred when the House resumed at 2.00 pm on Tuesday, 8 May.<sup>38</sup>

The significance of Mr Slipper's statement was that he was invoking provisions in the standing orders that state that the Deputy Speaker will take the Chair of the House whenever asked to do so by the Speaker and that the Second Deputy Speaker and other members of the Speaker's Panel will do likewise when asked by the Speaker (standing orders 16(b) and (c) and 17(b)). Under these provisions of the standing orders the Deputy Speaker and other Panel members perform duties of the Chair. The Speaker, Mr Slipper, continued to perform all the other responsibilities of the Speaker which arose under constitutional, statutory and standing order provisions, but he no longer took a role in chairing the House. On the day of Mr Slipper's statement to the House, the Manager of Opposition Business, Mr Christopher Pyne MP, sought to suspend standing orders to move a motion that would have seen the previous Speaker, Mr Jenkins, appointed to perform the duties of the Speaker whenever Speaker Slipper was absent from the House.<sup>39</sup> This was endeavouring also to invoke the provisions of section 36 of the Constitution that the House 'may choose a member to perform [the Speaker's] duties in his absence'. The motion to suspend standing orders did not receive the absolute majority required by the standing orders to enable the substantive motion to be moved.<sup>40</sup> This situation, with Speaker Slipper not taking the Chair in the House but continuing to perform all other duties of the

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35 Steve Lewis, 'Slipper shock – Speaker hit with sexual harassment claim', *Daily Telegraph*, 21 April 2012, p 1.

36 Statement by Hon Peter Slipper MP, Office of the Speaker, 23 April 2012.

37 Statement by Speaker, Speaker's Office, 29 April 2012.

38 House of Representatives Debates, 8 May 2012, p 4127.

39 House of Representatives Debates, 8 May 2012, p 4134.

40 *Ibid*, p 4141.

Speaker, and Ms Burke, as Deputy Speaker, taking the Chair for key times of the day such as Question Time, continued for a number of months. This was a difficult situation for all involved, not least for Ms Burke who had to perform the key role in the Chair, but without having the authority of the Speakership. As noted below, she was recognised to have performed very well during this time.

In the meantime, the legal matters in which the Speaker was involved proceeded without reaching any conclusion. However, in early October 2012 as part of the court case involving the allegations of sexual harassment of a former staff member, a large number of text messages sent by Mr Slipper were released and a number of these messages were of a sexual nature.<sup>41</sup> When the House resumed on 9 October 2012, the Leader of the Opposition moved, by leave, a motion under section 35 of the Constitution to remove Speaker Slipper from office immediately.<sup>42</sup> The motion was debated, but was defeated by 70 votes to 69. Nevertheless, later that evening Mr Slipper advised the House that he would be tendering his resignation to the Governor-General later that day.<sup>43</sup> Mr Slipper referred to his endeavours to achieve changes in the operation of the House including in relation to Question Time and to introduce greater civility into the House. Mr Slipper's period as an 'independent' Speaker had thus come to an end. Later that evening, the Deputy Speaker, Ms Anna Burke, was elected unopposed as Speaker.<sup>44</sup> This returned the numbers in the House to where they had been when the Parliament commenced.

## SPEAKER BURKE

Speaker Burke continued to preside over the House until its dissolution on 5 August 2013. In taking the Chair, Speaker Burke said that she looked forward to serving the House well and with distinction, noting that members serve the Parliament and the people and should uphold the dignity of the House.<sup>45</sup> In commending Ms Burke on her election, particular recognition was paid to the role she had played as Deputy Speaker in deputising in the Chair for Speaker Slipper.<sup>46</sup> Speaker Burke reverted to the 'impartial' model of Speakership articulated by Speaker Andrew. Like her predecessors, she did not attend party meetings. While Ms Burke did not seek to introduce any particular further changes, she worked within the significant changes which had already been made in the Parliament. For example, she continued with Speaker Slipper's practice of allowing up to five supplementary questions a day. Further she sought, as she had said in her remarks in taking the Chair, to uphold the dignity of the House and to take the opportunity to also remind members of their role in upholding the dignity of the House. Ms Burke, as both Speaker and Deputy Speaker,

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41 See for example Pamela Williams, 'Text barrage reveals Slipper's secrets', *Australian Financial Review*, 9 October 2012, p 11.

42 House of Representatives Debates, 9 October 2012, pp 11574–11601. Section 35 of the Constitution provides in part '[The Speaker] may be removed from office by a vote of the House ...'.

43 House of Representatives Debates, 9 October 2013, pp 11644–47.

44 House of Representatives Debates, 9 October 2013, pp 11660–61.

45 House of Representatives Debates, 9 October 2013, p 11663.

46 See House of Representatives Debates, 9 October 2013, pp 11663–65.

exercised the casting vote ten times, equal to the highest number of casting votes ever exercised by an individual Speaker of the House. On all occasions in which the casting vote was exercised by Speaker Burke, she did so in accordance with Westminster practice. As noted below, the way in which the casting vote was exercised in the 43rd Parliament was an important demonstration of the independent position adopted by the Chair. Ms Burke enhanced her reputation for impartiality in the way in which she exercised the casting vote.

## EXERCISE OF CASTING VOTE

One of the difficult responsibilities that can be placed on Speakers (and Deputy Speakers occupying the Chair for a Speaker) is to exercise the casting vote under section 40 of the Constitution when a vote in the House is tied. The casting vote has only been exercised on 36 occasions since Federation, and 15 of those occasions (42 per cent) were in the 43rd Parliament. The exercise of the casting vote in the 43rd Parliament had considerable potential to raise controversy as there would be tight votes on matters of significance and the partisan exercise of the casting vote would have aroused concern. All three Speakers, and Deputy Speaker Burke when she occupied the Chair for divisions during those periods when Speaker Slipper did not undertake duties in the Chair, adhered strictly to the principles outlined in *House of Representatives Practice* and directly reflecting principles which have emerged from the decisions of successive Speakers in the United Kingdom House of Commons. These principles are:

- the Speaker should always vote for further discussion, when this is possible;
- where no further discussion is possible, decisions should not be taken except by a majority; and
- a casting vote on an amendment to a bill should leave the bill in its existing form.<sup>47</sup>

As May notes, the purpose of adhering to these principles and giving a reason on each occasion for how the vote had been exercised is ‘to avoid any imputation upon his [the Speaker’s] impartiality’.<sup>48</sup> The use of the casting vote during the 43rd Parliament, by strict adherence to the principles referred to earlier, enhanced perceptions that Speakers had adopted an impartial and independent stance, in accord with the sentiments expressed in the Agreement for Parliamentary Reform. It is notable that, although *House of Representatives Practice* had long set out the key principles, before the 43rd Parliament they had not always been followed. The consistency of the exercise of the casting vote during the 43rd Parliament was thus important in strengthening practice on this critical matter.

<sup>47</sup> *House of Representatives Practice*, 6th edn, Canberra, 2012, p 183 after Erskine May’s *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th edn, LexisNexis, 2011, p 420.

<sup>48</sup> May, *op cit*, p 420.

## CHAIRING OF SELECTION COMMITTEE AND APPROPRIATIONS AND ADMINISTRATION COMMITTEE

There were two important additional responsibilities for Speakers in the 43rd Parliament which resulted from the Agreement for Parliamentary Reform. The Speaker was given the role of chairing two new and significant committees – the Selection Committee and the Appropriations and Administration Committee. A Selection Committee<sup>49</sup> was re-established to determine a range of matters primarily in relation to private members' business. The main responsibilities of the committee, chaired by the Speaker, were to:

- select and arrange the timetable for matters of private members' business for debate in the House;
- recommend items of private members' business to be voted on; and
- select bills to be referred to committees for an advisory report.<sup>50</sup>

The Selection Committee was central to the operation of a number of the procedural changes in the 43rd Parliament, particularly relating to private members' business, and thus placed the Speaker, as Chair of the Committee, at the centre of these developments. In delivering a paper to the Regional Presiding Officers and Clerks Conference in Canberra in July 2013, Speaker Burke, while noting the experience of the operation of the Selection Committee had been 'mixed',<sup>51</sup> stated:

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**The Speakership emerged from the 43rd Parliament with the philosophy of impartiality intact**

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The greater emphasis on private members' business has provided greater opportunity for backbenchers to raise issues of concern in their electorates, review legislation, and initiate their own legislative concerns.<sup>52</sup>

The Appropriations and Administration Committee was a new committee established in the 43rd Parliament as a result of the Agreement for Parliamentary Reform. As stated in the Agreement, and reflected in the standing orders establishing the committee, its primary role was to consider the estimates for the Department of the House of Representatives and, through the Speaker, convey these to the Minister for Finance and Deregulation for inclusion in the relevant appropriation bills.<sup>53</sup> On this core point, the committee reported that:

... the committee considers it has played a positive and responsible role in discharging its responsibilities under the standing orders, and in particular, in assessing the funding

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49 A Selection Committee (chaired by the Deputy Speaker) had operated from 1988 to 2007, to be replaced by a Whips Committee from 2007–2010.

50 Standing order 222.

51 Anna Burke MP, 'The organisation of private members' business: the role of the Selection Committee', Paper presented to the Regional Presiding Officers and Clerks Conference, Canberra, July 2013, pp 2.

52 *Ibid*, p 7.

53 Agreement for Parliamentary Reform, *op cit*, p 8 and standing order 222A.

requirements of the Department of the House of Representatives and bring those requirements to the attention of government.<sup>54</sup>

In relation to each of these committees, the three Speakers who occupied the Office in the 43rd Parliament played an important leadership role in assisting the committees to meet the expectations which the Agreement for Parliamentary Reform had made of them. As with the exercise of the casting vote, the chairing of these committees enhanced the overall perception of the Speakership.

## CONCLUSION

As can be seen, the place and role of the Speaker was central in the 43rd Parliament. The closeness of the numbers made it inevitable that the position of the Speaker would attract considerable interest and be the subject of some controversy. The fact that there were three Speakers in the course of the Parliament, the most in any parliament, is a commentary on the turbulence which surrounded the role of Speaker. The range of matters that arose involving the Speaker during the course of the Parliament brought into consideration all the provisions of the Constitution and the standing orders which relate to the Speaker. Careful thought had to be given to a number of issues and there was considerable interest from the media and the public in matters to do with the Speaker and the detail of how the constitutional and standing order provisions worked. In a parliament in which the role of the Speaker in controlling the House and exercising those judgments so crucial to the effective functioning of the House was even more significant than usual, the Speakership was central. Each of the Speakers who held office in the 43rd Parliament sought to perform the role of Speaker in the impartial manner consistent with the traditions of the Office in the Australian context, in accordance with the model articulated by Speaker Andrew. In a number of significant ways, whether the approach to matters concerning the financial initiative, the exercise of the casting vote, the approach to Question Time or the chairing of the Selection Committee and the Appropriations and Administration Committee, the three Speakers endeavoured to assert an impartial approach in a difficult and contentious climate under considerable scrutiny in the House and the wider community. This also reflected, in this difficult context, Speaker Andrew's point that the underlying philosophy of this approach to the Speakership was inherently Australian in that it embodied the notion of a 'fair go'. However, one cannot deny the significant controversy that surrounded the Speakership at various times, and that there had been a danger that the Speakership itself could have been damaged, perhaps even permanently damaged, by some of this controversy. Nevertheless the Speakership emerged at the conclusion of the 43rd Parliament with the underlying philosophy of that impartiality of the Australian Speakership intact. Perhaps, in addition, the experiment of an 'independent' model of Speakership was one that may be considered to have been less successful.

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54 House of Representatives Standing Committee on Appropriations and Administration, *Annual Report 2012–13*, Canberra, June 2013, p 5.