

From the Tables – July 2017 to June 2018

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AUSTRALIAN HOUSE OF REPRESENTATIVES

Matters relating to section 44 of the Constitution and consequent by-elections

Matters relating to s 44 of the Constitution and the citizenship status of Members and Senators continued to affect both Houses of the Commonwealth Parliament in the latter half of 2017 and 2018. In the House of Representatives, by-elections were held in December 2017 in the divisions of New England and Bennelong following the disqualification of the Hon Barnaby Joyce and the resignation of Mr John Alexander OAM over questions around their citizenship status. Mr Joyce was successful in the New England by-election and was sworn in on 6 December, the second last sitting day for 2017. Mr Alexander was successful in the Bennelong by-election and was sworn in when the House met in February.

On 4 December 2017, the House agreed to a resolution requiring each Member to provide a statement in relation to citizenship to the Registrar of Members' Interests, by no later than 9 am the following day. A similar resolution regarding a citizenship register for Senators had earlier been agreed to by the Senate during a Senate-only sitting on 13 November. The statement was to include the Member's declarations as to Australian and foreign citizenship, relevant considerations and evidence, as specified in the resolution. The resolution provided for the Registrar to publish the register and any alterations or additions on the Parliament's website. The resolution also provided that referral of a Member to the Court of Disputed Returns could be moved without notice by a Minister or the Manager of Opposition Business. The Citizenship Register was published on the Parliament's website late on the afternoon of 5 December.

On 6 December, the Manager of Opposition Business, pursuant to the resolution described above, moved to refer certain questions regarding the citizenship of nine

Members (including Government Members, Opposition Members and one minority party Member) to the Court of Disputed Returns. Debate ensued and when the question was put, a division was called and the numbers for the 'ayes' and 'noes' were equal. The Speaker gave his casting vote with the 'noes' in accordance with the principle that decisions should not be taken except by a majority.

Immediately following defeat of this motion, the Manager of Opposition Business moved a further motion, pursuant to the same resolution of the House, to refer certain questions regarding the place of the Member for Batman (Mr David Feeney) to the Court of Disputed Returns. The motion carried on the voices. The following day, the Speaker presented a copy of his letter and attachments to the High Court relating to the reference regarding the qualification of Mr Feeney.

The Member for Batman, Mr Feeney, resigned from the House on 1 February 2018, prior to the High Court, sitting as the Court of Disputed Returns, considered the matters referred to it by the House on 6 December 2017. The Court subsequently ruled that Mr Feeney's seat was vacant by reason of s 44(1). On 7 February, the Speaker issued a writ for the by-election with the polling date of 17 March 2018. Ms Ged Kearney was elected as the new Member for Batman and sworn in on 26 March.

Following the decision of the Court that Senator Katy Gallagher was incapable of being chosen or sitting as a Senator under s 44(1), the Members for Braddon, Fremantle and Longman informed the House of their intention to resign because of the relevance of the decision to their own circumstances. None of these Members, or the Member for Mayo, appeared in the Chamber or voted in a division after announcing their intention to resign.

The Members for Braddon, Fremantle, Longman, and the Member for Perth (who had signalled his intention to resign the previous week for different reasons) formally resigned on 10 May. In announcing their resignations, the Speaker said he would consult with party leaders in the usual way and inform the House of the dates fixed for by-elections. The Member for Mayo submitted her resignation on 11 May.

On 18 June 2018, the Speaker informed the House that he had issued writs on 15 June for the election of Members for the divisions of Braddon, Fremantle, Longman, Mayo, and Perth. The Speaker stated the rolls would close on 22 June, nominations on 5 July, and the date of polling would be 28 July 2018.

Passage of the Marriage Amendment Bill

On 4 December 2017 a message from the Senate was reported transmitting for the concurrence of the House the Marriage Amendment (Definition and Religious Freedoms) Bill 2017. Following the bill's introduction, the House granted leave for the second reading debate to take place immediately.

Standing orders were suspended on the next two days to enable the House to sit beyond its usual sitting hours, so as to enable as many Members who wished to contribute to the second reading debate on the bill to do so. The second reading debate concluded on the morning of 7 December when the Member for Leichhardt (Mr Warren Entsch) summed up the debate. In total, 125 Members contributed to the debate on the second reading of the bill, which went for over 21 hours.

Following the consideration in detail stage, the Prime Minister was granted leave to move the third reading immediately. He briefly addressed the motion, as did the Leader of the Opposition and the Member for Melbourne (Mr Adam Bandt). The question that the bill be read a third time was put and a division was called. There being only four Members voting with the 'noes' the Speaker declared the question carried and the bill was read a third time.

Division retaken after Government loses vote on floor of the House

On 4 December, the House considered a message from the Senate regarding a Senate resolution calling on the Government to 'accept New Zealand's offer to resettle 150 refugees and negotiate conditions similar to the United States refugee resettlement agreement.' The Senate requested the concurrence of the House in the resolution.

The Leader of the House moved that the resolution be disagreed to. During the ensuing debate, the Member for Melbourne (Mr Bandt) moved an amendment that the resolution of the Senate be agreed to. At the conclusion of debate, the question on the amendment was put and carried on division with 73 'ayes' and 72 'noes', with Government Members voting 'no'. The Leader of the House moved immediately that the House divide again in accordance with standing order 132.

The Manager of Opposition Business raised a point of order, claiming that there had been no confusion, error or misadventure, as required by the standing order. The Speaker stated that he did not concur. Following a closure of debate, the motion that the House divide again was carried on division.

Prior to the House dividing again on Mr Bandt's amendment, the Speaker stated that the Members who had missed the vote should explain to the House that they did so

through one of the reasons provided in the standing orders. The two Government Members each apologised to the House for missing the vote due to misadventure. The question on the amendment was accordingly put a second time, and negatived on division. The question on the original motion—that the resolution be disagreed to—then carried on division.

AUSTRALIAN SENATE

Referrals of Senators to the High Court

The High Court, sitting as the Court of Disputed Returns, considered an unprecedented number of referrals in relation to the eligibility of Senators under section 44 of the Constitution (see Table 1). Questions arose relating to the qualifications of Senators under s 44(i) of the Constitution, which prohibits ‘foreign allegiances’ and disqualifies any person who ‘is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power’.

Table 1. Referrals of Senators to the High Court, 2016 and 2017

Senator	Date referred	Constitutional provision	Outcome
Culleton	7 Nov 2016	s 44(ii): conviction for offence 1+ years imprisonment	Disqualified
Day	7 Nov 2016	s 44(v): direct or indirect pecuniary interest with Commonwealth	Disqualified
Canavan	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Ludlam	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Waters	8 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Roberts	9 Aug 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Nash	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Xenophon	4 Sep 2017	s 44(i): subject or citizen of a foreign power	Not disqualified
Parry	13 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Lambie	14 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Kakoschke-Moore	27 Nov 2017	s 44(i): subject or citizen of a foreign power	Disqualified
Gallagher	6 Dec 2017	s 44(i): subject or citizen of a foreign power	Disqualified

In late October 2017, the High Court made orders and delivered its judgment on questions concerning the qualification of the six Senators (and one Member of the House of Representatives) referred to the High Court in August and September. In November, Senator Stephen Parry, the President of the Senate, received advice from the British Home Office that he held British citizenship by descent. He resigned his office and his seat in writing to the Governor-General, as provided for by s 17 of the Constitution. On 14 November, Senator Jacqui Lambie made a statement to the Senate outlining similar circumstances and resigned her place. Both matters were referred to the High Court, in the same manner and form as other recent cases.

In the final sitting fortnight of 2017 there were two further referrals. Senator Skye Kakoschke-Moore resigned in light of information she had received from British authorities while preparing material for the new citizenship register. Questions relating to the resulting vacancy were referred to the Court on 27 November. Questions relating to the qualification of Senator Katy Gallagher under s 44(i) were referred to the Court on 6 December after she made a statement to the Senate about the steps she had taken to renounce British citizenship in advance of the 2016 election and the delay in authorities confirming her renunciation.

The focus of these matters was the prohibition on Senators and Members holding a foreign citizenship *from the time they nominate as candidates for election*. The question engaged by Senator Gallagher's case is whether a person is eligible to stand for election where the person has taken all necessary steps to renounce, but foreign law—or, possibly, foreign bureaucracy—has not operated to effect a change in status prior to the date of nomination.

In a further demonstration of the scope of operation of section 44, Senator Jim Molan was declared elected, after the High Court found that the candidate first identified in a special count of New South Wales ballots to replace former Senator Fiona Nash was incapable of being chosen, as she had recently accepted an appointment to the Administrative Appeals Tribunal. The Court's reasons confirmed that *a Senate election is not concluded if it returns an invalid candidate, but continues until a Senator is validly elected*. Any disqualification which arises in the meantime—in this case, appointment to an office of profit under the crown, contrary to s 44(iv)—renders the candidate incapable of being chosen.

The case in relation to Senator Gallagher was determined on 9 May 2018, with the Court deciding that Senator Gallagher should be disqualified by reason of s 44(i), and that the vacancy should be filled by a special count of the ballot papers. In reaching its decision, the Court held that the relevant foreign law setting out the process for renunciation must operate to irremediably prevent a candidate from nominating for

election. It is not sufficient for a person to have made reasonable efforts to renounce.

Rotation of Senators

Section 13 of the Constitution provides that after a double dissolution election, the Senate must divide State Senators into two classes, those receiving three year terms and those receiving six year terms, to re-establish the normal rotation of the Senate in half-Senate elections.

Following the unprecedented number of disqualifications discussed above, there was conjecture that the form of the court order declaring Senators elected may have had the effect of granting the incoming Senator the term (that is, the three or six year term) that the Senate allocated to the ineligible candidate. However, this would have undermined the principle adopted by the Senate in a resolution made on 31 August 2016, following the 2016 election (consistent with resolutions following previous double dissolution elections), that the longer terms be allocated to the Senators first elected in the count.

The Senate moved to remedy any uncertainty about Senators' terms by revisiting the resolution made on 31 August 2016. The subsequent resolution, agreed by the Senate on 13 February 2018, does two things:

- it operates as an order for the production of documents, requiring that results reports of the special counts undertaken by the Australian Electoral Commission be tabled in the Senate; and
- it provides that the section 13 resolution passed in 2016 operate by reference to the latest results report for any State.

In doing so, it preserves the principle that the longer terms be allocated to the Senators first elected in the count. It also effectively asserts the conventional view that the division of the Senate is a matter for the Senate itself.

Passage of a private Senators' bill

Also of significance during this reporting period was the passage of a private Senators' bill to allow same-sex marriage. This bill was only the 16th private Senators' bill to pass both Houses in the Commonwealth Parliament's 117 years.

Events prior to the passage of the bill were unusual. In early August 2017, the Government sought to revive its own bill—the Plebiscite (Same-Sex Marriage) Bill 2016—which had been defeated at the second reading stage in November 2016. The Government bill would not have amended the law to allow same-sex marriage itself; instead, it would have established the legislative framework for, and authorised federal spending on, a compulsory, in-person vote in a national plebiscite that would ask Australians: ‘Should the law be changed to allow same-sex couples to marry?’. The Government’s proposal to revive the bill was defeated on 9 August on an equally divided vote (in accordance with s 23 of the Constitution equally divided votes in the Senate are resolved in the negative).

After the Senate declined to further consider the Government’s plebiscite bill, the Government determined that it would rely on existing legislation and funding mechanisms to conduct a voluntary postal survey instead. Given that this option did not involve the passage of authorising legislation, the funding mechanism and legislative authority for the voluntary survey was challenged in the High Court. The challenges were unsuccessful and the survey went ahead, with the results being announced on 15 November 2017 (61.6 percent in favour of changing the law; with a turnout of 79.5 percent).

The day after the announcement of the survey result, a cross-party private Senators’ bill—the Marriage Amendment (Definition and Religious Freedoms) Bill 2017—was introduced, debated for several hours and given precedence over all other bills. The bill passed the Senate the following week, with sittings extended to accommodate lengthy debate. The bill was described by its proponents as a compromise arrived at following the report of the Senate Select Committee which examined a Government exposure draft bill earlier in the year. A number of technical and consequential amendments were agreed to, but the many substantive amendments which sought to expand or restrict the bill’s operation were rejected. In particular, there was substantial opposition to amendments dealing with matters outside the sphere of marriage itself, some of which may be taken up through a broader review of laws connected to religious freedoms. The same amendments met the same fate in the House the following week, and the Act was assented to on 8 December and commenced the following day.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

Report on procedures for election of a territory Senator

On 15 February 2018, the Standing Committee on Administration and Procedure reported on its review of Continuing Resolution 9, which provides for the procedures to be followed by the Assembly in the event of a casual vacancy occurring in relation to an ACT Senator. This followed the High Court decision that led to the disqualification and resignations of a number of Senators and Members of the Australian Parliament due to ineligibility to serve under s 44 of the Australian Constitution (see above).

The Committee noted that it appears that the Assembly has one of the more robust procedures to select a Senator when compared to practices in other state and territory legislatures. It also found that, in many ways, the requirement for a statutory declaration to be presented to the Legislative Assembly when choosing a Senator mirrors the requirement of a candidate at a general election when that person must declare that they are qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or Member of the House of Representatives, as the case may be. The Committee noted that one could argue that the only changes that need to be made to the process are for the individuals and parties involved to undertake more rigorous checks before that declaration is made – either at the casual vacancy or general election stage.

Independent Integrity Commission—Report of Select Committee

On 31 October 2017 the Select Committee on an Independent Integrity Commission presented its report. The Committee, which was chaired by a Minister, recommended that an ACT anti-corruption and integrity commission be established by the end of 2018. The model proposed is based on similar state models, particularly those in NSW and Victoria, and would be overseen by an Assembly committee.

Anti-Corruption and Integrity Bill 2018

On Wednesday 6 June 2018 the Leader of the Opposition presented a bill for an Act to establish the Anti-Corruption and Integrity Commission and for other purposes. Subsequently the Chief Minister, by leave, moved a motion to establish a five Member Select Committee on an Independent Integrity Commission 2018 to examine

a draft Government bill and the Leader of the Opposition's bill. The Committee was chaired by a Greens Minister and was required to report by 31 October 2018.

NEW SOUTH WALES JOINT HOUSE REPORT

Aboriginal Languages Bill 2017

The Aboriginal Languages Bill was the first bill of its type in any state in Australia to recognise the importance of Aboriginal languages. The bill was introduced into the Legislative Council on 11 October 2017 by the Minister for Aboriginal Affairs, the Hon Sarah Mitchell MLC.

A number of unprecedented or unusual procedures were agreed to by the House in recognition of the historic significance of the bill. Once the House had agreed to the initial motion for leave to introduce the bill, the President left the Chair while proceedings took place to commemorate the bill, including a welcome to country and smoking ceremony in the parliamentary forecourt. A message stick ceremony was then held in the chamber with a number of elders and stakeholders speaking about the significance of Aboriginal languages and the bill. The final speaker handed the message stick to Minister Mitchell and the message stick ceremony participants took seats in the President's Gallery to the left and right of the President.

Upon the President taking the Chair and the House again being in session, the President invited two Aboriginal elders to take chairs on the dais while the bill was being debated. Pursuant to the resolution of the House, Minister Mitchell then invited Dr Ray Kelly, an academic researcher in Indigenous languages, to firstly translate into Dhungutti her acknowledgement of the traditional owners and later to speak to the significance of the bill.

Once the bill had been debated and passed by the Council it was sent to the Legislative Assembly for concurrence, accompanied by the message stick. The message stick was placed on the table beside the mace during the bill's passage through the Assembly and was later returned to the Council with the message stick and assented to on 24 October 2017.

175th anniversary of the first elections in NSW

On 20 June 2018 the Parliament of NSW and the NSW Electoral Commission celebrated the 175th anniversary of the first elections in New South Wales.

Two Private Members' Bills receiving assent

The first half of 2018 saw two bills introduced by private Members in the Legislative Council pass both Houses and receive assent, the first private members' bills to do so since 2014.

The Public Health Amendment (Safe Access to Reproductive Health Clinics) Bill 2018 was introduced by Ms Penny Sharpe (Australian Labor Party) and was co-sponsored by Mr Trevor Khan (The Nationals). The bill establishes safe access zones of 150 metres around reproductive health clinics that provide abortions and creates offences within the zones designed to protect the safety and privacy of those accessing services as well as clinic staff. The bill received assent on 15 June.

The Modern Slavery Bill 2018, the first of its kind in Australia, was intended to combat modern slavery through the establishment of an Anti-Slavery Commissioner. The bill was also intended to raise awareness of modern slavery, detect and expose risks of modern slavery in supply chains and provide assistance and support to victims.

The bill was introduced by Mr Paul Green of the Christian Democratic Party. The bill had been developed by the Parliamentary Working Group on Modern Slavery, a cross-party group comprising Mr Green and Mr Trevor Khan (The Nationals), Mr Matthew Mason-Cox (Liberal Party) and Mr Robert Brown (Shooters, Fishers and Farmers Party), which was formed in an attempt to implement the findings of the report of the Select Committee on Human Trafficking in New South Wales. The bill received assent on 27 June.

NEW SOUTH WALES LEGISLATIVE ASSEMBLY

Request for access to in camera evidence taken by a Legislative Assembly Committee

On 23 May 2018, the Deputy Speaker informed the House that the Speaker had received correspondence from the Counsel Assisting the Coroner of Western Australia requesting access by officers of the Coroner's Court of Western Australia to the *in camera* evidence taken before the Legislative Assembly Select Committee upon Prostitution, which was in operation between 1983 and 1986. The Deputy Speaker advised that access to the in camera evidence had been requested to assist the Coroner's inquest into the death of Ms Shirley June Finn.

The House resolved to grant leave to officers of the Coroner's Court of Western Australia to inspect the *in camera* evidence taken before the Select Committee upon Prostitution, on condition that:

1. The evidence be inspected in Parliament House.
2. Any information obtained be used by the Coroner's Court of Western Australia to pursue appropriate further inquiry without revealing to any person other than the Coroner and officers of the Coroner's Court of Western Australia the contents of the *in camera* evidence, and its contents not be made public.
3. Before adducing into evidence of the inquest any evidence taken before the Select Committee upon Prostitution, the Coroner seek leave of the Legislative Assembly.

Electoral Funding Bill 2018

On 17 May 2018 the Minister for Planning, Minister for Housing, and Special Minister of State introduced the Electoral Funding Bill 2018. The object of the bill was to make provision for the disclosure, capping and prohibition of certain political donations and electoral expenditure for state parliamentary and local government election campaigns, and for the public funding of state parliamentary election campaigns. The bill passed both Houses on 23 and 24 May, with amendments, and received assent on 30 May.

NEW SOUTH WALES LEGISLATIVE COUNCIL

Permanent display of message stick in Legislative Council chamber

During the second reading debate on the Aboriginal Languages Bill 2017 a number of Members reflected on the significance of the message stick ceremony and suggested that the message stick should be displayed permanently in the chamber. The President, on behalf of the House, commenced consultation with the Aboriginal Languages Establishment Advisory Group and the NSW Coalition of Aboriginal Regional Alliances on the appropriate means by which to have the message stick placed on permanent display in the Parliament.

As a result, on 21 June the House resolved that the message stick would reside in a display cabinet to be recessed into the northern wall of the Council chamber. The

House also resolved to authorise the placement of the message stick on the Table during proceedings on the opening of Parliament or during other special occasions at the discretion of the President. On these occasions an Aboriginal Language group, selected on a rotational basis, will be invited to nominate an elder from that group to remove the message stick from its display cabinet, briefly address Members in their language from the Bar of the House and then hand the message stick to the Usher of the Black Rod for placement on the Table.

Establishment of Selection of Bills and Regulation Committees

Following recommendations of the Select Committee on the Legislative Council Committee System, which reported in December 2016, two new committees were appointed on a trial basis for 2018: the Selection of Bills Committee and the Regulation Committee.

The Selection of Bills Committee would consider all bills introduced into either House and report on whether any bill should be referred to a standing committee for inquiry and report. The Regulation Committee could inquire into and report on any regulation, including the policy or substantive content of a regulation, and trends or issues that relate to regulations. The committees were to table reports evaluating the effectiveness of the trial by the last sitting day in November 2018.

Orders for Papers and 'Cabinet information'

In 2018, a series of orders for papers brought to the fore the issue of the Legislative Council's power to require the production of a class of documents which have been classified by the executive government as 'cabinet information'.

In March, the House ordered that the Government produce documents relating to the Sydney stadiums redevelopment strategy. The return did not include business cases for the redevelopment of the stadiums, even though the government agency Infrastructure NSW had published summaries of the business cases on its website. In response to queries from Members, the Government advised that the relevant agencies or ministers did not 'hold any additional documents that are lawfully required to be provided in accordance with the terms of the resolution'.

Two further orders for papers followed in April and May, relating to the relocation of the Powerhouse Museum and an independent report on the out-of-home-care system (the Tune report). Both orders were very narrow in scope, requesting only the draft and final business case for the relocation and the Tune report. The fact that these documents existed was public knowledge, but they had not been released

publicly by the Government. In both cases, no documents were provided in the returns and the accompanying responses again stated that the agencies held no documents lawfully required to be provided.

In subsequent proceedings in the House the Leader of the Government in the Legislative Council stated that it was the Government's position that 'the power of the House to compel the production of documents does not extend to Cabinet information. Accordingly, even if otherwise covered by the terms of an order, Cabinet documents are neither identified nor produced in response to an order'.

This led, on 5 June, to the passing of a motion that noted the failure of the Government to comply with the previous three orders of the House and again ordered the production of the Tune report and the Powerhouse Museum and Sydney stadiums business cases by 9.30 am the next day. The motion also censured the Leader of the Government in the Legislative Council and ordered that if the documents were not provided the Leader of the Government would be required to attend in his place at the Table and provide an explanation.

The documents were not produced in compliance with the order. However, when the Leader of the Government was called on to provide an explanation he stated that the documents would be provided by the Department of Premier and Cabinet by 5.00 pm on Friday 8 June 2018.

When the documents were provided, the accompanying correspondence asserted the documents were Cabinet documents and that the Legislative Council had no power to require such documents to be provided, and that in this case the Government decided to produce the documents on a voluntary basis.

On 21 June, the House agreed to a motion rejecting both the claim that the documents had been provided voluntarily and the Government's apparent use of the *Government Information (Public Access) Act 2009* definition of 'Cabinet information' when responding to orders for papers, noting that reliance on this definition was likely to have led to a much broader class of documents being withheld from production to the House. The motion further stated that the House does have the power to require the production of Cabinet documents such as those produced on 8 June (that is, business cases for capital projects and consultant reports on areas of government administration) and that the test to be applied in determining whether a document falls within this category, is, at a minimum, that articulated by Spigelman CJ in *Egan v Chadwick*.

Establishment of two new 'super committees'

On 15 March 2018 the Legislative Council resolved to establish two new standing committees—a Public Accountability Committee and a Public Works Committee. The motions were each moved by Mr Robert Brown, of the Shooters, Fishers and Farmers Party, and agreed to on division (21 ayes, 18 noes). The media immediately described these committees as 'super committees.'

The role of the Public Accountability Committee is to inquire into and examine the public accountability, financial management, regulatory impact and service delivery of government departments, statutory bodies or corporations. The committee is modelled on the Legislative Assembly Public Accounts Committee, and may examine consolidated financial statements and general government sector financial statements, financial reports of statutory bodies and Auditor General's reports to Parliament.

The Public Works Committee is to inquire into and report on any public works to be executed (including works that are continuations, completions, repairs, reconstructions, extensions or new works) where the estimated cost of completing such works exceeds \$10 million.

Both committees have a non-government majority and a non-government chair, and a wide reaching self-referencing power to inquire into and report on the expenditure, performance or effectiveness of any government department, statutory body or corporation. The resolutions appointing the committees include a requirement to inquire into future arrangements for ongoing scrutiny by the Legislative Council of the matters covered by their remit.

NEW ZEALAND HOUSE OF REPRESENTATIVES

General election

The general election was held on 23 September 2017. Turnout as a percentage of enrolled electors (92.4 percent of New Zealanders were enrolled to vote) was 79.8 percent, which was the highest turnout since 2005.

On election night, National won 46.0 percent of the vote (58 seats) while the Labour Party won 35.8 percent of the vote (45 seats). The other parties that were re-elected to Parliament were New Zealand First (NZ First) with 7.5 percent of the vote (9 seats), the Green Party of Aotearoa/New Zealand (Greens) with 5.8 percent (7 seats), and ACT New Zealand won 0.5 percent (1 seat). No other party qualified for a seat in

Parliament by winning either an electorate seat, or more than 5 percent of the party vote.

The final election results were announced two weeks after election day. This was to allow for the large number of special votes to be counted, along with other appropriate checks. After the special votes were counted, the final allocation of seats in the House was announced. National remained the largest party, but with a reduction of two seats in the final result, with those seats being transferred—one each to Labour and the Greens. The representation for the two remaining parties, ACT and NZ First, was unchanged from election night.

First ‘truly MMP Government’

No party or self-identified group of parties secured enough seats to govern on election night. NZ First began negotiations with National and Labour. National and NZ First could form a majority, as could Labour, NZ First and the Greens. There was speculation about the Greens negotiating with National to create another possible majority, but the Greens Party Leader quickly ruled this out.

After two weeks of negotiations, NZ First Leader Rt Hon Winston Peters announced his party would enter into a formal coalition with Labour. Accordingly, the Governor-General, Rt Hon Dame Patsy Reddy, appointed Rt Hon Jacinda Ardern as Prime Minister, with Mr Peters as Deputy Prime Minister. The new Government is supported on issues of confidence and supply by the Green Party.

A number of Members and commentators declared this the ‘first truly MMP Government’ as the party with the most seats was not in Government. The former Prime Minister, Rt Hon Bill English, who became the Leader of the Opposition, vowed that National would be ‘the strongest Opposition party that Parliament has seen’.

Two parties not returned to Parliament

The 52nd Parliament has the fewest parties (five) since New Zealand adopted MMP. Two incumbent parties that contested the election, the Māori Party and United Future, failed to have candidates returned to Parliament. Both parties had been Government support parties since 2008.

Changes to Standing Orders implemented

The new Parliament was convened with an amended set of standing orders. The Standing Orders Committee presented its report on the review of the standing orders

on 26 July 2017, with the House adopting the recommendations in the report on 10 August. The amendments to the standing orders took effect on the dissolution of the 51st Parliament.

One of the changes was to the structure of select committees. The number of subject select committees was reduced from 13 to 12, and a new approach was recommended for committee membership to be calculated on a more strictly proportional basis. While the Standing Orders Committee had unanimously suggested that the total number of seats on subject select committees should be reduced from about 125 to 96, the National Party decried this to be 'anti-democratic'. Disagreement on this point was aired in the media until a compromise was unexpectedly reached during the election of the Speaker (see below).

The Standing Orders Committee's report bolstered the role of select committee chairpersons as presiding officers who must regard the interests of the House as paramount. The report included a set of expectations for effective chairing of committees, which is now regarded as a 'job description' for this essential role. As a result of a cross-party agreement, five of the 12 subject select committees are now chaired by Opposition Members, which is a higher proportion than ever before.

Other notable changes to the standing orders included a rewriting of the rules for financial scrutiny debates to reflect a sector-based approach that has been trialled in recent years, and a new procedure for debating international treaties that the government intends to implement through primary legislation. The Standing Orders Committee also suggested improvements to legislative scrutiny, better accommodation of family needs in parliamentary life, and the development of an online parliamentary noticeboard for Members to publish notices about community events or milestones or significant achievements by constituents.

Outcome of review into the suitability of the Auditor-General

The Officers of Parliament Committee initiated a review of the suitability of Martin Matthews continuing as the Controller and Auditor-General, following information about his handling of a fraud case when he was Secretary for Transport. Sir Maarten Wevers, a former senior public servant, was appointed to lead the review on behalf of the Committee.

Sir Maarten completed his review at the end of June, and provided his draft report to the Clerk of the House. In the interests of natural justice, Mr Matthews was provided with a copy of the report and provided comment, which the Committee then considered.

During this consideration, Mr Matthews tendered his resignation in writing from his position as Controller and Auditor-General with immediate effect. The Committee promptly concluded its consideration on this matter, and presented a report to the House detailing the process it had followed.

Boosting public engagement via electronic petitions and committee livestreaming

In its effort to give New Zealanders greater access to parliamentary processes, New Zealand Parliament has added an electronic petitions system, live-streaming and video-conferencing services to its suite of public engagement tools.

In March 2018 the New Zealand Parliament launched its electronic petitions system. Before each petition goes live it is checked by the Office of the Clerk to ensure it conforms to the rules of the Parliament. Changes are agreed with the petitioner before the petition is published on the New Zealand Parliament website and the petitioner can collect signatures.

In June 2018 the New Zealand Parliament launched livestreaming and video conferencing from some select committee rooms, making it easier for people living outside Wellington or people with disabilities to talk to select committees. The videoconference service allows livestreaming anywhere in the country. It not only allows those people wanting to talk to a committee to engage but allows interested parties to view public committee hearings, through the subject committee's Facebook page. The video-conference facility is able to connect via PC, tablet, Android or Apple devices.

Celebrating diversity of New Zealand Parliament

The Parliament has been recognising the diversity of languages throughout New Zealand by celebrating Samoan Language Week and permanently interpreting oral question time each sitting day into New Zealand Sign Language.

New Zealand celebrated the importance of the Samoan language in New Zealand life from 27 May to 2 June 2018. The theme for Samoan Language Week / Vaiaso o le Gagana Samoa was 'Alofa atu nei. Alofa mai taeao – Kindness given. Kindness gained.' Events were held across the country celebrating New Zealand's third most commonly spoken language. It is the first of seven weeks set to celebrate Pacific languages this year.

On 10 May 2018, Parliament introduced permanent New Zealand Sign Language interpretation during oral question time. The Parliament has featured New Zealand Sign Language interpretation during oral questions in New Zealand Sign Language Week since 2014, on Budget Day each year for the Budget Statement presented by the Minister of Finance and speeches from party leaders, and for some other significant events, such as the opening of Parliament. New Zealand Sign Language interpretation was also made available during the first reading of the Election Access Fund Bill on 16 May 2018.

NORTHERN TERRITORY LEGISLATIVE ASSEMBLY

40th anniversary

The Northern Territory Legislative Council met from 1948 to 1974, before it was replaced by the Legislative Assembly. 2018 marked the 40th anniversary of limited self-government for the Territory, which was granted from 1 July 1978. The usual 1st of July fireworks were the order of the day on Territory Day 2018 (the Northern Territory is the only Australian jurisdiction permitting the sale of fireworks to the public, restricted to use on this one day of the year).

Membership profile

As of June 2018, the Northern Territory Cabinet consisted of 67 percent women (six out of nine Ministers). The Legislative Assembly has 48 percent women Members (12 of 25). The Aboriginal population of the Northern Territory is approximately 30 percent, and Aboriginal Members have been elected to each of the 13 Assemblies convened since 1974. Six Members with Aboriginal heritage serve in the 13th Assembly (2016-2020), the same proportion (24 percent) as served in the 12th Assembly (2012-2016). At the 2016 election there were 16 candidates with known Aboriginal heritage, and at the previous 2012 election there were 20 candidates with known Aboriginal heritage. More than 12 percent of all MLAs over the existence of the Northern Territory Assembly have been Aboriginal people.

Languages spoken in the Assembly

The Northern Territory Standing Orders Committee has an ongoing reference (which lapses on 31 December 2018) to receive submissions about the operation of Standing Order 23A, introduced in the 12th Assembly after considerable controversy about

Aboriginal language spoken during an interjection and matters relating to alleged disorder.

Standing order 23A requires an oral translation to be provided in English before a Member may speak in another language. The Member for Nhulunbuy has argued for the procedure to be reversed to permit speaking in a different language prior to providing a translation in English.

QUEENSLAND LEGISLATIVE ASSEMBLY

New Parliament

Queensland's new electoral boundaries came into effect and in December 2017, 93 Members were declared elected. Twenty three new MPs and one returning Member from the 54th Parliament took their seats in the 56th Parliament, including the Queensland Parliament's first Torres Strait Islander Member, Ms Cynthia Lui MP, Member for Cook. Table 2 shows the composition of the 55th and 56th Parliaments:

Table 2. Membership of the 55th and 56th Queensland Parliaments

Party	55th Parliament (at November 2017)	56th Parliament (at June 2018)
Government (Australian Labor Party)	42	48
Opposition (Liberal National Party)	41	39
Crossbench:		
Katter's Australian Party	2	3
Queensland Greens	0	1
Pauline Hanson's One Nation	1	1
Independents	3	1
Total	89	93

Changes to sessional orders

On 15 February 2018, the House adopted Sessional Orders for the 56th Parliament. The Leader of the House advised the changes would allow more efficient use of the House's time. Significant changes include sitting hours from 9.30am on all days (previously the House did not sit on Wednesday mornings which were dedicated to

committee meetings) and automatic adjournments at 7pm on Tuesdays and Wednesdays and 6pm on Thursdays. The changes include a reduction in the number of opportunities and time allocated to Private Members' Business. The sessional orders in the previous hung Parliament introduced increased opportunities and time allocated to Private Members' Business.

A number of other measures were introduced in relation to time limits (for example, a 50 percent reduction in the time to speak to motions, second reading debates and specified business where no questions may be put or divisions called; that is, Private Members' Statements, matters of public interest and adjournment debates).

Criticism of the new sessional orders

The removal of dedicated committee time on Wednesday mornings means most committee meetings now take place on Mondays and some regional Members have complained that this requires travel on Sundays, impacting on the time they can spend with family and in their electorates. The Opposition considers the new sitting hours do not provide sufficient time for debate, operate to gag them from fully considering legislation and are generally insufficient to progress the Government's legislative agenda.

An apparent tactic of the Opposition, in demonstrating their view of the inoperability of the Sessional Orders, has been to have many of its Members speak in the second reading and on each amendment in consideration in detail stage of bills. This has resulted, on one occasion, in the House suspending the sessional orders to extend the sitting beyond the time for the automatic adjournment, so as to ensure the passage of a contentious bill. The Government has also used the allocation of time orders (guillotine motions) to set time limits around the passage of bills through each stage. The Leader of the House and Attorney General, the Hon Yvette D'ath, flagged further reform in the form of a regular allocation of time order for each sitting week.

A further issue that arose in relation to the new sessional orders was dealing with the time for automatic adjournment coinciding with a division. When this occurred, the Speaker ruled that the division must conclude, as it would be a nonsense for the House to be unable to reach a decision on a question because the time for the automatic adjournment had arrived. To prevent the issue recurring, a minor amendment was made to move the Private Member's Motion debate back one hour.

Committees

The 56th Parliament established seven new portfolio committees that cover government portfolios, in accordance with s 26A of the Constitution of Queensland. Functions of the committees are prescribed in sections 92–95 of the *Parliament of Queensland Act 2001* and include examination of legislation including subordinate legislation and consideration of public works and public accounts.

The composition of the Legislative Assembly determines the membership and operation of portfolio committees. In the 56th Parliament, portfolio committees have six members: three Government and three non-Government, with a Government chair. Chairs in the 56th Parliament have a casting vote in the event of a vote being equal.

SOUTH AUSTRALIAN HOUSE OF ASSEMBLY

Bill of special importance: Budget Measures Bill 2017

On 22 June 2017, the Treasurer introduced the Budget Measures Bill under suspension of Standing Orders. The bill proposed that major banks operating in South Australia be required to pay a quarterly levy of 0.015 percent on bonds and deposits greater than \$250,000, excluding mortgages and ordinary household deposits. It also contained other changes, including a levy on foreign real estate investors, payroll tax relief and stamp duty relief for apartment purchases.

Due to its majority and support of two Independent members of Cabinet, the Government anticipated safe passage of the bill through the House of Assembly. Passage through the Legislative Council was less certain due to limited support from crossbench Independents.

The bill was referred to as a 'money bill' and the Legislative Council was unable to amend it as it does with other bills. The Legislative Council did, however, return the bill with suggested amendments printed in erased type, which are not deemed to form part of the bill under section 62(4) of the *Constitution Act 1934*.

The Government remained committed to the bill but lacked the support of the Legislative Council. In August, the Government was considering a range of options including removal of the levy or replacement with another revenue measure, reintroduction of the bill with or without amendments, or declaring the bill a 'Bill of Special importance' pursuant to section 28A of the Constitution Act (which allows the Governor to dissolve the House of Assembly and issue a writ or writs for a general

election on a date other than that contemplated by s28 if, and only if, a bill of special importance passed by the House of Assembly is rejected by the Legislative Council).

In November, the Legislative Council returned the bill, requesting amendments to remove the bank levy from the bill. The House disagreed to the amendments and sent the bill back to the Council. The Government did not pursue the matter saying it would go to the electorate to seek a mandate for the levy and to expose the 'breach of convention' by the Council. The bill was subsequently laid aside in the Council prior to the end of the session.

Removal of 'fairness' provision from the Constitution Act 1934

Following the dinner break on 30 November 2017, the last scheduled sitting day prior to the State election, the House received the Constitution (One Vote One Value) Amendment Bill from the Legislative Council. The purpose of the bill was to remove the so-called fairness clause in the Act, which required the Electoral Districts Boundaries Commission to ensure that 'if candidates of a particular group attract more than 50 percent of the popular vote... they will be elected in sufficient numbers to enable a government to be formed.' The clause also included a provision that a 'group' of candidates need not necessarily be from the same party, but may also include candidates whose political stance is such that there is reason to believe that they would, if elected in sufficient numbers, be prepared to act in concert to form a government.

After the fairness clause was enacted in 1991, the Liberal Party had a higher state-wide vote in all but one election (2006) but only formed government on one occasion (1993). A boundary redistribution in 2016 saw the Commission apply the fairness provision, in concert with other redistribution principles in the Act, to realign districts nominally in favour of the Liberal Party. The Labor Party challenged the redistribution in the Supreme Court on the grounds that it offended the principle of 'one vote, one value'. However, the Supreme Court dismissed the appeal and upheld the redistribution.

The Constitution (One Vote One Value) Amendment Bill was a Government bill introduced into the Legislative Council. The Council passed amendments proposed by a Member of the Council to remove the fairness clause. The Government's original approach was to conduct a referendum on the determination of electoral boundaries but the amendments negated the need for a referendum. On receipt of the bill, the Government advised the House that legal advice had been obtained from the Solicitor-General that a referendum was not required to remove the fairness clause

from the Act. (The fairness clause had been inserted after three-quarters of South Australian electors voted in favour of the measure at a referendum in February 1991.)

As it was the last sitting day, the Government was keen to see the bill passed. It suspended standing orders to enable passage through all stages without delay. Following heated debate in the House, which lasted over five hours and included application by the Government of the guillotine under standing order 114(a), a practice rarely used in the House, the bill was passed.

While the Liberal Party indicated that they would consider challenging the legality of the amendments following the 2018 State election, some legal commentators have suggested that it is arguable that the referendum provisions in the Act do not apply to the fairness clause.

TASMANIAN HOUSE OF ASSEMBLY

Some reflections on the opening of Parliament 2018

A general election for the House of Assembly was held on 3 March 2018, with the resulting make-up of the 25-member House being Liberal 13 (down from 15 in the previous Parliament); ALP 10 (up from seven); and Tasmanian Greens two (down from three). The Liberals having won a majority of seats (and incidentally, 50.26 percent of the primary vote), a Liberal Government was commissioned.

Opening Day was scheduled for 1 May. This day is perhaps the greatest Parliamentary day: touchstones of ancient traditions are acknowledged; the democratic will of the electorate is fulfilled with the swearing in of Members (on this occasion, with seven new faces amongst the membership); and for the first time, the number of women exceeded men in the House (13/12). There was great anticipation and excitement about the place. The atmosphere was buoyant and positive.

Opening Day is the most scripted and predictable of days. There are nine components of the day:-

1. Ecumenical Service
2. Proclamations read and opening by Commissioners
3. Members sworn
4. Election of Speaker

5. House adjourns for presentation of Speaker/military guard inspection/band etc
6. Resumption at 3 p.m. for Vice Regal Opening
7. Reception for Members and official guests
8. Programmed appointment of Committees; commencement of the Address-in-Reply, with speeches by the mover and seconder of the motion; and
9. Adjournment.

Bearing in mind the operation of the Hare-Clark electoral system for the House of Assembly, the importance given to returning a 'strong majority government' is a perennial appeal from both major parties, invariably accompanied by the undertaking that 'no deals' would be done with minority parties to secure Government. Given that the Liberals were returned with a majority of seats, a new ministry was announced and the Government's nominee for Speaker was also announced. The nominee was Mr Rene Hidding, a Minister in the previous Government and the longest serving Member of the House, who had first been elected in 1996.

Members were sworn in, Codes of Ethical Conduct and Race Ethics made, in and in accordance with standing order 5, the Clerk called for any nominations of a Member to 'take the Chair of this House as Speaker'. The Premier sought the call and duly nominated Mr Hidding, with the nomination seconded by the Deputy Premier and nomination accepted by the nominee. When the question 'Are there any further nominations?' was asked, the Leader of the Opposition sought the call and nominated the Liberal Member for Denison, Ms Sue Hickey. The nomination was seconded by the Leader of the Greens and, to the surprise of many, was accepted by Ms Hickey. A secret ballot was conducted, with the result being: Ms Hickey, 13 votes; Mr Hidding 12 votes. Ms Hickey was then conducted to the Chair. She acknowledged the honour conferred upon her and took the Chair.

This is not the first time the Government's nominee for Speaker has not been elected despite the Government holding a majority of seats. In 1992 (in the 35 member House), an alternative member of the party holding Government was elected in similar circumstances, when Mr Graeme Page was elected by 18 votes to 17, defeating the late Hon Michael Hodgman QC (the father of the current Premier). In 1992, the Government also had a majority of two on the floor (18 Liberals to 16 Labor and Greens combined). The similarities end there. Mr Page had had 16 years' experience in the House; had been Deputy Chair of Committees; and had significant experience as a Member and chair of standing and select committees. Ms Hickey, the

newly elected Speaker in 2018, was first elected to the House at the 2018 election and had spent perhaps 30 minutes in the Chamber. The numbers on the floor are even when the ALP and the Greens vote together, with the Speaker having the casting vote.

VICTORIAN LEGISLATIVE ASSEMBLY

Government calls for Cabinet documents to be tabled

On 29 March 2018, the Assembly, on a motion moved by the Minister for Public Transport, agreed to call for planning documents from the previous Parliament. The motion required the current Premier to produce the documents, which could have potentially included confidential ministerial papers, and documents protected as Cabinet-in-confidence and by legal professional privilege. The documents covered a period when the current Leader of the Opposition had been Minister for Planning in the previous Government.

Advancing the Treaty process with Aboriginal Victorians Bill 2018—arrangements in the House

On 28 March 2018, the Advancing the Treaty process with Aboriginal Victorians Bill 2018 was introduced into the Legislative Assembly. The bill aimed to advance the process of treaty making between Aboriginal Victorians and the state. It provided for the creation of a new representative body, which will work with the Government on future treaty negotiations.

For its introduction, standing and sessional orders were suspended to allow six elders to sit on the floor of the House and for Victorian Treaty Advancement Commissioner Jill Gallagher AO and Chair of the Aboriginal Treaty Working Group Mick Harding to address the Legislative Assembly. After being amended in the Assembly, the bill passed the Legislative Council and received Royal Assent on 3 July 2018.

Budget assented to without passing the Council

Victoria's Appropriation Bill for the 2018–19 financial year received royal assent without passing through the Council. The bill passed the Assembly with relatively little debate, 44 Members having spoken on the bill. Debate on the second reading of the bill commenced in the Council; however, s 65 of the *Constitution Act 1975* required that the bill be presented to the Governor for the royal assent after one

month of passing the Assembly. It is only the second time this had occurred since the provision was inserted into Victoria's Constitution in 2003.

VICTORIAN LEGISLATIVE COUNCIL

Voluntary Assisted Dying Bill 2017

On Friday 20 October 2017, the Voluntary Assisted Dying Bill 2017 was transmitted from the Legislative Assembly and read a first time. The second reading was made an Order of the Day for the next day of meeting. Debate commenced on Tuesday 31 October and continued for a total of 13 hours and 48 minutes over Thursday 1 and Friday 2 November. The House agreed to the motion for the bill to be read a second time on Friday 2 November on division with 22 ayes to 18 noes.

On Tuesday 14 November, the Committee of the Whole commenced consideration of the bill. The bill was considered for 47 hours and 21 minutes over three sitting days (five calendar days). During that time, the Government declared seven one-hour extensions and sat past midnight into the next day twice:

- On Thursday 16 November, the House commenced at 9.30 am and adjourned at 12.04 pm on Friday 17 November; and
- On Tuesday 21 November, the House commenced at 12.00 pm and adjourned at 4.12 pm on Wednesday 22 November.

The bill was passed with 39 amendments on Wednesday 22 November 2017, all of which were agreed to by the Legislative Assembly. Royal Assent was given on 5 December 2017.

There were a number of significant procedural aspects to debate on this bill, including:

- the Deputy President standing down from duties in the chamber (concerning certain allegations of impropriety in his electorate office) meant that two Acting Presidents shared the duty of chairing the Committee of the Whole, but without the powers of sanctioning Members available to the Deputy President. This caused great difficulty during often heated Committee proceedings;
 - the closure motion is rarely used in the Council but became a more prominent procedure during this Committee of the Whole; and
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- the President has a deliberative vote on all matters. The President rarely participates in debates or committee stages and never from the Chair. The President participated in the Committee of the Whole from the floor and was subject to some adverse interjections and heated words from those opposed to his position.

Firefighters Bill—Extended Good Friday sitting and discontinuation of pairs agreement

The Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 was introduced into the Council on 8 June 2017. The bill had two distinct purposes—to provide a rebuttable, presumptive right to compensation for both career and volunteer firefighters in respect of certain cancers and to reform the structure of the Victorian fire services.

Debate on the bill was deferred until a Select Committee had inquired and reported. The Committee's report was tabled on 22 August 2017 and the Government's response to the report was tabled on 7 September 2017. Debate on the second reading resumed on 7 September, but the bill was not brought back on for further debate until 27 March 2018. After a lengthy debate including failed attempts by non-Government Members to postpone debate, the bill passed the second reading on division and progressed to the Committee of the Whole stage on the Thursday afternoon before Good Friday. Consideration of the bill continued until midnight. A motion to extend the sitting past midnight was agreed to on division.

Shortly after this, a motion to report progress was put by an Opposition Member who objected to the extended sitting into Good Friday on religious grounds. A second Opposition Member also objected. During a lengthy procedural debate, the Government offered pairs to Members of the Opposition for reasons of religious observance. The motion to report progress was defeated. Two Opposition Members accepted pairs and the House continued in the committee stage of the bill.

At 11.00 a.m. on Good Friday, over 20 hours after the Committee of the Whole stage commenced, the bill passed with amendments, the report was adopted (on division) and the third reading question was put. During the division on this question, the two Opposition Members who had not attended the chamber since midnight, as per the pair arrangement, entered the chamber to vote on the Third Reading. Given that the paired Government Members were absent, the effect was that the bill was defeated 18 to 19.

Following points of order, the President noted that pairs are not a formal procedure of the House and are not covered by standing orders. Accordingly, the points of order were dismissed. No further pairing agreements have been entered into in Council since this occasion.

Attracting hard-to-reach inquiry participants using online surveys

As part of its inquiry into career advice activities in Victorian schools, the Economic, Education, Jobs and Skills Committee used an online survey to encourage students and recent school leavers to share their views on the topic. The Committee is examining how well career advice is meeting the needs of Victorian students and how school career advice can be improved. A SurveyMonkey survey was created, asking multiple choice and open-ended questions of young people and of teachers and school career advisers.

The Committee used the survey results to scope the inquiry topic and identify areas for focus during public hearings. The results highlighted a wide discrepancy between young people and teachers on career advice considered to be useful. The Committee also found the responses to the survey were more candid than the evidence provided in submissions, which could have been due to the survey's anonymity.

The survey was open for eight weeks and attracted 594 responses; 485 of these were considered valid. Respondents were evenly split between young people (247) and teachers or career advisers (238). A campaign advertising the survey ran through the Parliament of Victoria's Facebook and Instagram accounts, attracting an audience of 65,991 people and resulting in 21,590 engagements (such as likes, shares and video views).

WESTERN AUSTRALIAN LEGISLATIVE ASSEMBLY

Recommended expulsion of a Member

On the final sitting day for 2017, the Premier moved that the Procedure and Privileges Committee 'consider and report back to the House ... whether there have been any breaches of privilege in relation to any statements made to the House by the Member for Darling Range'.

The issue arose initially from media reports that the Member, Mr Barry Urban, wore a police service medal that he was not entitled to wear. As the issue progressed in the media, doubts were also raised about Mr Urban's academic qualifications. In a

personal explanation to the House, Mr Urban's comments raised more questions than were answered. The Premier, who until that point had publicly supported him, felt the explanation was not sufficiently comprehensive, and referred the matter to the Procedure and Privileges Committee.

On 8 May 2018, the Committee tabled its report, *Misleading the House: Statements Made by the Member for Darling Range*, in which it found that the Member had deliberately misled the House on multiple occasions about his education history and previous military service. The Committee also found he deliberately sought to deceive the Committee by providing to it a forgery of a degree from the University of Leeds, as well as providing deliberately misleading testimony and submissions. By doing so, the Committee found that he had committed a gross and aggravated contempt of Parliament and recommended his expulsion from the Legislative Assembly, and that the seat of Darling Range be declared vacant by reason of such expulsion.

The Speaker stressed that the Committee did not make the decision lightly, and that the expulsion of a Member is a serious action and one that must never be taken without the strongest justification. Immediately after the report was tabled, Mr Urban rose and resigned as the Member for Darling Range, hence avoiding becoming the first Member to be expelled from the Parliament of Western Australia.

However, the matter did not end there. On the next sitting day, the Speaker tabled a letter he had received from the Commissioner of Police, in which the Commissioner advised that he had instructed the major fraud squad to commence a criminal investigation into the actions of the now former Member. The Commissioner requested to be provided with 'any documentation and evidence in relation to the Committee's determination'. The Speaker sought advice from the Clerk as to any issues of parliamentary privilege in answering the Commissioner's request, and undertook to table that advice at the earliest opportunity.

In the course of a subsequent debate regarding the House endorsing the Committee's recommendations, the Opposition attempted to move an amendment that the Attorney General report to the House whether he was 'of the opinion that there are reasonable grounds for securing a conviction against the former Member for Darling Range under section 57 of the *Criminal Code*'. The amendment was defeated, but highlighted that giving false evidence before Parliament is a criminal offence in Western Australia, punishable by up to seven years' imprisonment. In defeating the amendment, the Government argued that it was imprudent to run parallel investigations, given that the Police Commissioner had already indicated he was conducting a criminal investigation.

On 15 May 2018, the Speaker tabled advice from the Clerk, which revealed there were competing claims for the evidence held by the Committee as, in addition to the request from the Commissioner of Police, the former Member for Darling Range had requested the return of his medals and other documents he supplied to the Committee. The advice recommended that the Speaker seek clarification as to which criminal offences the Commissioner of Police was investigating before any further decision be made, as that had a direct bearing upon what evidence could be provided to the police. If the police confirmed they were investigating whether Mr Urban had committed a criminal offence under s 57 of the *Criminal Code*, that is, giving false evidence to a House or committee, then the Clerk's view was that parliamentary privilege was, by necessary implication, abrogated. In other words, the section would be ineffectual if parliamentary proceedings could not be used to pursue the offence.

The Clerk also highlighted the more difficult issue of how evidence given to the Committee by other witnesses should be handled. Under Legislative Assembly Standing Order 308:

Any witnesses examined by the Assembly or a committee are entitled to the protection of the Assembly in respect of their having given evidence and anything that may be said in their evidence.

It was the opinion of the Clerk that the abrogation of parliamentary privilege implicit in s 57 of the *Criminal Code* did not extend to the evidence given by witnesses to the Inquiry other than Mr Urban. In other words, irrespective of what criminal offence was under investigation, witnesses to the Inquiry were still entitled to the protection of parliamentary privilege. The Clerk recommended that any action taken in response to the Commissioner of Police's request take the form of a resolution of the House directing the Committee, so as to convey the full authority of the House.

On 13 June 2018 the Leader of the House gave notice that he would move a motion to provide all of the Committee's evidence to the Commissioner of Police. After much behind the scenes discussion between the Clerks, the Speaker, the Government and Opposition, the motion was moved in an amended form. It read:

That this House, in response to the request of the Commissioner of Police to the Speaker dated 9 May 2018, directs the Procedure and Privileges Committee to confer with the Commissioner of Police and to provide to the commissioner the evidence and documentation the committee considers –

is relevant to the commissioner's investigations;
does not breach parliamentary privilege; and

is consistent with the House's obligation to protect witnesses, provided to the committee in relation to the inquiry referred to the committee concerning statements made to the Legislative Assembly by the former Member for Darling Range.

The motion therefore gave the Committee the ability to liaise with the Commissioner of Police in determining what evidence is provided, while providing protection to the witnesses who had assisted the Committee or provided evidence during the inquiry.

WESTERN AUSTRALIAN LEGISLATIVE COUNCIL

A truncated sitting year in 2017

It was an interesting and unpredictable first year of the 40th Parliament, which opened in May. The Labor Government held only 14 of the 36 seats in the Legislative Council, could only guarantee 13 votes (since the President was a Labor Member). With the uncertain support of the four Greens Members, the Government was still one vote short of a majority of 17 votes. The other five parties hold 18 votes and could and did vote in a myriad of ways. The outcome was 25 divisions, two tied divisions (resolved in the negative) and six Government defeats, including a vote that caused a \$400 million hole in the Government budget.

Most of the truncated sitting year was dominated by debate on the Address-in-Reply, Loan Bill 2017 (seeking a record \$11 billion), Supply Bill 2017 and Budget Estimates, during which few unique procedural issues arose. A relative flurry of activity in the final sitting weeks of our House resulted in 21 bills being passed by the Parliament in 2017. This is lower than the average of 38 bills each year in the last Parliament and 60 bills per year previously. While no bills have been defeated to date, motions to amend were common and four of the 22 bills considered by our House were amended. There is an unpredictable mixed record of voting. In the 25 divisions, the Greens voted with the Government 17 times, the Liberals 10 times, and the Nationals five times. Two of the three One Nation Members voted with the Government four times, as did the Shooters, Fishers and Farmers and Liberal Democrat Members, with the other One Nation Member voting with the Government six times.

An early indication of how the numbers could be used against the Government was when it lost control of the business of the House, losing a vote that amended the order of business to move order of the day number 2 (an Opposition disallowance motion) to be order of the day number 1 for the next sitting of the House (the vote

was 13 ayes, 20 noes). This was followed by a further loss to the Government when the order of the day, the *Road Traffic (Vehicles) Amendment Regulations (No. 2) 2017*, was disallowed (the vote was 20 ayes, 11 noes), immediately resulting in a \$10 million per annum loss to the state budget.

This was a relatively small inconvenience to the Government compared with the effect of the House twice disallowing measures in the *Mining Amendment Regulations (No 2) 2017* to impose a gold royalty increase (the votes were 17 to 16 and 15 to 14) which left a \$400 million hole in the state budget over the forward estimates. These disallowance motions raised a procedural issue relating to the order in which separate notices of motions to disallow the same instrument can be moved, if Members from two parties independently advise the Clerk of their intention to move a notice of motion to disallow the same instrument on the same day. The President gave the call to the Members in the order that the Clerk received the motions (after the instrument was gazetted).

Ongoing unpredictability in 2018

In the first six months of 2018, the House amended six of the 11 bills it passed and referred five bills to committees (these were mainly uniform bills). The outcome of divisions in the House, where there is a non-Government majority, remains unpredictable. In March, the House, against the Government's wishes, amended the order of motions to be debated to prioritise debate on the Government's decision to close a number of regional educational facilities. Debate was accompanied by the WA Country Women's Association (CWA) marching on Parliament to protest cuts to regional education; the first CWA protest in its 94 year history.

In April 2018, the Standing Orders were amended to introduce an Acknowledgement of Country to be read after prayers at the commencement of each day's sitting. It is understood that the Western Australian Parliament was the last parliament in Australia to introduce the reading of an Acknowledgement of Country.
