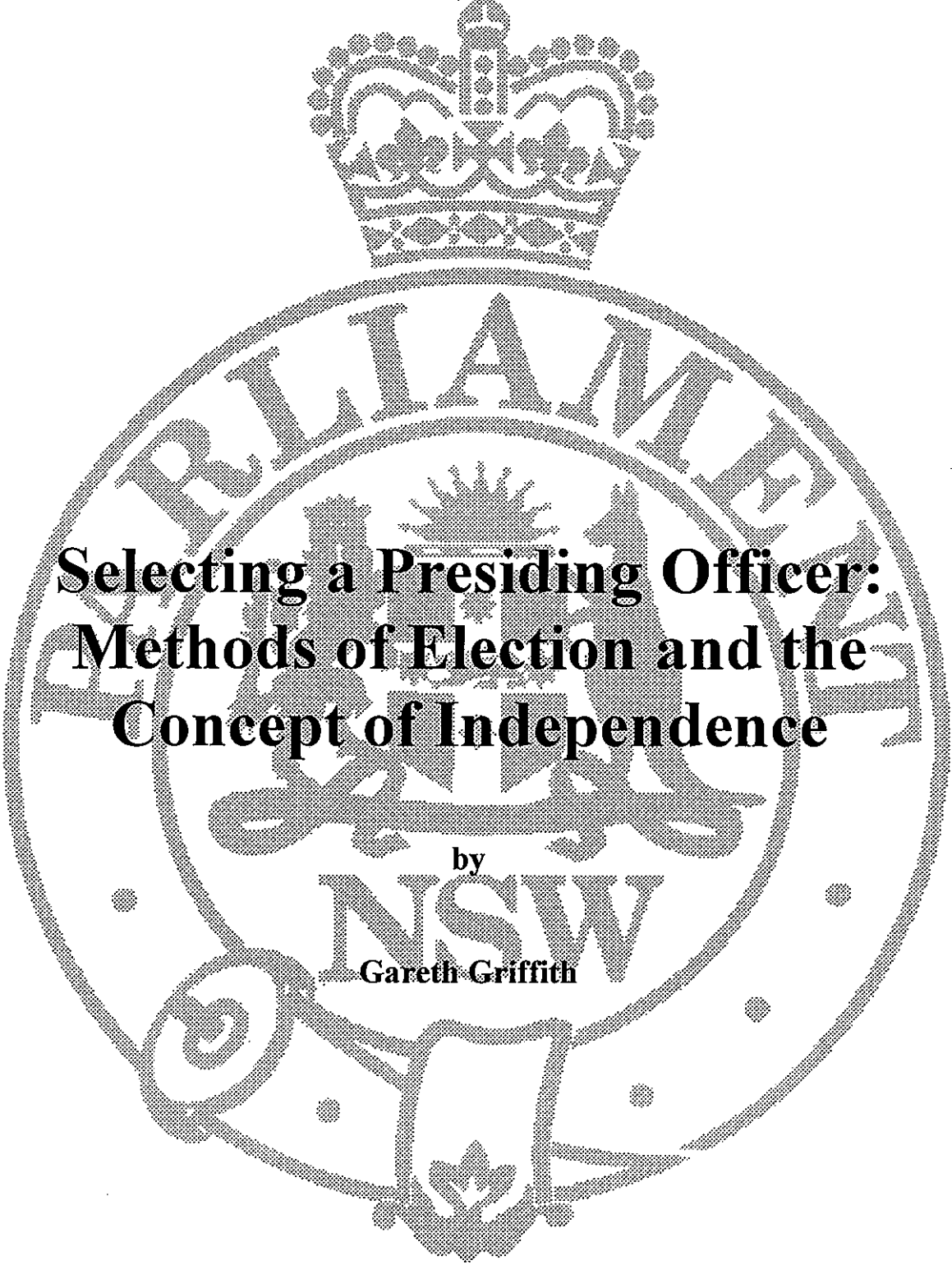


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**Selecting a Presiding Officer:  
Methods of Election and the  
Concept of Independence**

by

**Gareth Griffith**

**Briefing Paper No 13/95**

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## EXECUTIVE SUMMARY

This Briefing Paper discusses the concept of the independence of Presiding Officers and looks at the different approaches to the selection of a Presiding Officer in Australia and in other selected jurisdictions. These issues are discussed in relation to the recent reforms to the Speakership of the Legislative Assembly and the Presidency of the Legislative Council, under the *Constitution (Legislative Council) Further Amendment Act 1991* and the *Constitution (Amendment) Act 1992*. Some of the main findings include:

- In the British Parliament there has developed a view of the Speakership based on the principles of continuity and independence. (pages 6-7)
- The office of Speaker in Australia in general has traditionally lacked both the degree of independence from party affiliation and the continuity enjoyed by its British counterpart. A significant factor in this respect is the relatively small size of the lower Houses of Parliament in Australia. (page 7)
- In 1992 the NSW *Constitution Act* was amended to provide for an election for the Speakership by secret ballot. The Constitution was also amended to give formal expression to the idea that the Speaker is to be recognised as "the independent and impartial representative" of the Legislative Assembly. Section 22G (1) of the NSW Constitution defines the constitutional role of the President of the Legislative Council in the same terms.(pages 8-9)
- In all the other Australian jurisdictions election of the Speaker is by ballot. However, the term "secret ballot" is not used. The electoral procedures vary somewhat between the jurisdictions. (pages 9-13)
- Under section 31B of the Constitution, NSW has some of the most stringent provisions for secret balloting. However, neither the Constitution nor the Standing Orders at present set out the procedure in detail. (pages 13-14)
- In the Canadian House of Commons, voting booths are provided for the conduct of the secret ballot. Subsequent to the election of the Speaker, ballot papers and related records are destroyed by the Clerk of the House. (pages 15-16)
- In New Zealand and the United Kingdom a contested election for the Speakership is decided by division, similar to the old system in NSW. (pages 16-19)

- In contrast to the Speakership, in NSW the President of the Legislative Council has previously enjoyed some continuity of office. (page 21)
- There is now a requirement for regular elections for the Presidency under the rules which apply to the election of the President of the Australian Senate. (pages 22-25)
- Those rules mandate election by ballot but not, in express terms, by secret ballot. The relevant Standing Order does not set out all the procedural details involved. Nonetheless, the 7th edition of Odgers states categorically that "election is conducted by secret ballot". (page 23)

## 1. INTRODUCTION

Included in the *Constitution (Amendment) Act 1992* were changes to the NSW *Constitution Act 1902* which provided statutory recognition to the President of the Legislative Council and the Speaker of the Legislative Assembly as the Presiding Officers of their respective Houses of Parliament and as the independent and impartial representatives of those Houses. New sections 22G (1) and 31 (1) were inserted in the *Constitution Act* for this purpose. A further amendment was the insertion in the *Constitution Act* of section 31B, which deals with the method of electing the Speaker. The Premier, Mr Fahey, explained in the Second Reading Speech for the Constitution (Amendment) Bill 1992:

The bill provides that the election of the Speaker will be conducted by secret ballot. Balloting will continue until one member who has been nominated obtains the votes of at least two-thirds of the number of members of the Assembly. However, where the number of candidates is or has been reduced to two, the successful candidate will be elected by a simple majority of those voting. Where candidates receive an equal number of votes in two successive ballots, there is provision to resolve the deadlock by lot.<sup>1</sup>

These amendments were introduced as a consequence of the Memorandum of Understanding of 31 October 1991 between the Government and the Independent Members of Parliament, Mr John Hatton, Ms Clover Moore and Dr Peter MacDonald.<sup>2</sup> The proposal received cross-party support.<sup>3</sup>

Provision for the election of the President of the Legislative Council by secret ballot had already been made under the *Constitution (Legislative Council) Further Amendment Act 1991*.<sup>4</sup>

The result is that both the Speaker of the Legislative Assembly and the President of the Legislative Council will be elected by secret ballot for the first time at the start of the Fifty-First Parliament.

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<sup>1</sup> NSWPD, 17 November 1992, p 9005.

<sup>2</sup> NSWPD, 31 October 1991, p 4008.

<sup>3</sup> NSWPD, 27 November 1992, p 10467.

<sup>4</sup> Originally the relevant section was numbered section 22G (2A) but was re-numbered section 22G (4) under the *Constitution (Amendment) Act 1992*.



The purpose of this Briefing Paper is to consider some of the background to these reforms, as well as to look at the different approaches to the selection of a Presiding Officer in Australia and in other selected jurisdictions.

## 2. PRESIDING OFFICERS IN THE UNITED KINGDOM - AN HISTORICAL NOTE

The office of Speaker of the British House of Commons dates back at least as far as 1377, at which time the Speaker's main function was to act as the mouthpiece of the Commons and to communicate their resolutions to the King. However, as with many other features of our constitutional framework, it was as a result of the conflict between the Commons and the Crown in the seventeenth century that the Speakership began, albeit slowly, to take on its modern form. In particular, whereas before that time the Speaker was basically the "King's man", the conflict between Charles I and the Commons saw the establishment of the principle that the Speaker's first duty is to the House. By the beginning of the next century political parties were developing recognisably in the Commons and the office of the Speaker became a prize of the majority party, so marking a further step away from Royal influence. In Britain the tradition of the independence of the Speaker from the Government of the day developed after the election of Speaker Onslow in 1728. He was elected Speaker five times, each time without opposition. Yet, it would be wrong to suggest that Speaker Onslow completely stood aside from politics.<sup>5</sup> As Wilding and Laundy explain, the principle of the continuity of the Speaker's office and its removal from the arena of party politics was only established in 1841 when the Liberal Speaker Shaw-Lefevre was re-elected by a House controlled by a Conservative majority.<sup>6</sup> Among the reasons advanced by Sir Robert Peel on that occasion in favour of the re-election of the Speaker were: (a) that the public advantage flowing from the election of the Speaker should not "necessarily be made the object of a party"; and (b) that, as opposed to election after a party contest, the re-election of the Speaker with the general goodwill of the House would enhance the authority and power of the office.<sup>7</sup> In this way the Speakership was transformed over time into the impartial presiding officer of the House of Commons.<sup>8</sup>

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<sup>5</sup> P Laundy, *The Office of the Speaker in the Parliaments of the Commonwealth*, London 1984, pp 42-43.

<sup>6</sup> N Wilding and P Laundy, *An Encyclopaedia of Parliament*, 4th ed, London 1972, p 709.

<sup>7</sup> Sir I Jennings, *Parliament*, 2nd ed, Cambridge 1957, p 66.

<sup>8</sup> For a detailed account of the history of the Speakership see P Laundy, *The Office of the Speaker*, London 1964.

In the British Parliament there developed therefore a view of the Speakership based on the principles of continuity and independence. The Speaker is above party political controversy even to the extent that, when seeking re-election at the national polls, he or she remains aloof from party issues - standing as "the Speaker seeking re-election". In recent years the major parties have often not contested such elections.<sup>9</sup> Also, with reference to the principle of continuity, Griffith and Ryle commented in 1989 that this is now "so well accepted that no Speaker in modern times has been challenged when nominated for re-election to the Chair, although the formal processes are all repeated".<sup>10</sup>

The office of Lord Chancellor is in marked contrast to that of Speaker. The Lord Chancellor is *ex officio* the Presiding Officer of the House of Lords, but in reality the similarities do not extend far beyond that point. The Lord Chancellor is a member of the Government with a seat in the Cabinet. There is no convention inhibiting the Lord Chancellor from engaging in party political controversy. Unlike the Speaker, when in the House he or she may take part in debate and vote. The Lord Chancellor does not have a casting vote.

### 3. THE SPEAKERSHIP IN AUSTRALIA

The office of Speaker in Australia in general has traditionally lacked both the degree of independence from party affiliation and the continuity enjoyed by its British counterpart. The practice has been to change the Speaker when the government itself has changed. It has been said that the reasons for adopting this practice are in part historical and partly electoral and political. Particularly significant in any comparison with the British House of Commons is the relatively small size of the lower Houses of Parliament in Australia. Thus Browning et al comment in a federal context, "The comparatively small size of the House of Representatives means that any one seat may be vital in determining a governing majority in the lower House". The same applies but with greater force in the States and Territories where the numbers in the lower Houses are that much smaller again.

The more recent history of the Speakership in NSW was considered in some detail in the Parliamentary Library's Occasional Paper, "The Legislative Assembly of New South Wales 1941 to 1991", by David Clune (No 1/1993). The paper notes Speaker Rozzoli's wide-ranging proposals in 1991 to depoliticise the Speakership, which included:

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<sup>9</sup> However, other candidates have sometimes stood: Speaker Thomas, for example, was opposed by Plaid Cymru and the National Front in Cardiff West in 1979.

<sup>10</sup> JAG Griffith and M Ryle, *Parliament: Functions, Practice and Procedures*, London 1989, p 148.

election of the Speaker (by secret ballot) for a period not exceeding ten years; that the Speaker on election resign from any political party of which he is a member; that the Speaker have a notional State-wide constituency; that a retiring Speaker should be ineligible to continue as a Member of the Assembly; a Speaker should only be able to be removed by a two-thirds majority vote in the House. The Government subsequently rejected the Speaker's ideas on the grounds that: "We do not believe that, in a Parliament as small as the Legislative Assembly, it is possible to have a Speaker who takes a kind of monastic vow of independence."<sup>11</sup>

In 1992 the *Constitution Act* was amended to provide for an election for the Speakership by secret ballot. Before then, the method of electing the Speaker was set out in Standing Orders 9, 9A and 14 of the Legislative Assembly. Under those rules a Member, by addressing the Clerk, would propose some other Member for the Speakership. The motion had to be seconded, after which the proposed Member had to stand and inform the House he or she had accepted the nomination. Debate on the motion ensued in which no Member could speak for more than ten minutes. At any time during the proceedings of the election, the closure could be moved by either the Premier or a Minister. Before putting the question for the closure, the Clerk would ask if there were any further proposals for the office of Speaker. No debate was allowed on these further submissions. The matter was then decided by division, in which the Clerk put the question in relation to each of the candidates in order of nomination until a majority vote was obtained.<sup>12</sup>

In the past in NSW, the conduct of the Speakership, and in particular the level of actual or perceived independence from the Government of the day, has varied considerably. The same point has been made in relation to the Speakership in other Australian jurisdictions, notably in the context of the Federal Parliament. Viewed in this light, perhaps the really major innovation of the *Constitution (Amendment) Act 1992* is the insertion into the Constitution of the provision: "There shall be a Speaker of the Legislative Assembly, who is the Presiding Officer of the Legislative Assembly and is *recognised as its independent and impartial representative*" (emphasis added). The existence of the Speakership is of course recognised in other State Constitutions and in the Commonwealth Constitution. But none of these seeks to define the constitutional role of the Speakership. Instead, they are essentially machinery provisions. Typical is section 35 of the Commonwealth Constitution which

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<sup>11</sup> D Clune, *The Legislative Assembly of New South Wales 1941 to 1991*, NSW Parliamentary Library, 1/1993, p 14.

<sup>12</sup> REA Ward, *New South Wales Legislative Assembly: A Short Guide to Rules and Practice*, Sydney 1977, pp 15-17.

provides:

The House of Representatives shall, before proceeding to the dispatch of any other business, choose a member to be the Speaker of the House, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The Speaker shall cease to hold his office if he ceases to be a member. He may be removed from office by a vote of the House, or he may resign his office or his seat by writing addressed to the Governor-General.

The second paragraph of that section finds its equivalent in section 31 (2) of the NSW Constitution Act.

However, the significant point is that section 31 (1) of the NSW Constitution now gives formal expression to the idea that the Speaker is to be recognised as the "independent and impartial representative" of the Legislative Assembly. A standard is thus declared for the Speakership by way of a statutory statement of considerable symbolic and practical importance. From another practical standpoint, presumably the concepts inherent to that standard would be the core concern of any future censure motion against the Speaker. Section 22G (1) achieves the same outcome in relation to the President of the Legislative Council.

#### **4. METHODS OF ELECTING THE SPEAKER IN AUSTRALIA**

Leaving NSW out of the picture for a moment, it can be said that, in regard to the methods used to elect a Speaker, there is considerable uniformity across the other Australian jurisdictions. In all cases election is by ballot. The term "secret ballot" is not used, but that would seem to be the intention behind the relevant Standing Orders.

In terms of the processes of election, various formulations operating at contrasting levels of detail and encapsulating somewhat different practices can be noted. For example, in the House of Representatives model, which is mirrored more or less precisely in the Northern Territory, the ACT, South Australia and Western Australia, when debate is concluded the bells are rung as in a division, after which each Member delivers to the Clerk a ballot paper, in writing, containing the name of the nominated Member he or she has voted for and the votes are then counted by the Clerks at the Table. In Tasmania, Queensland and Victoria, on the other hand, the ballot papers are provided by the Clerk and are afterwards placed by the Members in a ballot box on the Table. The Standing Orders for the Queensland Legislative Assembly provide in this respect: "When the Bars are closed, the Clerk will initial and deliver at

the table to each Member present a ballot-paper, and will check the names of those to whom ballot papers are given. A Member will record his vote by placing a cross opposite the name of the Member for whom he wishes to vote...The Member will then fold his ballot-paper and place it in the ballot-box on the table." The Clerk then counts the votes, assisted by other officers at the Table.<sup>13</sup>

The most recent election for the Speaker of the Tasmanian Parliament presents an interesting example of how the relevant Standing Orders can operate in practice. Peter Bennison explains that, when Parliament resumed on 14 April 1992, the Premier, Mr Groom, in accordance with his previously stated intention, nominated Mr Hodgman as Speaker. The nomination was seconded by the Deputy Premier. The former Speaker, Mr Polley, then nominated a long serving Government backbencher, Mr Page, for Speaker. The motion was seconded by another member of the Opposition. According to Peter Bennison, the House then "proceeded to a secret ballot". The bells were rung, the doors locked and ballot papers distributed by the Clerk of the House. Each Member then put a mark opposite the name of the desired candidate on the ballot paper and placed it in the box provided on the Table of the House. The Clerk then counted the votes at the Table in the company of two previously appointed scrutineers. It was found that Mr Page had received 18 votes and Mr Hodgman 17 votes. Later it was confirmed that another Government backbencher, Mr Bonde, had voted with Mr Page and the Opposition to defeat the Government's nominee. Peter Bennison notes that "The result caused considerable consternation on the government benches". In an interesting comment on the secrecy of the ballot, *The Mercury* reported: "All Ministers showed each other their ballot papers to avoid accusations of a breach of Cabinet solidarity, but backbenchers did not".<sup>14</sup> In part, therefore, it was a "show and tell" ballot.

In most jurisdictions it is the Clerk of the House who presides during the election. The exception is the Queensland Legislative Assembly where, since 1992, the election of Speaker is presided over by the Member who has served for the longest continuous period in the House and who is not a Minister.<sup>15</sup> The same arrangement was recommended in the 1992 report of the Standing Orders Committee of the Victorian Legislative Assembly<sup>16</sup> and in the 1992

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<sup>13</sup> Standing Order 7 (Qld).

<sup>14</sup> P Bennison, "Election of Speaker of the Tasmanian House of Assembly, April 1992" (1993) 61 *The Table* 33-36.

<sup>15</sup> Standing Order 4.

<sup>16</sup> Legislative Assembly of Victoria, *Final Report of the Standing Orders Committee Upon A General Revision of the Standing Orders*, March 1992, p 2.

report of the House of Representatives Standing Committee on Procedure where it was said:

While the Chair is seen as being obviously apolitical during this period, the committee agrees that it places the Clerk in a difficult position and places the House in a potentially vulnerable position as there must be some doubt as to what powers and privileges the Clerk would possess during this process. Vesting the powers of the Speaker with a Member of the House would eliminate the potential vulnerability of the House and leave the Clerk free to conduct ballots or special ballots when necessary.<sup>17</sup>

In all jurisdictions candidates for the Speakership are nominated and that nomination is then seconded. Nomination is made by address to the Presiding Officer. Where there is only one candidate, that person is declared to be Speaker. Where there are two or more candidates, then a ballot is held and any subsequent ballot which is required until one candidate has an absolute majority of the votes cast. Where there are more than two candidates, the candidate with the least number of votes is excluded from any subsequent ballot. Provision is also made for a candidate to voluntarily withdraw from the election. In the event of a contested election, in some jurisdictions provision is made for debate to ensue after the time for proposals has expired, but debate must be relevant to the election and a Member cannot speak for more than five minutes.<sup>18</sup> Debate is not explicitly provided for in Tasmania; whereas in Victoria it seems to be precluded in express terms.<sup>19</sup> The relevant Standing Orders in Western Australia and South Australia are not precise regarding the rules of debate. In Western Australia it is the candidate who shall "address himself to the House", but again only in the event of a contested election. In South Australia, each candidate may address the House, but debate is also contemplated under Standing Order 4, so long as it is "strictly relevant to the election of the Speaker".

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<sup>17</sup> House of Representatives Standing Committee on Procedure, *The Standing Orders Governing the Speaker, Chairman, Deputy Chairmen and Officers*, March 1992, p 3.

<sup>18</sup> Standing Order 4 (Qld); Standing Order 12 (d) and (e) (Cth); Standing Order 2 (d) and (e) (ACT); Standing Order 7 (d) and (e) (NT).

<sup>19</sup> Standing Order 6 (Vic) provides that no Member may address the House after the time for proposals has expired.

Differences in practice also emerge where a tied vote occurs:

- The House of Representatives and the Legislative Assemblies of the ACT and the Northern Territory can be looked at in combination for this purpose. In all three, in the event of an equality of votes at any stage in the election process a special ballot is held in which only the names of the candidates receiving the same number of votes are put forward. If there is still deadlock, then a second special ballot is conducted. If the votes remain tied after that then provision is made for the sitting to be suspended for 30 minutes. A further ballot is then held, unless it is rendered unnecessary by a withdrawal.<sup>20</sup> That is as far as the Standing Orders of the House of Representatives and the ACT Legislative Assembly go. However, in the Northern Territory further provision is made for the matter to be decided afterwards by lot.<sup>21</sup>
- In both South Australia and Queensland, where there is a tied vote at any stage in the election of the Speaker, a second ballot is held. In the event of another tied vote, the deadlock is resolved by lot.<sup>22</sup>
- In Victoria, where there is an equality of votes between two candidates, then a new ballot is held. If the situation is still deadlocked then the Clerk *may* suspend the sitting for up to two hours. Subsequently, unless one candidate withdraws, an "open vote" takes place in which the Clerk assigns a side of the House to the voters for each candidate "and shall direct each Member present to vote by taking his seat according to his choice".<sup>23</sup> Similar provision is made for where there is an equality of votes between more than two candidates, except that two special ballots may be held before the House proceeds to a short suspension and then to an "open vote".<sup>24</sup>
- The Tasmanian lower House has its own way of resolving a deadlock. Here a second ballot occurs and if the vote is still tied then the candidate who is the longest continuous serving Member of the House

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<sup>20</sup> Standing Order 12 (j) and (l) (Cth); Standing Order (2) (j) and (k) (ACT); Standing Order (k) and (n) (NT).

<sup>21</sup> Standing Order 7 (p) (NT).

<sup>22</sup> Standing Order 9 (SA); Standing Order 6 (c) (Qld).

<sup>23</sup> Standing Order 6 (g) (Vic).

<sup>24</sup> Standing Order 6 (h) and (i) (Vic).

is elected or is retained for a further ballot; or, where both Members have served continuously for the same length of time, the matter is decided by lot.<sup>25</sup> This procedure is used both for the elimination of a candidate and, where necessary, to decide the final outcome of the election.

- In Western Australia Standing Order 14 of the Legislative Assembly requires a fresh ballot to be taken "as often as necessary" until one candidate has an absolute majority.

## 5. ELECTING A SPEAKER IN NSW UNDER SECTION 31B OF THE CONSTITUTION ACT

This brief survey of the methods of electing the Speaker in the other Australian jurisdictions serves to bring to the foreground some of the distinctive aspects of the system in NSW under section 31B of the *Constitution Act*. These are as follows:

- In NSW the detailed account of the procedure for electing the Speaker is set out in the *Constitution Act* and not, as in other jurisdictions, in the Standing Orders of the lower Houses of Parliament. Standing Order 12 of the NSW Legislative Assembly states only that the procedure for the election of the Speaker shall be in accordance with section 31B of the *Constitution Act*.<sup>26</sup> The Standing Orders do not elaborate on the Act therefore, though such elaboration is contemplated under section 31B (7) of the Constitution.
- Section 31B (1) of the *Constitution Act* makes specific reference to an election "by secret ballot". The Act does not set out all the procedural details involved: for example, whether a ballot box will be provided for the purposes of the election, or how the voting paper is to be set out and completed by Members. It may be that under section 31B (8) any procedural gaps could be filled by the Standing Orders that relate to the election of the President of the Senate. However, those procedures may not be entirely appropriate to the election of the Speaker of the Legislative Assembly, in which case the procedural gaps will have to be filled by other means. An important point to note in this context is that the relevant Senate Standing Orders do not expressly mandate a "secret" ballot.
- Consistent with general practice in other Australian jurisdictions,

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<sup>25</sup> Standing Order 8 (n) and (o) (Tas).

<sup>26</sup> Legislative Assembly of NSW, Standing Rules and Orders, 12 December 1994.



section 31B (1) does provide that a ballot is not required if only one candidate is validly nominated.

- Section 31B (2) of the *Constitution Act* provides for anonymity in the process of nominating a candidate for the Speakership. Thus, nominations must be made "*in writing*", and the identity of the nominators and seconders shall not be disclosed by the Clerk of the Legislative Assembly or other person presiding at the election" (emphasis added). As noted, this contrasts with the position elsewhere in Australia where a candidate for the Speakership is nominated and the nomination is seconded by an address made to the Presiding Officer on the floor of the House. In this respect, NSW has the most stringent provisions for secret balloting.<sup>27</sup>
- A nomination is only valid if the person nominated accepts nomination "by endorsement on the instrument of nomination" (section 31B (2)).
- Whereas other Australian jurisdictions only require an absolute majority at any time in the process of electing a Speaker, section 32B (4) of the *NSW Constitution Act* on the other hand stipulates that an absolute majority is sufficient only at the stage when the election has been narrowed down to two candidates, or in the situation where only two candidates have been nominated. Where there are more than two candidates, a two-thirds majority is required.
- No provision is made in the NSW Constitution for Members to debate the election of the Speaker. However, debate does seem to be contemplated under Standing Order 3(8) which provides: "Until a Speaker is elected, the Clerk shall preside and in any *debate* shall decide which Member is entitled to address the House" (emphasis added).

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<sup>27</sup> It may yet be possible to find informal means of undermining the secrecy provisions at some other stage in the process. RS Parker notes the following example of one such scheme in the context of NSW politics: "Bitter experience with defections over Legislative Council issues stimulated the ALP from the outset to devise ingenious means of policing its members' votes despite the strictly enforced secrecy of the Legislative Council ballot. As long as a number of candidates were nominated...it was possible to allot each Labor parliamentarian a distinctive order in which to mark his preferences on the ballot, while ensuring that sufficient preferences would ultimately cumulate on the preferred candidate or candidates. This enabled the party's scrutineers checking the completed ballot papers to identify a defector by spotting missing or deviant preference orderings." RS Parker, *The Government of New South Wales*, St Lucia 1978, p 208.

- Consistent with the practice in Queensland, South Australia and the Northern Territory, under section 31B (5) deadlocks are to be resolved by lot.

## 6. METHODS OF ELECTING THE SPEAKER IN OTHER SELECTED JURISDICTIONS

*Canada:* It seems that before the mid-1980s the Speaker of the Canadian House of Commons was nominated by the Prime Minister who "always exercised a very strong influence over the initial choice of candidate".<sup>28</sup> An election occurred at the start of each Parliament, which was conducted by the Clerk of the House.

In 1985 the Standing Orders were amended, in the light of reports released by two special committees on reform of the House, to provide for election by secret ballot. The first time these new procedures were used in September 1986 John Fraser was elected Speaker after no fewer than eleven ballots. Except for Cabinet Ministers and leaders of recognised parties, every Member was eligible to be elected and those wishing to withdraw had to notify the Clerk in writing. When the House convened to elect the Speaker as many as thirty nine members had not withdrawn and the subsequent election took no less than twelve hours to complete.<sup>29</sup> The protracted election prompted calls for further changes to the electoral process.<sup>30</sup>

Under the Standing Orders of September 1994 the ballot still takes place without any declared nominations. All members of the House, except for Ministers of the Crown and Party Leaders, are automatically considered candidates for the position of Speaker. Any Member who does not wish to have his or her name appear on the list of candidates must so inform the Clerk of the House in writing by no later than 6:00 pm on the day before the election is to take place. The election itself is by secret ballot. A ballot box is placed at the foot of the Table and, according to the official account, voting booths are placed on either side of the Table. The Presiding Member announces the list of Members who may not be elected Speaker; a list of those Members eligible to be elected as Speaker is available in the voting booth. When the Presiding Member is satisfied that all Members wishing to vote have done so, the Clerk and the Table Officers count the ballots. When the Clerk is satisfied with the accuracy of the count, he or she will, in accordance with Standing Order 4 (6),

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<sup>28</sup> G Levy, "A Night to Remember: The First Election of a Speaker by Secret Ballot" (Winter 1896-87) *Canadian Parliamentary Review* 10, p 11.

<sup>29</sup> *Ibid*, p 13.

<sup>30</sup> Canadian House of Commons, *Annotated Standing Orders of the House of Commons 1989*, p 12.

destroy all ballot papers and related records. The Standing Orders enjoin the Clerk not to divulge in any way the number of ballots cast for any candidate.<sup>31</sup>

If no one Member has obtained a majority of the votes cast, the names of the last place candidate (or candidates in the event of a tie vote for last place) and the names of any Members having received 5% or less of the votes cast, are dropped from the list. The process is repeated until a candidate has received a majority of votes cast (Standing Orders 4(8) and (9)).

Provision is made for candidates to withdraw from the election between ballots (Standing Orders 4(8) and (9)). Under Standing Order 4 (10) debate is not permitted during the election of the Speaker and the Presiding Member is not allowed to entertain any question of privilege. The new procedures reflect the fact that the Speaker is elected by individual Members of Parliament to serve the House. Thus, Standing Order 6 provides that the election of the Speaker is not in any way related to the confidence the House has in the government and is not to be considered in that light.<sup>32</sup>

When the election of a Speaker occurs at the beginning of a Parliament, the most senior Member in terms of continuous service presides, provided he or she is neither a Minister nor holds any office within the House. When the Speaker has stated his or her intention to resign, the Speaker presides (Standing Order 3).

**New Zealand:** The procedure relevant to the election of a Speaker in New Zealand is set out in detail in the second edition of David McGee's *Parliamentary Practice in New Zealand* (1994). The main points are that the Clerk acts as chairperson for the purpose and, in the event of a contested election, the matter is decided by division and not by secret ballot. As in Australia, there is no tradition, if the Government changes, of re-electing as Speaker the Member who held that post in the previous Parliament. McGee comments that in modern times the majority party in the House has usually provided the Speaker from among its ranks. However, the Speaker elected in 1993 was an Opposition Member. Furthermore: "In a new step towards developing a bipartisan approach to electing a Speaker, in 1990 the proposal

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<sup>31</sup> This account is based on - *The Canadian House of Commons, Election of the Speaker: A Description of the Process*, January 1994, pp 1-3. It is worth noting that the official account of the electoral process is in rather more detail than the Standing Orders themselves. In particular, the provision of voting booths is not mentioned in the Standing Orders. Standing Order 4(5) provides only that "Members shall deposit their completed ballot papers in a box provided for that purpose on the Table".

<sup>32</sup> *Annotated Standing Orders of the House of Commons*, op cit, p 11.

for the election of the Speaker was seconded by the Senior Opposition Whip".<sup>33</sup>

When there are two candidates proposed, "the Clerk puts the question for the election of the first member so nominated, and if this is carried the election of the Speaker is so disposed of, and that member is elected". This occurred in 1923, the last time the election was contested:

Only if the question for the election of the first nominee is lost does the Clerk go on to put the question for the election of the second nominee. This last occurred in 1891 when the question for the election of the first member proposed was negatived on a division. The question for the election of the second member proposed was then put and carried without a division. If the second question is also negatived, neither member is elected Speaker and the Clerk calls for further nominations.<sup>34</sup>

Under the Standing Orders, provision is made for when more than two Members are proposed for Speaker. In these circumstances Members are asked by the Clerk, in alphabetical order, to rise in their place and state which of the nominees they vote for. If a Member gains an absolute majority of votes by this process, that member is instantly declared elected. Otherwise the Member with the fewest votes drops out until only two candidates remain. The House then reverts to the procedures which apply when there are only two Members proposed.

**United Kingdom:** As discussed earlier, the Speakership of the British House of Commons is based on the principles of continuity and independence. From this it follows that contested elections are more the exception than the norm. According to the 21st edition of *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, since the making of Standing Order No 1 on the election of the Speaker in 1972 there have been no contested elections to the Chair; nor have there been any contested elections since the publication of that edition in 1989. The office was contested in 1895 and 1951 when the major parties failed to agree on a candidate; and again in 1971 as a result of backbench dissatisfaction with the dominant role played by the two front benches in the election of Selwyn Lloyd to the office of

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<sup>33</sup> D McGee, *Parliamentary Practice in New Zealand*, 2nd ed, Wellington 1994, p 94.

<sup>34</sup> *Ibid.*

Speaker.<sup>35</sup> At that time the Clerk of the House acted as presiding officer for the purpose of electing the Speaker. This arrangement was changed in 1972. Now "the Chair is taken for this purpose by the Member, present in the House and not being a Minister of the Crown, who has served for the longest period continuously as a member of the House".<sup>36</sup> This reform followed the recommendation of a Select Committee on Procedure which concluded that "the House is placed in an unduly vulnerable position while the Clerk is presiding over its proceedings".<sup>37</sup> It seems this was because the Clerk of the House as presiding officer was, under the Standing Orders then in force, "powerless to deal with points of order, dilatory motions or prolongation of the debate".<sup>38</sup>

Also considered by the Select Committee was the proposal to elect the Speaker by secret ballot. The proposal was rejected but only after a canvassing of the arguments for and against. In favour of the proposal it was said that a secret ballot would greatly reduce "the influence of the leadership and establishment of the major parties". The Select Committee had in fact been established in response to the disquiet expressed amongst backbenchers over the election of the Speaker in 1971.<sup>39</sup> Against the proposal it was contended that a secret ballot would "tend to diminish the Speaker's status, to weaken the tradition of impartial authority and continuity in the office, and to accentuate rather than compose divisions of opinion within the House". Further, it was claimed that in reality voting in a secret ballot would still follow party lines and that at the beginning of a new Parliament "very few of the members would be able to cast a vote in the ballot with any knowledge of the candidates". In particular, the Select Committee believed it would be wrong to depart from the general principle that Members should be publicly accountable for the votes they cast in their capacities as Members of Parliament and, moreover, that the adoption of a secret ballot would lead to undesirable canvassing and lobbying,

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<sup>35</sup> P Laundy, "The Speaker and his Office in the Twentieth Century", in *The House of Commons in the Twentieth Century*, ed by SA Walkland, Oxford 1979, pp 124-203.

<sup>36</sup> CJ Boulton ed, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 21st ed, London 1989, p 226.

<sup>37</sup> First Report from the Select Committee on Procedure, *Election of a Speaker*, HMSO 1972, p xiii.

<sup>38</sup> *Ibid*, p xi.

<sup>39</sup> The continuing potential for tension between the party leadership and the backbenchers was evident during the election of Speaker Weatherill in 1983 when attempts were made by the Prime Minister to promote two other candidates, namely, Francis Pym and Humphrey Atkins. Both declined to be nominated: P Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, *op cit*, pp 77-78.

"especially of new Members, at the beginning of a Parliament".<sup>40</sup>

The secret ballot has not been adopted. Thus, were a contested election to occur, it would be decided by division. Erskine May explains: "According to usage, in the event of a division the two members whose names have been proposed from the Chair take part in it, each Member giving his vote in favour of his rival".<sup>41</sup> More usually, an agreed candidate is put forward and his or her election is proposed by senior backbenchers from the two sides of the House.

In 1992 Betty Boothroyd became the first woman to be elected to the Speakership.

## 7. COMMENTS ON THE SPEAKERSHIP IN NSW

The *Constitution (Amendment) Act 1992* introduced important changes for the Speakership in NSW. Of particular symbolic and potentially practical significance is the recognition in the Constitution Act that the Speaker is the "independent and impartial representative" of the Legislative Assembly. There do not seem to be any obvious parallels to that provision in any of the other State Constitutions, or in the Commonwealth Constitution. Indeed, the only parallel seems to be with section 22G (1) of the NSW *Constitution Act*, which defines in the same terms the constitutional role of the President of the Legislative Council.

That statutory recognition of the independence of the Speakership is backed up by the provision for an election by secret ballot under section 31B of the *Constitution Act*. It remains to be seen how these reforms will operate in relation to the depoliticisation of the Speakership. It is interesting to note in this context the following comment made in regard to the Canadian House of Commons: "election of the Speaker by secret ballot represents a major evolution in the House of Commons. This change, which was instituted in 1985, has changed the way that the House operates".<sup>42</sup> The potential significance of these reforms is not to be underestimated therefore. What we see in the Canadian example is an attempt, not to replicate the Westminster model, but to recognise the value of its core principle of the independence of the Speakership and, from there, to adopt appropriate electoral mechanisms to achieve that goal in a way that is consistent with local needs and conditions.

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<sup>40</sup> First Report from the Select Committee, *Election of a Speaker*, op cit, p xii.

<sup>41</sup> *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, op cit, p 227.

<sup>42</sup> JR Robertson, *Draft Proposals on Parliamentary Reform*, Library of Parliament, Canada, April 1992, p 26.

The reforms in NSW can be viewed in a similar way.

## 8. THE PRESIDENT OF THE NSW LEGISLATIVE COUNCIL

Recent statutory changes relevant to the election and independence of the President of the Legislative Council have occurred in two stages. First, the *Constitution (Legislative Council) Further Amendment Act 1991* introduced the requirement for the President to be elected at the first meeting following a periodic Council election. Also spelt out in express terms was the provision that the person so chosen must cease to hold office as President immediately before the Legislative Council assembles following a periodic Council election. A further feature of these amendments was the adoption of the electoral procedure used for choosing the President of the Australian Senate. This was expressed to be "Until Standing Rules and Orders of the Legislative Council otherwise provide...". The net effect was to require the Presidency to be the subject of regular election by ballot.

Secondly, the *Constitution (Amendment) Act 1992* provided statutory recognition to the President as the independent and impartial representative of the Legislative Council.

Before the 1991 reforms, sections 22G (1) and (2) of the *NSW Constitution Act* read as follows:

- 22G (1) A person shall be chosen to be the President of the Legislative Council-
- (a) before the Legislative Council proceeds to the dispatch of any other business after the first appointed day; and
  - (b) whenever the office of President of the Legislative Council becomes vacant.
- (2) The person so chosen shall cease to hold office as President of the Legislative Council-
- (a) if he ceases to be a Member of the Legislative Council;
  - (b) if he is removed from that office by a vote of the Legislative Council; or
  - (c) if he resigns his office by writing under his hand addressed to the Governor.

These provisions were debated at some length following the periodic Council elections of 1988 and 1991.<sup>43</sup> The debate focussed on the issue of continuity. In particular, arguments were made for and against the proposition that there existed in NSW a longstanding convention whereby a President remained in office notwithstanding the political composition of the House or the political complexion of the Government of the day. A related question was whether a convention of that sort was consistent with the provisions of the Constitution.

It is certainly the case that the office of the President of the Legislative Council has a distinctive history. Between 1856 and 1934, when the office was filled by the Governor by appointment, the Legislative Council itself had no power at all over the office of President. That situation changed subsequent to the constitutional crisis of the late 1920s and early 1930s. The Legislative Council was reconstituted under the *Constitution Further Amendment (Legislative Council Elections) Act 1932* from a nominated House to an elected House, with effect from 23 April 1934. Since that date the Council has been served by six Presidents: The Hon Sir John Peden from 1934 to 1946; the Hon EH Farrar from 1946 to 1952; the Hon WE Dickson from 1952 to 1966; the Hon Sir Harry Budd from 1966 to 1978; the Hon JR Johnson from 1978 to 1991; and, since then, by the Hon MF Willis. The election for the office was contested in 1934 but not, after that, till 1988 and again in 1991.<sup>44</sup>

Before 1991 the procedure for electing the President was found in Schedule 4 to the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*. That procedure required a majority of the Members to vote in favour of a candidate for President. The vote was decided by division. Provision was not made for resolving a deadlock.

In the Second Reading Speech for the Constitution (Legislative Council) Further Amendment Bill (No 2) 1991 it was said:

The President of the Legislative Council currently holds office until he or she ceases to be a member of the Council or is removed by the Council...that is out of step with the practice followed elsewhere. The President of the Australian Senate and the Speaker of the Legislative Assembly respectively are elected after each general election.<sup>45</sup>

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<sup>43</sup> NSWPD, 28 April 1988, pp 75-102; NSWPD, 3 July 1993, pp 99-117.

<sup>44</sup> NSWPD, 28 April 1988, pp 75-79.

<sup>45</sup> NSWPD, 21 August 1991, p 255.



## **9. THE PRESIDENT OF THE AUSTRALIAN SENATE**

The forthcoming election for the President of the Legislative Council will be held in accordance with the procedure for choosing the President of the Senate. The most recent Standing Orders for the Senate were issued in October 1994. Standing Orders 6 and 7 are those of particular relevance to the election of the President of the Senate. These read as follows:

### **Election of President**

6. (1) Whenever the office of President becomes vacant, whether because of section 17 of the Constitution or of the standing orders, the Clerk shall act as Chairman of the Senate prior to the election of the President, and shall have the powers of the President under the standing orders while so acting.
- (2) A Senator, addressing the Clerk, shall propose to the Senate as President some Senator then present, and move that that Senator take the Chair of the Senate as President. The Senator proposing the motion and any Senator speaking to it may speak for not longer than 15 minutes.
- (3) If only one Senator is proposed as President, the Senator so proposed is called by the Senate to the Chair without any question being put, shall express a sense of the honour proposed to be conferred on the Senator, and shall be conducted to the Chair.
- (4) If 2 or more Senators are proposed as President, a motion shall be made regarding each such Senator, that that Senator take the Chair of the Senate as President, and each Senator so proposed shall express a sense of the honour proposed to be conferred on the Senator, and may address the Senate.

### **Ballot**

7. (1) When 2 Senators have been so proposed as President, each Senator present shall deliver to the Clerk a ballot paper indicating the name of the candidate for whom the Senator votes. The candidate who has the greater number of votes shall be the President, and be conducted to the Chair.
- (2) When more than 2 Senators have been so proposed, the votes shall be similarly taken, and the Senator who has the greatest number of votes shall be the President, provided that Senator has also a majority of the votes of the Senators present.

- (3) If no candidate has such a majority, the name of the candidate having the smallest number of votes shall be withdrawn, and a fresh ballot shall take place; and this shall be done as often as necessary, until one candidate is elected as President by such a majority, and the Senator elected shall be conducted to the Chair.
- (4) If there is an equality of votes, the votes shall be again taken, and if again there is an equality of votes, the Clerk shall determine, by lot, which of the candidates, having the same number of votes, shall be withdrawn, as if that candidate had obtained the lesser number of votes.

Following mainly the accounts in the 6th and 7th editions of Odgers, a number of points can be made by way of elaboration:

- The Senate Standing Orders mandate election by ballot but not, in express terms, by secret ballot. Standing Order 7(1) does not set out all the procedural details involved. Nonetheless, the 7th edition of Odgers states categorically that "election is conducted by secret ballot".<sup>46</sup>
- The method of electing the President by ballot was adopted when the Senate first met on 9 May 1901.
- In November 1981 the Standing Orders were amended to remove the requirement for the seconding of motions, but the practice of moving and seconding nominees for President has continued as a courtesy. In recent years the practice has been for both mover and seconder to be the Leader and Deputy Leader of the Government and of the Opposition in the case of Government and Opposition candidates, respectively.<sup>47</sup>
- The office of the President almost invariably goes to a member of the majority political group in the Senate.<sup>48</sup> Despite this, Reid and Forrest suggest that "most of the Presidents have not been beholden to the party leadership to quite the extent that the Speakers have. Presidents have remained party members and supporters, but the circumstances of their elections, combined with the lesser significance of the Senate for the survival of the Government, has meant that their partisanship has been

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<sup>46</sup> JR Odgers, *Australian Senate Practice*, 7th ed, Canberra, forthcoming May 1995, p 141.

<sup>47</sup> *Ibid.*

<sup>48</sup> JR Odgers, *Australian Senate Practice*, 6th ed, Canberra 1991, p 176.

neither as marked nor so frequently tested as the Speaker's".<sup>49</sup>

- As indicated above, in contrast to the Speaker of the British House of Commons, the President of the Senate does not attempt to dissociate him/herself completely from party politics and activities. Odgers commented in the 6th edition that the British practice in relation to the Speakership "is not altogether adaptable to the Australian Senate for the reason that to do so would disrupt the principle of equal State representation. It is to preserve this principle that the States should have equal voting strength that the Constitution provides that the President, in all cases, shall be entitled to vote".<sup>50</sup> In its original form the Constitution (Legislative Council) Further Amendment Bill No 2 1991 would have given the President of the Legislative Council the same voting rights as those of the President of the Senate. In the event of an equality of votes the question would have passed in the negative. That proposal was not reflected in the subsequent Act.<sup>51</sup> In the Legislative Council, therefore, the President continues to have a casting vote; he or she does not have a deliberative vote.
- When only one Senator is proposed, the Senator is called to the Chair without any question being put.
- The 6th edition of Odgers commented that the Standing Orders are not precise regarding the rules of debate when there is more than one candidate.<sup>52</sup> That uncertainty is not reflected in the 7th edition where it is said, with reference to Standing Order 6(2), "that debate cannot occur until all nominations have been received, so that any senator speaking is able to refer to all nominations".<sup>53</sup>

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<sup>49</sup> GS Reid and M Forrest, *Australia's Commonwealth Parliament 1901-1988*, Melbourne 1989, p 43. The authors commented that, up to that date, there had only been one censure motion against a President.

<sup>50</sup> *Ibid.*

<sup>51</sup> NSWPD, 25 September 1991, p 1729. The proposal was defeated in committee.

<sup>52</sup> *Ibid.* It was said that under Standing Order 6(2), a Senator may not speak on a motion for more than fifteen minutes. It is suggested that, in the context of a three-cornered election, if a Senator has not spoken before the nomination of Senators B and C, he or she should be taken as speaking to all of the motions before the Senate and be limited to fifteen minutes.

<sup>53</sup> JR Odgers, 7th ed, *op cit*, p 141.

- When there are two candidates, each Senator is provided with a ballot-paper on which he or she writes the name of the candidate of his or her choice. The votes are counted by the Clerks and the candidate who has the greater number of votes is declared by the Clerk to be President. It has been noted that Standing Order 7(1) does not set out all the procedural details involved in a contested election.
- There have been two candidates on 18 occasions, the most recent being 20 August 1985.
- The same procedure is followed where there are more than two candidates, except that in this situation to be elected President a candidate requires an absolute majority of the votes of the Senators present. If no candidate has the required majority, the candidate having the smallest number of votes is withdrawn and a fresh ballot is taken. This process is repeated until one candidate has gained an absolute majority.
- There have been more than two candidates on two occasions, on 9 May 1901 and 17 February 1987. On the latter occasion there were three candidates and two ballots were required to elect Senator Kerry Sibraa.
- In the event of there being an equality of votes, a new ballot is held. If there is another tie, the Clerk determines the outcome by lot. This has only happened once, on 1 July 1941.<sup>54</sup>
- No subsequent examination of any ballot papers of a secret ballot of the Senate is permitted (ruling of President O'Byrne, Senate Debates, 11 July 1974, pp 81-3, 101).<sup>55</sup>

## **10. METHODS OF SELECTING THE PRESIDING OFFICER OF UPPER HOUSES IN OTHER SELECTED JURISDICTIONS**

Further comparative analysis may not be so relevant in this context as it was in relation to the Speakership. This is because the upper Houses of the relevant jurisdictions tend to differ quite markedly from one another. The British House of Lords is an obvious example, both in terms of its membership and functions. The office of the Lord Chancellor is also quite distinctive. The Lord Chancellor is appointed by the Prime Minister.

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<sup>54</sup> The background to this event is explained in GS Reid and M Forrest, *op cit*, p 42.

<sup>55</sup> JR Odgers, 7th ed, *op cit*, p 142.

The Canadian Senate was modelled on the British House of Lords but in an adapted form. Originally Senators were appointed for life, but now the retiring age is 75. Membership of the Canadian Senate is calculated on a regional basis though not on the basis of equality of membership between the Provinces. The Speaker of the Senate is appointed by the Governor-General. He or she may leave the Chair to participate in debates and may vote on an issue.

Comparison is easier and more meaningful within Australia. The Australian Senate has been considered. The relevant arrangements in the other States are as follows:

- **Western Australia:** Section 49 of the *Constitution Act 1889* requires the Members of the Legislative Council to elect a President after each general election. The method of election is set out in Standing Orders 19-26. In the event of a contested election a ballot ensues. Where there are two candidates, the one with the largest number of votes is to be President. Where there are more than two candidates, balloting proceeds until one candidate has an absolute majority of the votes, with the candidate with the least number of votes being excluded from any subsequent ballot at each stage. An equality of votes is decided by a further ballot and, subsequently, by lot. The votes are counted by the Clerk and Deputy Clerk with a Member appointed by the House acting as scrutineer.
- **South Australia:** The arrangements in South Australia are substantially the same as those in Western Australia. The election of the President at the first meeting of the Legislative Council is mandated by section 23 (1) of the *Constitution Act 1934*. The method of election is dealt with under Standing Orders 16-21. Standing Order 21 provides, "Prior to the President assuming the Chair the Clerk shall act as Chairman of the Council".
- **Victoria:** The constitutional position in Victoria is slightly different. Section 31 (1) of the *Constitution Act 1975* provides, "The Council, *if there is no President*, shall before proceeding to the dispatch of any other business elect a member of the Council to be the President" (emphasis added). Arguably, the words "if there is no President" contemplate a continuity of the Presidency. Certainly, section 31 (1) contrasts with the corresponding provision relating to the election of the Speaker which states in clear terms that a Speaker must be elected after a general election. The Legislative Council is mandated to elect a new President under section 31 (2) "In the case of death, resignation or removal by a vote of the Council...". Legally, therefore, the position seems to be comparable to that in force in NSW before 1991.

The practice in Victoria seems to be that a President of the Legislative Council remains in office until his or her term as a Member has ended. This means that, as Members of the upper House are elected for the equivalent of two terms of the lower House, it is possible for a President to remain in office for a period straddling the life of two Parliaments. Thus, a President is not elected after every general election, or after every periodic election for the Legislative Council. Instead, the practice is for the President to be elected or re-elected after every other periodic election for the Legislative Council.

Importantly, in the event of a contested election, the matter is decided by division - "like other questions", according to Standing Order 30.

- *Tasmania:* Here the constitutional position is different again. The nineteen member Legislative Council is not dissolved. Instead, a rotational election system operates in which three positions are re-elected each year and four positions in every sixth year. The office of President is subject to this rotational scheme. What seems to occur is that the President serves for his or her term. If subsequently re-elected to the Legislative Council, he or she is then eligible to be re-elected to the Presidency, depending on the political complexion of the House. Standing Order 17 provides: "The President shall continue in office until death, resignation, periodical retirement or removal by the vote of an absolute majority of the Council; provided that on periodical retirement he shall continue to hold office until the next sitting of the Council, unless he is not re-elected".

In the event of a contested election, the matter is decided by ballot. Deadlocks are broken by a further ballot, in the first instance, and then by the choice of the longest continuous serving member. If two Members have served for the same period, the matter is decided by lot. This method is used both for the elimination of a candidate and, where necessary, to decide the final outcome of the election. The Standing Orders deal specifically with the valid completion of the ballot paper, which is to be folded and placed "in some receptacle placed on the Table for that purpose" (Standing Order 14(1)).

## 11. CONCLUSION

The reforms discussed in this paper to the Speakership of the Legislative Assembly and the Presidency of the Legislative Council are of considerable symbolic and practical significance. In general terms, they can be viewed in the context of the recent trend, in Australia and beyond, to reform Parliament and, in particular, to redress the perceived imbalance between the legislative and executive arms of the state. At issue here is the exercise of Parliament's functions of deliberation and review in the constitutional scheme of things;

stated in plainer language, that Parliament is not to be reduced to a "rubber stamp", a mere instrument of the Executive Government. Another aspect to the debate is that public confidence in the political process depends not only on the proper exercise of Parliament's constitutional functions, which is a matter of substantive concern, but also on the way in which the business of Parliament is conducted. In both respects, the issue of the independence and impartiality of the Presiding Officers is of crucial importance. Under the *Constitution (Amendment) Act 1992* the importance of that issue is accorded formal statutory recognition. The other changes discussed in this paper are intended to contribute to the detail of reform, specifically the requirement for regular elections for the Presidency of the Legislative Council under the rules which apply to the election of the President of the Australian Senate, and the requirement to hold an election by secret ballot for the Speakership of the Legislative Assembly.