

Chapter 6 Members' Pledge of Loyalty, Roll, Leave of Absence

6.1 Members' Pledge of Loyalty

The procedure for members to make the pledge of loyalty at the commencement of a Parliament is outlined in Chapter 4 of Part One.

New members are advised to make an appointment with the Clerk to discuss the legal and procedural requirements of their taking a seat in the House.

Early in the days of a new Parliament separate commissions are issued by the Governor to the Speaker, Deputy Speaker and the Assistant Speaker, enabling them to administer the pledge of loyalty to any members who may be elected during that Parliament.¹ A member cannot sit or vote until he or she has taken the pledge of loyalty in accordance with section 12 of the *Constitution Act 1902*.²

After a by-election, the procedure on the day the member takes the pledge of loyalty (usually the first day the House sits after the return of the writ) is that:

- (1) The Speaker informs the House that the writ for election of a member for the electoral district has been returned and names the member elected.
- (2) The Clerk announces the member's name and the member is conducted into the Chamber (through the northern side door) escorted by members (usually the party leader and one other) to the foot of the Table where they nod obeisance to the Speaker prior to walking up to the Speaker's Chair. The Speaker hands the member the form of the pledge of loyalty.
- (3) The member must take a pledge of loyalty prior to signing the form, which is then witnessed by the Speaker.
- (4) The member then signs the Roll with their full name (no initials). The member's address is transcribed from the writs.
- (5) The member is escorted back to their "allocated" place on the respective side of the House.³

On occasion this procedure has been slightly altered. For example, on 11 October 2005 three members, who had been elected at recent by-elections, were escorted into the Chamber as a group by the Premier and the Government Whip. This departed from the usual practice where the Clerk introduces new members to the House and they are escorted and introduced individually.⁴

Standing order 23(2) states that a member returned at other than a general election may be escorted into the Chamber by other members (i.e. introduced to the House).⁵ It is not mandatory for a newly elected member to be escorted into the Chamber by another member.

¹ See for example, PD 01/03/1994, p. 8; VP 01/06/1999, pp. 104-5; VP 17/06/2003, pp. 165-7.

² Prior to an amendment to the *Constitution Act 1902* in 2006 members were required to swear allegiance to the Queen and her heirs and successors either by oath or affirmation.

³ See for example, VP 12/03/2002, p. 57.

⁴ PD 11/10/2005, p. 18310.

⁵ On one occasion, a member who had been elected following the death of a candidate on the day of the general election was introduced to the House in the same way as a member returned at a by-election as the writ for the election was issued after the general election, VP 17/06/2003, p. 167.

Originally such an introduction was mandatory and this created a difficult situation in 1943 when Mr J. T. Lang, a former Premier of the State, was elected at a by-election as an independent member for the electorate of Auburn and no member was prepared to introduce him.⁶ The situation was overcome by Mr Lang introducing himself as the newly elected member for Auburn and the Speaker made a statement explaining that as the newly elected member was well known to members and the Speaker, he would allow Mr Lang to be sworn without first having been formally introduced.⁷

The pledge of loyalty taken before the Speaker by a member is as follows:

- Under God, I pledge my loyalty to Australia and to the people of New South Wales.

A member may omit the words "Under God" when taking the pledge of loyalty.

6.2 Leave of absence

Every member is bound to attend the service of the House⁸ unless leave of absence is granted, on motion without notice, usually moved by the member's party whip.⁹ Leave may be granted for any sufficient cause, but such leave cannot exceed the remainder of the session. A member is excused from attendance so long as the member has leave, but forfeits it upon attending the House (S.O. 27-29).¹⁰ Leave has been granted to a member who was yet to take a seat.¹¹

A member's seat becomes vacant if they remain absent for one whole session without leave being granted.¹² Members unable to attend Parliament on any particular sitting day inform their party whip or in the case of an Independent member, the Speaker, who may make a statement to the House informing it of the member's absence¹³ or the member may explain any absence to the House themselves.¹⁴

6.3 Resignation

Section 33 of the *Constitution Act 1902* provides that "Any Member of the Legislative Assembly may, by writing under his hand, addressed to the Speaker, resign his seat therein, and upon receipt of such resignation by the Speaker, the seat of such Member shall become vacant."

⁶ Mr Lang was Premier in 1932, when the Governor had cause to inform him that his commission as Premier had been withdrawn and in the ensuing years Mr Lang remained a controversial political figure.

⁷ VP 05/10/1943, p. 20.

⁸ The duty of a member to attend the sittings of the House includes also the obligation to serve on committees of the House to which the member may be appointed.

⁹ VP 23/06/2004, p. 898.

¹⁰ VP 23/12/1913, p. 14; VP 25/05/1976, p. 9.

¹¹ See VP 02/05/1995, p. 29, where a leave of absence was granted to the Member for East Hills on the first day of the 51st Parliament on account of being absent from the State. The member was subsequently sworn in the following day VP 23/05/1995, p. 34.

¹² Constitution Act, s. 13A.

¹³ The Leader of the House may also propose a motion to grant a member leave of absence PD 30/03/2004, p. 7687.

¹⁴ PD 04/09/2003, p. 3189.

On receipt of a resignation, the Speaker informs the House. It is usual for the House to declare the seat vacant when a member has resigned.¹⁵ After the House has declared the seat vacant the Speaker then issues a writ for a by-election.¹⁶ If the House is not in session or adjourned for more than seven days, the Speaker issues the writ without a declaration by the House (s. 70 *Parliamentary Electorates and Elections Act 1912*).¹⁷

Members cannot send a letter of resignation to the Speaker which requests that the resignation take effect from a later date. The House has affirmed that the resignation takes place from the time of receipt of the letter by the Speaker. On 27 October 1998, the Speaker informed the House that he had received a resignation from a member the previous day and the House declared the seat vacant. Concerns arose as to whether this declaration was valid as the member had requested that his resignation take effect from 31 October 1998 rather than the date of receipt. The Speaker received advice from the Crown Solicitor that, under section 33 of the *Constitution Act 1902* “the scheme for resignation of a seat is for such resignation to take effect immediately upon its receipt by the Speaker to whom it must be addressed and it is not possible for a Member to exclude the operation of section 33 by nominating some other time at which resignation is to take effect.” The Crown Solicitor also noted that section 33 did not confer a discretion on the Speaker to take into account a request for a resignation to take effect at some future time. Despite this, the Crown Solicitor was of the view that the letter did not constitute a resignation within the meaning of section 33 as it did not constitute an unequivocal statement of intention to resign the seat on the receipt of the resignation. As such the Crown Solicitor advised that the seat did not become vacant on the letter’s receipt by the Speaker. The House, whilst recognising the advice of the Crown Solicitor, did not agree that the intention to resign was unclear and on 29 October 1998 reaffirmed its resolution declaring the seat vacant from the date of the receipt of the resignation letter.¹⁸

Any member of the Legislative Assembly wishing to stand as a candidate for a federal election must resign from the Legislative Assembly before the “hour of nomination” as a candidate for that election.¹⁹ Whilst any such resignation is irrevocable, the by-election for the casual vacancy created by any such resignation may be delayed to allow the former member to contest the by-election if unsuccessful at the Federal poll.

¹⁵ This process is particularly important in those cases where a member has not resigned but the seat has become vacant for some other reason such as a member has died in office or the election of a member has been declared void by the Court of Disputed Returns.

¹⁶ If the Speaker is absent, the Deputy Speaker, as Acting Speaker, can assume his duties in relation to the resignation of a member and the issue of a writ for filling the vacancy in accordance with section 31A of the *Constitution Act 1902*.

¹⁷ There have been occasions when a seat has become vacant, either through resignation or the death of a member, and no writ has been issued even though the House has declared the seat vacant. For example, in 1913 Speaker Morton advised the House that he considered it unnecessary to issue a writ for the election of a member for the electoral district of Lachlan following the death of the member as the Parliament would be in recess when the writ would be returned and would not sit again during the session due to the expiration of the Parliament. VP 10/09/1913, p. 87. See also PD 06/03/1947, pp. 1184-5 where Speaker Clyne advised the House that a writ for the vacant seat of Redfern would not be issued as the dissolution of the House for a general election was imminent and there would be no opportunity for any new member elected to be sworn in before the end of the session. More recent advice from the Solicitor General indicates that if the House declares a seat vacant the Speaker must issue a writ for a by-election in accordance with the provisions of s. 70 of the *Parliamentary Electorates and Elections Act 1912*. Advice received from the Solicitor General re: Phillip Smiles MP: Constitution Act s.13A, dated 25 June 1993.

¹⁸ VP 27/10/1998, p. 987; VP 29/10/1998, pp. 1017 and 1018. See also PD 29/10/1998, pp. 9373-5 and 9398.

¹⁹ See section 164 of the *Commonwealth Electoral Act 1918*.

To delay the issue of the writ for the by-election created by a member's resignation, the member must tender their resignation to the Speaker with notification of their intention to contest a federal election and to contest the by-election for their former seat if unsuccessful at the federal poll. The member must do so "prior to the date of the issue of the writ" for the federal election.²⁰ This means that the member must resign the day before the issue of the writ. The writ for a federal election must be issued within 10 days of the dissolution of the House of Representatives and may be issued almost immediately. Consequently, there may be little or no time after the announcement of an election during which a member may take advantage of the provisions of the *Parliamentary Electorates and Elections Act 1912*.

A member's salary ceases from the day of resignation and, if re-elected to the Legislative Assembly, recommences from the day of election.²¹

6.4 Places of members

Members do not have reserved seats, however the front bench on the right hand of the Chair is reserved for Ministers during Question Time (S.O. 26). Likewise the front bench on the left is reserved for Opposition Shadow Ministers.²² The whips are seated on opposite sides in the first place nearest the Speaker on the second row. Independent members have sat on the back rows of the Opposition side and, during periods when there are large Government majorities, two back rows on the Opposition side have been deemed to be "Government" for the purposes of divisions.

²⁰ See section 79(8) *Parliamentary Electorates and Elections Act 1912*.

²¹ See section 16 of the *Parliamentary Remuneration Act 1989*.

²² PD 15/10/1997, p. 849.