

## Chapter 4 Proceedings on the Meeting of Parliament

### 4.1 Meeting of a new Parliament

Following a general election, the Governor, on the advice of the Premier issues a proclamation setting out the time and place for the meeting of the new Parliament.<sup>1</sup> In answer to the Governor's proclamation, the newly elected lower House members assemble in the Legislative Assembly Chamber at the time specified. Under s. 30 of the *Constitution Act 1902*, the Assembly is able to meet and transact business despite the fact that five or fewer writs for the election of members have not been returned to the Governor.

Under the standing orders and practices of the House the following events then take place:

- The Clerk reads the Governor's proclamation, announces the receipt of the writs and tables the writs and the list of members elected (S.O. 2(1)).
- The Assembly then waits for the message from the Commissioners appointed by the Governor for the opening of Parliament (S.O. 2(2)).
- The Clerk of the Legislative Council informs members of the Council that the Governor has caused a commission to be issued under the Public Seal of the State appointing commissioners for the opening and holding of Parliament. The Usher of the Black Rod is then directed to let the Assembly know to attend in the Council Chamber.
- The Usher of the Black Rod proceeds to the Legislative Assembly Chamber,<sup>2</sup> and strikes the door of the Chamber three times with the Rod and the Serjeant-at-Arms announces "Black Rod". On indication from the Clerk, the Serjeant-at-Arms calls out "Enter Black Rod", the door is unlocked, the Usher enters and advances to the centre of the Assembly Chamber, bows to both sides of the House and delivers the following message—

"The Commissioners request the immediate attendance of this Honourable House in the Legislative Council Chamber, to hear the commission for the opening of Parliament read."

- Members of the Assembly then proceed to the Legislative Council Chamber (S.O. 2(3)), preceded by the Usher of the Black Rod, Serjeant-at-Arms<sup>3</sup> and the Clerks-at-the-Table. On their arrival in the Council Chamber they take seats specially provided for them. They are informed by one of the Commissioners that the Governor has appointed Commissioners to do all things necessary to enable Parliament to proceed to the despatch of business. The Clerk of the Legislative Council then reads the Commission

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<sup>1</sup> The Governor may issue a new proclamation calling a new Parliament together on an alternate date to that which has already been proclaimed by the Governor. See for example, VP 20/12/1926, p. 2 where the Parliament was called together on the day prior to date to which previously proclaimed; and VP 24/09/1940, p. 1 where Parliament was called together on a day subsequent to the day previously announced by proclamation as the day of meeting.

<sup>2</sup> As the Usher approaches the door of the Assembly the ancient ceremony is repeated of the doors being slammed and bolted in their face. Traditionally, the Black Rod is the Royal Messenger. This practice, it is claimed, dates from the stormy period of English constitutional history when Charles I once came with a body of armed men and, to murmurs of "privilege!", walked up the gangway to ask for the surrender of six members. Some historians claim that this colourful story is but a myth. Wherever the truth lies the practice demonstrates the right of the Assembly to close its doors and deliberations against all comers, if it so wishes. See Wilding, Norman and Laundy, Philip, *Encyclopaedia of Parliament*, Revised Edition, 1961, p. 229.

<sup>3</sup> The Serjeant-at-Arms is also a Clerk at the Table and the Deputy Serjeant performs a number of the Serjeant's roles.

appointing the commissioners.

- After the Commission has been read one of the Commissioners informs members that "... it is His/Her Excellency's pleasure that you, members of the Legislative Assembly, return to your Chamber, and there, after members have taken the pledge of loyalty, proceed to the election of one of your number to be your Speaker".
- On returning to the Legislative Assembly Chamber the Clerk reads a commission empowering certain members, usually the Premier, the Deputy Premier and the next senior Minister, to administer the pledge of loyalty to other members.
- The Premier, after having taken the pledge of loyalty administers the same to the other two commissioners. The commissioners, having signed the roll, administer the pledge of loyalty to all other members present. The Clerk lays copies of the writs on the Table and members sign the roll as they are called to the Table.<sup>4</sup>
- When members have all taken the pledge of loyalty, the House proceeds to the election of Speaker by secret ballot.<sup>5</sup> When one of the members present has been elected, the Premier informs the House when the Governor will receive the Speaker (S.O. 11).

The Assembly proceeds to Government House. On being received by the Governor, the Speaker announces that the Assembly in the exercise of their undoubted rights, had proceeded to the election of a Speaker; that their choice had fallen upon them, and they now presented as its Speaker. After being congratulated by the Governor, the Speaker, in the name of and on behalf of the House, lays claim to all members' undoubted rights and privileges, particularly freedom of speech in debate and free access to the Governor when occasion should require (S.O. 11(5)).<sup>6</sup> The first record of a speech by the Speaker of the House of Commons asserting the right of free speech and declaring the loyalty of the House to the throne was by Sir James Pickering in 1378.<sup>7</sup>

When the House returns, the Speaker reports the attendance upon the Governor. This announcement by the Speaker is usually followed by some business of a formal nature. Standing order 3(5) states that at the commencement of a new session the House shall "*in assertion of its rights transact some business of a formal nature without notice*". In accordance with tradition a bill is presented to the House pro forma.<sup>8</sup> Since 1901 the Law of Evidence Bill has been the bill used for this procedure. The bill is introduced but is not listed on the business paper and does not progress through any subsequent stage.<sup>9</sup> However, there is no requirement for the business that is transacted to be a bill.

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<sup>4</sup> Members sign the roll with their full name (no initials). The Member's address is transcribed from the writs. For further information on the pledge of loyalty taken by members see section 6.1 of Part One.

<sup>5</sup> See section 5.1.1 of Part One for further information on the election of the Speaker.

<sup>6</sup> See for example VP 29/04/2003, pp. 37-8.

<sup>7</sup> Laundry, Philip, *The Office of Speaker in the Parliaments of the Commonwealth*, 1984, p. 13.

<sup>8</sup> The practice of presenting a bill in the House of Commons without immediately addressing the Sovereign's causes for the calling of Parliament has been traced as far back as 1558 and became established by resolution of the House in 1604. (Extract from *Balancing tradition and progress, Procedures for the opening of a new Parliament*, House of Representatives Standing Committee on Procedure, August 2001, p. 16). Even though the Governor does not usually give a speech on the opening of a new Parliament as to the reasons why the Parliament has been summoned, the tradition of the House asserting its right is maintained.

<sup>9</sup> The practice varies across other jurisdictions with a number of Houses introducing a bill under this procedure that is later enacted including the Victorian Legislative Assembly and the Western Australian Legislative Assembly.

This formal business is usually followed by announcements made by the Premier of the new Ministry; by party leaders of their election as leaders and the election of their deputies. In addition, the Deputy Speaker and Assistant Speaker are elected<sup>10</sup> and messages from the Governor informing assents to bills received since the last meeting of Parliament are reported. In recent years sessional orders such as the Citizens' Right of Reply and the Code of Conduct for Members have also been adopted at the first sitting.

#### **4.2 Meeting for new session**

The duration of a Parliament is broken up into periods called "sessions".<sup>11</sup> A session begins when the Governor issues a proclamation summoning the Houses and ends when the Governor issues a proclamation proroguing both Houses of Parliament.

At the opening of a session of Parliament both Houses meet at the time specified in the proclamation summoning Parliament. The Speaker takes the Chair and the proclamation is read by the Clerk. The Usher of the Black Rod then delivers a message from the Governor (or if the Governor is not present, the Commissioners) requesting that the House go to the Legislative Council Chamber. In the Legislative Council Chamber the Governor reads their speech and afterwards hands it to the President and a copy to the Speaker.

The Governor's speech is couched in general terms and usually summarises the Government's achievements and outlines proposed legislation for the forthcoming session. This speech is prepared following advice from The Cabinet Office.<sup>12</sup>

If the Governor is not present to give the speech, the Clerk reads the commission for the opening of the session and the Commissioner reads a message from the Governor, which entreats them to give due consideration to the matters submitted to them.<sup>13</sup>

After delivering the speech the Governor departs, and the Assembly returns to its own chamber.

Before the Governor's speech is reported, a pro forma bill (i.e. the Law of Evidence Bill) is introduced in order for the House to assert its right to meet and legislate without a summons from the Governor. No business should intervene between the introduction of the bill and the report of the Governor's speech.

The Speaker lays upon the Table of the House the copy of the speech made by the Governor. An Address in Reply to the speech may be immediately moved.

#### **4.3 Address in Reply debate**

The Address in Reply is a motion (moved and seconded by members supporting the Government) addressed to the Governor in response to the Governor's speech on the opening of the session (standing orders 4 to 7). As the speech outlines the

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<sup>10</sup> See section 5.2.2 of Part One.

<sup>11</sup> See section 9.6 of Part One.

<sup>12</sup> If the Governor is absent from the State and the administration of the State has been assumed by the Lieutenant Governor, a speech can be delivered by the Lieutenant Governor instead. See for example, PD 22/05/2006, p. 1.

<sup>13</sup> See PD 16/04/1996, p. 1.

Government's proposed legislative program for the session, debate on the Address in Reply motion is necessarily wide-ranging.<sup>14</sup>

The motion for the Address in Reply is passed in the following form:

*That the following Address in Reply to the Speech which His [or Her] Excellency the Governor has addressed to both Houses of Parliament on opening this session of the Parliament of New South Wales be now adopted by this House:*

*To [His or Her] Excellency the [Name of Governor], Governor of the State of New South Wales in the Commonwealth of Australia.*

*MAY IT PLEASE YOUR EXCELLENCY-*

*We, the Members of the Legislative Assembly of the State of New South Wales, in Parliament assembled, desire to express our thanks for Your Excellency's speech, and to express our loyalty to Australia and the people of New South Wales.*

*We assure Your Excellency that our earnest consideration will be given to the measures to be submitted to us, that we will faithfully carry out the important duties entrusted to us by the people of New South Wales.*

*We join Your Excellency in the hope that our labours may be so directed as to advance the best interests of all sections of the community.*<sup>15</sup>

The motion is open to amendment and such amendments usually address themselves to the omission of items from the legislative program<sup>16</sup> or the omission in the Governor's speech of some proposed legislative action.<sup>17</sup> Any division called is usually on the amendment as it would be discourteous to the Governor to oppose the Address itself.

The debate on the Address in Reply has precedence of general business but can be interrupted by government business in accordance with standing order 5.<sup>18</sup> Prior to the adoption of the new standing orders in 2006 the Address in Reply had precedence of all business unless standing orders were suspended to allow for other business to be conducted or a sessional order was adopted.<sup>19</sup>

Prior to the enactment of section 24B of the *Constitution Act 1902* in 1995, which provides that the Governor may dissolve the Legislative Assembly if a motion of no

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<sup>14</sup> The adoption of an Address in Reply in the New South Wales Parliament first occurred in 1843, when an Address was presented to Governor Sir George Gipps by the partly elective and partly nominee Parliament which met that year. See Short Address delivered to Members of the Royal Australian Historical Society by W.K. Charlton, Clerk of the Parliaments, 22 July 1944, p. 5.

<sup>15</sup> VP 24/05/2006, p. 51 and VP 23/11/2006, p. 412.

<sup>16</sup> See for example, VP 20/08/1952, p. 26; VP 02/09/1953, p. 38; VP 13/09/1955, p. 34; and 06/09/1962, p. 25.

<sup>17</sup> See for example, VP 19/08/1969, p. 39.

<sup>18</sup> Government Business includes all procedures except general business motions and private members' bills such as the adoption of sessional orders, dissent from rulings of the Chair and disallowance of statutory rules. Under the previous standing orders, when the Address in Reply had precedence of all business, a standing order specifically allowed a number of items of business to be conducted during the currency of the Address in Reply debate.

<sup>19</sup> For example, during the 52nd Parliament a sessional order was adopted that provided: "That, during the current session, unless otherwise ordered, government business may be conducted during the currency of the Address in Reply debate." VP 26/2/2002, p. 12.

confidence in the Government is passed by the House, amendments moved to the Address in Reply invariably were attempts to inform the Governor that the Government did not possess the confidence of the House. This is no longer the case given the legislative provisions that have been enacted and the adoption of standing orders<sup>20</sup> relating to such procedures in the House (S.O. 111). On occasions when amendments are moved to the Address in Reply the Government has often moved the closure (i.e. "That the question be now put") and the amendment has been negated.<sup>21</sup> In other cases, the Government has moved that the member be not further heard<sup>22</sup> or has moved to adjourn the debate to prevent the consideration of amendments.<sup>23</sup> In one case an amendment that the Government does not possess the confidence of the House was ruled out of order by the Speaker on the basis of relevance – it raised matters that were not mentioned in the Governor's speech.<sup>24</sup>

Standing and sessional orders were suspended on one occasion to enable the House to debate a motion to take note of the Address in Reply on a particular day and to enable those members who had not spoken to the Address in Reply to speak to the motion, which had already been agreed to, for a period not exceeding 20 minutes each.<sup>25</sup> Standing and sessional orders have also been suspended to permit a concurrent debate on the Appropriation Bill and cognate bills and the motion to take note of the Address in Reply.<sup>26</sup>

After the debate is concluded and the Address is adopted by the House, the Speaker informs the House that the Address in Reply is to be presented to the Governor at Government House by all members of the Assembly. The procedure relating to the presentation of the Address in Reply to the Governor is as follows:

The Speaker, accompanied by the Serjeant-at-Arms, heads the procession to Government House. On arrival at Government House the Speaker is met by an Aide-de-camp and the Official Secretary and is escorted to meet the Governor:

- (1) The Speaker takes up a position in front of the step to the alcove in front of and facing the position the Governor will take up.
- (2) The mover and seconder of the Address in Reply stand side by side on the left of the Speaker with the Chamber Officers standing in a line behind the Speaker, the Clerk on the right, while the Serjeant-at-Arms stands to the left of the seconder of the Address.
- (3) The members, headed by the Premier and the Ministers, stand along the wall opposite and facing the alcove.

At the appointed time –

- (1) The Official Secretary announces the Governor, who enters and takes up their position opposite and facing the Speaker.

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<sup>20</sup> The standing orders were first adopted in 1994 and are included in the current standing orders adopted in 2006.

<sup>21</sup> VP 10/11/1927, p. 30; VP 01/10/1940, p. 23; and VP 16/09/1980, p. 74.

<sup>22</sup> VP 22/09/1921, p. 41.

<sup>23</sup> VP 31/08/1921, pp. 16-17; VP 04/07/1922, p. 8; VP 08/08/1923, p. 15; and VP 19/09/1928, p. 26.

<sup>24</sup> VP 18/08/1983, p. 29.

<sup>25</sup> VP 6/6/2002, p. 275.

<sup>26</sup> VP 7/6/2002, p. 281.

- (2) The Speaker then reads the Address in Reply, bows and hands the Address to the Governor. The Governor then reads their response which is then handed to the Speaker.
- (3) The Speaker asks permission to present the mover and seconder of the Address. Following their presentation the Speaker moves to the Governor's right hand.
- (4) The Speaker, with the Serjeant-at-Arms on their right hand side, presents the Premier, who is then invited by the Governor to stand to their left, then Ministers, and after that all members present.<sup>27</sup>
- (5) The Chamber Officers are then presented to the Governor by the Speaker.
- (6) The Serjeant-at-Arms takes charge of the Governor's answer to the Address in Reply and later hands it to the Clerk.
- (7) At the time previously arranged between Government House and the Clerk, the Speaker takes leave of the Governor, and followed by Chamber Officers and members returns to Parliament House.
- (8) At a convenient time and by direction of the Speaker, the House re-assembles at the ringing of one long bell.

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<sup>27</sup> The Serjeant-at-Arms assist the Speaker if necessary with the names of members and their electorates.