

Chapter 5 Speaker, other Office Holders and Officers

5.1 The Speaker

The office of Speaker is an essential element in the parliamentary system. The "Speaker" of the House of Commons was originally so called because his function was to speak for the Commons in all the proceedings of the Parliament in which they were allowed or required to take part and to communicate the resolutions of the Commons to the Monarch.¹ In New South Wales, the position of Speaker was first appointed under the Act of 1842 (Imperial Act – 5 & 6 Vic. C. 76) for the Government of New South Wales and Van Diemen's Land.²

Today, the Speaker presides over the sittings of the House and as the Presiding Officer of the Legislative Assembly the position holder must act with both authority and impartiality. The Speaker's authority is respected and rulings and decisions are rarely challenged. The Speaker maintains order in the House, calls members to speak, proposes questions for debate and puts the question for decision at the conclusion of debate. The Speaker also conducts divisions and rules on points of order. When presiding in the Chair the Speaker cannot vote in divisions. However, in the event of votes being equal, the Speaker exercises a casting vote and any reasons given may be entered in the *Votes and Proceedings*. The Speaker can speak in debates and vote in divisions when not presiding in the Chair.³ In all, the function of the Speaker is to regulate debate and enforce the observance of the rules which govern the conduct of the House.

The Speaker's decisions are subject to the will of the House exercisable through a motion of dissent (S.O. 95). As such, any inference that the Chair has acted inadequately or improperly, however indirect or ambiguous, is disorderly. For example, any presumption that the members on the Opposition side of the House are being treated less fairly than members supporting the Government is a reflection on the Chair because it implies that fair treatment will not automatically be forthcoming.⁴ Furthermore, any accusation that a member (or Minister) has defied a request from the Speaker is improper because it implies that the Speaker lacks control.⁵

The office of the Speaker is recognised in s. 31 of the *Constitution Act 1902* where the office is described as the Legislative Assembly's "independent and impartial representative". This independence is reflected by the fact that the Speaker is not bound by any order of the Cabinet or Executive Council unless it is made in pursuance of an Act.⁶

¹ Laundry, Philip, *The Office of the Speaker in the Parliaments of the Commonwealth*, 1984, p. 11.

² Extract from an address delivered to members of the Royal Australian Historical Society by H. Robbins, Clerk of the Legislative Assembly, 23 June 1951, p. 13.

³ In June 2007 an amendment was made to the *Constitution Act 1902* to provide for the Speaker to participate in debate and vote in divisions when not presiding in the Chair. Prior to this amendment the Speaker could not participate in debates in the House and could only exercise a casting vote. Prior to the adoption of the current standing orders in November 2006 the Speaker was able to participate in debate during committee of the whole when the Chairman of Committees was presiding.

⁴ See ruling of Speaker Ellis, PD 16/09/1970, p. 5934.

⁵ See ruling of Speaker Ellis, PD 22/11/1972, p. 2971.

⁶ This advice was first provided in a legal opinion obtained by the Legislative Assembly regarding the Office of the Speaker and a Parliamentary Privileges Bill, dated 1912, but remains current in relation to this aspect.

Speakers have in the past and present been criticised for being subject to the will of the political party to which they belong. However, the principle of the Speakership is well summed up in the statement by Speaker Maher in 1959:

...nothing that happens elsewhere is likely to affect my impartiality in the control of this House. I have a job to do and it would be most improper if, in my control of the House, I have to be subject to party discipline and in that way be more sympathetic to members on one side of the Chamber than the other.

As far as my political loyalty and principles are concerned, I am subject fully to the control of the party to which I belong; as far as my administration of this House is concerned, and my control of the proceedings of this House, I am subject only to this honourable House, whose servant I am.⁷

5.1.1 Election of the Speaker

The first act of a newly elected Legislative Assembly after new members have all given the pledge of loyalty is the election of a Speaker (S.O. 2(7)).⁸ Section 31B of the Constitution Act outlines the mechanism of election. It provides:

(1) The election of the Speaker shall be conducted by secret ballot. A ballot is not required if only one candidate is validly nominated, and that candidate shall be declared elected.⁹

(2) Nominations shall 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. A nomination is not validly made unless the person nominated accepts nomination, by endorsement on the instrument of nomination.

(3) Nominations shall not be closed until a reasonable opportunity has been given for the Members of the Legislative Assembly desiring to do so to make nominations. Further nominations may not be made between ballots.¹⁰

(4) The candidates with the smallest number of votes shall be successively withdrawn one by one, and a fresh ballot shall take place after each withdrawal, until one candidate receives the votes of at least two-thirds of the number of Members of the Legislative Assembly for the time being or (if there are only two candidates validly nominated or there are only two candidates left) a majority of the number of Members voting at that ballot. That candidate shall be declared elected.

(5) If there is an equality of votes among the candidates with the smallest number of votes, the ballot shall be taken again, and if again there is such an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates with

⁷ PD 26/11/1959, p. 2370.

⁸ For recent examples see VP 02/05/1995, pp. 7-8; VP 11/05/1999, p. 6; VP 29/04/2003, p. 6.

⁹ VP 29/04/2003, p. 6; VP 08/05/2007, p. 6.

¹⁰ It has been the practice in the Commons since the early 18th Century that proposals for Speakership are not made from the front benches. There is, however, no convention in the House of Representatives nor the Legislative Assembly of New South Wales that proposals should not be made from the front bench. (Extract from *Balancing Tradition and Progress, Procedures for the opening of a new Parliament*, House of Representatives Standing Committee on Procedure, August 2001, p. 12).

the same number of votes shall be withdrawn, as if that candidate had received the smallest number of votes.

(6) If there are only two candidates validly nominated or there are only two candidates left, and if there is an equality of votes among the two candidates, the ballot shall be taken again, and if again there is an equality of votes, the Clerk of the Legislative Assembly or other person presiding at the election shall determine, by lot, which of the candidates is taken to have received the smaller number of votes. The other candidate shall be declared elected.

(7) The Standing Rules and Orders of the Legislative Assembly may make provision, not inconsistent with this section, for or with respect to the manner of election of the Speaker and associated matters.

(8) In the absence of relevant standing rules and orders at the time of such an election, the election is to be conducted (subject to this section and to any necessary adaptations) in accordance with the provisions of the standing orders of the Senate of the Parliament of the Commonwealth that relate to the election of the President of the Senate.

These provisions are complimented by the provisions of standing order 10(2)¹¹ which provides:

(a) At least one week before the scheduled sitting all Members are notified by the Clerk that nominations will be called for the office of Speaker at the prescribed time, i.e., immediately after Members have taken the pledge of loyalty. A sample copy of the nomination form will be attached to the notification.

(b) At the prescribed time on the first day of sitting the Clerk will:

- (i) call for nominations to be delivered to the Clerk at the Table in a sealed envelope by the person nominated or by any other Member;
- (ii) ask the House if it is satisfied that reasonable opportunity has been given for the receipt of nominations;
- (iii) declare nominations to be closed;
- (iv) if there is one valid nomination, declare that Member to be elected;
- (v) if there is more than one valid nomination, announce the fact that a ballot will be required;
- (vi) have ballot papers prepared and initialled;
- (vii) order that the bells be rung as prescribed for the taking of a ballot;¹²
- (viii) call each Member by order of electorate, with Members proceeding to the Table to collect a ballot paper. The names of Members issued with ballot papers will be crossed off a list.

(c) Having received a ballot paper Members will:

- (i) proceed to the voting booths located at the western end of the Chamber

¹¹ This standing order was adopted in 2006 but prior to this the Clerk, as Returning Officer, published guidelines for the election of Speaker to fill in the gaps in the statutory provisions.

¹² S.O. 351 provides that "Before the House proceeds to any ballot, the bells shall be rung as in a division. No other business shall be conducted during the balloting period."

- to cast their vote in secret; and
- (ii) place their ballot paper in the locked ballot box on the Table and return to their seat.

(d) When all Members present have been called, received a ballot paper, voted and placed a ballot paper in the ballot box, the Clerk will ask if any Member has not voted and desires to do so. The Clerk will then ask the House if there is any objection to declaring the ballot closed.

(e) The locked ballot box will then be brought to the Table by the Serjeant-at-Arms and unlocked by the Clerk. The votes will be counted by the Clerk and checked by the Deputy Clerk and Clerk-Assistant. When the counting is completed the Clerk will report the result of the ballot and the House shall either proceed to further ballots or the Clerk will declare a Member to be elected.

NB: At no time during the proceedings is the Chamber locked or the sitting suspended.

- The very first election of a Speaker by secret ballot took place on 2 May 1995, the first sitting day of the 51st Parliament.¹³

After election in accordance with standing order 11:

- (1) The elected Member shall be conducted to the Speaker's rostrum by two Members.
- (2) Having been so conducted the Member elected makes acknowledgment to the House for the honour conferred and takes the Chair as Speaker. The Mace having lain under the Table shall be laid upon the Table.
- (3) After the House congratulates the Speaker, a Minister shall inform the House, where and at what time the Governor will receive the House for the purpose of presenting the Speaker.
- (4) At the stated time the sitting may be adjourned or suspended and the House shall proceed, with any Members then present, to be received by the Governor.¹⁴
- (5) At such presentation the Speaker shall, in the name and on behalf of the House, lay claim to its undoubted rights and privileges.
- (6) On return the Speaker shall report the making of the claim.
- (7) A new Speaker filling a vacancy occurring during the currency of a Parliament does not lay claim to the privileges of the House. (See also section 4.1 of Part One on the meeting of a new Parliament.)

A Speaker may also be elected during the currency of a Parliament in the event that the Speaker vacates the position during a session of Parliament.¹⁵

¹³ VP 02/05/1995, pp. 7-8.

¹⁴ From the 16th Century, the Speaker of the House of Commons was a royal nominee, which reflected the Speaker's role as the conduit between the Commons and the Sovereign and the importance of his being accepted by the latter. However, over centuries the roles of the Speaker as presiding officer of the Commons during its deliberations and the defender of its powers and privileges took on increasing significance. The loyalty of the office to the House rather than the Crown became more important. Nevertheless, in the British Parliament, the choice of the Speaker cannot take place until the Crown has given its leave or consent. (Extract from *Balancing Tradition and Progress, Procedures for the opening of a new Parliament*, House of Representatives Standing Committee on Procedure, August 2001, p. 12).

¹⁵ For example, during the twenty-fifth Parliament (27 April 1920 to 17 February 1922) the Speakership changed hands a number of times due to the numbers in the House following the 1920 general election. (See VP 13/12/1921, p. 169 and VP 20/12/1921, p. 177 where Speaker Levy (Nationalists) resigned from the Chair and Speaker Hickey (Labor) held the

The role of the Clerk in the election of the Speaker is that of returning officer and is purely an administrative one.¹⁶ However, the Clerk can remind members of their obligations in relation to the Speaker's election. For instance, during the first secret ballot for the Speaker in 1995, a point of order was taken that members were milling around the polling booths and the Clerk, as returning officer, reminded members that the Constitution Act required that the ballot be secret and asked that members conduct themselves in such a way that no member be able to see what vote another member had cast.¹⁷

Once the election is determined the House proceeds to Government House to present the Speaker to the Governor. (See section 4.1 of Part One for further information).

5.1.2 Other provisions

There are important provisions in the *Constitution Act 1902* which relate to the office of Speaker: what happens when the Speaker is absent from the State¹⁸; the fact that the Speaker is not counted in a quorum; the Speaker's casting vote¹⁹; the right of the Speaker to participate in debate and vote in divisions when not presiding in the Chair; and the fact that members resign to the Speaker²⁰.

When the Speaker takes part in debates on legislation and general motions on the floor of the House, it is done in their capacity as a private member and not as the Presiding Officer. However, as the Speaker comments may be made from the Chair on condolence motions for former members²¹ and sitting members²² and also in relation to seasonal felicitations.²³

In the event of a vacancy in the office of Speaker during a Parliament, the Clerk reports the vacancy to the House at its next meeting and a new Speaker is elected

Speakership for only a week until resigning and Speaker Levy again took the Chair). The Labor Party were able to govern, despite not having an absolute majority, due to the support of two minor party members and by putting a member of the Nationalists, Daniel Levy, in the Chair. However, in October 1921 Levy was persuaded to step down by Sir George Fuller, Leader of the Nationalists with a firmer promise of support from Progressive leader Wearne. This move brought down the Labor Government and Fuller became the Premier for several hours on 20 December 1921. Wearne was, however, unable to control the numbers in the Progressive party and Levy returned to the Chair. (See *The People's Choice: Electoral Politics in 20th Century New South Wales*, Volume One, edited by Michael Hogan and David Clune, 2001, pp. 231-42). Mr Levy agreed to be reappointed to the Speakership "...on the distinct assurance that, if I am elected, when I present myself to his Excellency the Governor for his approval, I am clearly to communicate to him the condition of deadlock at which, unfortunately, we have arrived." (PD 20/12/1921, p. 2619). When Mr Levy was presented to the Governor following his second election to the Chair, he informed the Governor of the difficulties associated with the election of a Speaker, and that he had accepted the office to prevent an impasse and suggested that the only solution was for the Governor to dissolve the Parliament (PD 20/12/1921, p. 2621). The Parliament was not dissolved by the Governor which resulted in the resignation of the Fuller Ministry with Mr Fuller arguing that he had declined to remain in office "...under conditions that not only would humiliate me but would tend to lower the repute of parliamentary government." The Labor party subsequently formed the new Administration (PD 20/12/1921, pp. 2621-2).

¹⁶ It is interesting to note that on 28 July 1909 the House of Representatives met to elect a new Speaker following the death of the incumbent and the role of the Clerk in the election process was questioned. In this instance, a motion was moved to adjourn the debate on the election with the result of the division being 31 for both the ayes and the noes and the Clerk then stated that he would give his casting vote with the noes and allow debate to continue under the provisions of the standing orders of the House that stated the Clerk shall act as Chairman of the House until a Speaker is elected. This action was, however, questioned by members of the House particularly given the fact that no-one is able to vote in the House if they have not taken an oath. Debate continued and Speaker Salmon was eventually elected by 37 votes to 29. See *House of Representatives Practice*, 5th edition, p. 168.

¹⁷ PD 02/05/1995, pp. 7-8.

¹⁸ See section 5.2.1 of Part One for further information.

¹⁹ See section 5.7 of Part One for further information.

²⁰ See section 6.3 of Part One for further information.

²¹ PD 16/04/1996, p. 51; PD 08/06/2005, p. 16705; PD 19/09/2006, pp 1852-3.

²² PD 30/04/2003, p. 159; PD 20/10/2004, p. 11759.

²³ PD 05/12/2003, p. 6131; PD 22/11/2002, p. 7547; PD 06/12/2001, p. 19845.

as the first item of business (S.O. 16).²⁴ If the vacancy occurs during a recess (between sessions) the election will take place after the Governor's opening speech or the reading of the Commission to open the Parliament.²⁵

Under s. 70 of the *Parliamentary Electorates and Elections Act 1912*, the Speaker issues writs to fill vacancies caused otherwise than by a general election.

The Speaker is the mouthpiece for the House, and thus Addresses from the House to the Governor (S.O. 354) and messages to the Legislative Council are conveyed under the Speaker's hand (S.O. 337).

The Speaker also has extensive administrative functions, being responsible, with the President, for the overall direction of Parliament House and its staff.²⁶ In this, the Presiding Officers are advised by the Clerks of both Houses. The Speaker is solely responsible for the operation of the Department of the Legislative Assembly.

5.1.3 Convention followed for the office of the Speaker between dissolution or expiration of the Parliament and opening of a new Parliament

By convention, the Speaker remains in office and exercises the powers vested in the office up until the election of the Speaker on the opening day of the first session of the new Parliament. This applies even if the occupant of the office of Speaker does not seek re-election or is not returned at the general election. During this period the Speaker receives the full salary and expense allowance prescribed for the Speaker, but does not receive the salary and electoral allowance of a private member.²⁷

5.1.4 The role of the Speaker in the administration of the Parliament

Under the current arrangements there is no statutory provision which prescribes how the New South Wales Parliament is to be managed. The *Constitution Act 1902* makes no provision for the administration of the Parliament. Despite this lack of statutory provision, the Presiding Officers have in practice been jointly responsible for the operations of the Parliament.²⁸ Each House of Parliament is administered by its Presiding Officer with the joint services such as the library, security, catering, building services and information technology services being administered by both the President and the Speaker.²⁹ There is provision in the standing orders of both Houses for the appointment of a Library and a House Committee, which may make recommendations concerning their respective areas. However, the Presiding Officers are not subject to any direction, except possibly by the House collectively, as to the management of the Parliament.

²⁴ VP 13/12/1921, p. 169 and VP 20/12/1921, p. 177.

²⁵ VP 04/08/1937, p. 2.

²⁶ The Speaker made a statement in the House concerning the death of a member of the parliamentary staff and offered the sincere sympathy of the Parliament. VP 11/12/2002, p. 665

²⁷ In 1885 by colonial minute it was decided that the Speaker should hold office for the period between dissolution and the election of his successor, notwithstanding that the occupant of the position has not been returned at the general election. This situation occurred in 2003 when Speaker Murray did not stand for re-election at the general election but maintained the Speakership until the first sitting day of the new Parliament where a new Speaker was elected by the House.

²⁸ See for example, PD 17/04/1996, pp. 135 and 147 where Speaker Murray stated that "by a long-established convention, matters pertaining to the administration of Parliament and the provision of members' services are brought to the attention of the Presiding Officers."

²⁹ A legal opinion in relation to this matter was obtained by the Legislative Assembly as part of the opinion regarding the Office of the Speaker and a proposed Parliamentary Privileges Bill in. The Opinion was ordered to be printed by the Legislative Assembly 10 September 1912.

5.1.4.1 The Parliamentary Precincts Act 1997

Legislation was enacted in 1997 which provides for a statutory definition of the precincts of the New South Wales Parliament and vests its control in the Presiding Officers.³⁰ Section 13 of the *Parliamentary Precincts Act 1997* provides for the constitution of the Corporation of the Presiding Officers as a statutory body representing the Crown with Part 2 of the Act defining the Parliamentary precincts, conferring control, and management thereof in the Presiding Officers and vesting title to the Parliamentary precincts in the corporation. Section 7 provides:

Control and management of Parliamentary precincts

- (1) Subject to this Act:
 - (a) the Parliamentary precincts are under the control and management of the Presiding Officers, and
 - (b) the Presiding Officers may take any action they consider necessary for the control and management of the Parliamentary precincts.
- (2) Subsection (1) does not affect:
 - (a) the powers of each House to control or manage its own affairs and proceedings, and
 - (b) the orders of each House in relation to its own affairs and proceedings, and
 - (c) the powers of each House in relation to the control and management of so much of the Parliamentary precincts as constitute the chamber of the House concerned or as are used exclusively or principally for the purposes of the House.

The Crown Solicitor has advised that the legislation does not confer control and management of the Parliamentary precincts on the Corporation nor does it make acts of the Presiding Officers, as such, acts of the Corporation. Therefore, the Corporation and the Presiding Officers have distinct roles and functions with respect to the Parliamentary precincts – the Corporation as owner, with (limited) power to deal with land and the Presiding Officers with control and management, but not so as to affect the powers etc. of the Houses.³¹

Prior to the enactment of the *Parliamentary Precincts Act 1997* the Presiding Officers did exercise a general control over the building and precincts but it was not statutorily defined. For instance, on 25 March 1976, in response to a question as to whether the Speaker would permit nurses demonstrating at the front of Parliament House to be allowed to shelter under the verandah of Parliament House due to the rain, the Speaker stated:

...I believe that if I were to accede to the humane request by the Deputy Leader of the Opposition...the House thereafter would be faced with a situation in which the front of this Parliament House would take on a character similar to the front of the federal Parliament House at one time, with the equivalent of aboriginal tents, as it were, on its front lawn. Every time there was a hostile demonstration the House would be in the position of having to accommodate protesters within the precincts of the House, on its verandah. I find the matter embarrassing to me, as I am sure it is embarrassing to the whole House in some respects, but it would be an unworkable proposition to do what the Deputy Leader of the Opposition has suggested.³²

There were, however, times when the issue was brought into question and even a proposal to give the control of the building/precincts to a parliamentary committee. In 1928 a sub-committee of the House Committee recommended that the whole of the parliamentary premises, with the exception of the two Chambers during sittings, be under the control of the Committee. This was of grave concern to both the Speaker

³⁰ See the second reading on the *Parliamentary Precincts Bill*, PD 17/04/1997, pp. 7724-30.

³¹ Advice received from the Crown Solicitor re: Security Licences for Parliament House, dated 14 August 1998.

³² PD 25/03/1976, pp. 4802-3.

and the President at the time who, in response to the report, argued that such a move would deprive them of their authority over the buildings and that under such conditions the Presiding Officers could be beholden to the Committee even in the use of their own suites. In fact, the Presiding Officers went so far as to argue that to place the precincts under the control of the House Committee could be construed as being so far-reaching as to even prevent the removal of a disorderly member from the precincts and would divest the power of the Presiding Officers to deal with “strangers” (now referred to as visitors) in and about the premises.³³

In 1992 a Joint Select Committee reported on the management of the Parliament, following the introduction of legislation to establish a Parliamentary Management Board.³⁴ It recommended that a board be established for the management of the Parliament, either by legislation or preferably by a resolution of both Houses. The objective of the board would be “to improve the management and the administration of the Parliament and to increase the involvement of Members.” The board was to be comprised of equal members from each House including the Presiding Officers who would act as joint Chairs, occupying the Chair on a rotational basis and with a deliberative vote only. It was also proposed that members of each House would be able to meet separately on matters affecting their own House.³⁵

It was envisioned that the functions of the board would be:

- general oversight of the administration of the Parliament;
- exercising the powers of a standing committee, under the standing orders of both Houses;
- assuming the responsibilities of certain existing committees, namely the House Committee and the Library Committee, and appoint sub-committees to carry out the continuing functions of such committees;
- establishing other sub-committees to deal with any matters and invite persons who are not members of Parliament to offer advice or give evidence (thus ensuring access to external expertise if needed);
- examining and making recommendations concerning any functions which might be contracted out (e.g. library reference services, printing, contract reporting, stores, building services);
- compiling the estimates of expenditure for the Parliament; and
- reporting to Parliament annually and as required on its operations, and with the joint chairmen to answer any questions which may be asked about the board in their respective Houses.³⁶

The Legislative Assembly passed a resolution on 2 December 1994 establishing a Joint Standing Committee to be known as “The Parliamentary Management Board”.³⁷ The resolution was subsequently passed by the Legislative Council on 5 December 1994, which was also the final sitting day of the 50th Parliament. Members were not appointed to the Joint Standing Committee and due to the

³³ See letter from the Presiding Officers re: proposals by a sub-committee of the House Committee to place control of the precincts in the hands of the House Committee, dated 6 February 1928.

³⁴ The introduction of such legislation was part of an agreement between the Greiner Coalition Government and the three non-aligned independents who held the balance of power in the Legislative Assembly. The *Parliament Management Bill 1992* was never passed by the Parliament.

³⁵ See the Report of the Joint Select Committee upon the Management of the Parliament, November 1992.

³⁶ *Ibid.*, p. 2.

³⁷ VP 02/12/1994, pp. 628-9.

expiration of the 50th Parliament, prior to the general election, the committee ceased to exist. The election brought about a change of Government and the Parliament has not taken any further action to re-establish such a committee.

5.1.4.2 Role of the Speaker in relation to staff of the Legislative Assembly

The Speaker employs the staff of the Legislative Assembly and together with the President is responsible for employing the staff of the joint services. All “minor servants” of the Parliament are appointed by delegation of the Governor to the Presiding Officers under section 47 of the *Constitution Act 1902* and are therefore Crown employees³⁸. The Clerks, the Serjeant-at-Arms and the Usher of the Black Rod are appointed by the Governor with a Commission under Letters Patent.

Since 1988, the Parliament has received a global salaries vote, allowing the Presiding Officers to use the funds allocated to salaries according to their discretion. The delegation from the Governor includes an implied power to set terms and conditions of employment and to dismiss. There is no abrogation of the general law within the Parliamentary precincts and the Parliament is subject to employment and occupational health and safety laws of general application.

5.2 The Deputy Speaker and Assistant Speaker

The standing orders provide for both a Deputy Speaker and an Assistant Speaker³⁹ (previously referred to as the Chairman of Committees).⁴⁰ Both the Deputy Speaker and the Assistant Speaker are elected on the first sitting day of each Parliament, or whenever either office becomes vacant and hold office for the duration of the Parliament unless the House otherwise directs. Advice from the Crown Solicitor suggests that section 31A of the *Constitution Act 1902*, which provides for the Deputy Speaker to act in place of the Speaker when they are absent from New South Wales, couple with the absence of a legislative position stating when the position of Deputy Speaker ceases, implies the Deputy Speaker continues until a new Deputy Speaker is elected.⁴¹ The procedure for election of the two positions is the same and set out in standing orders 13 and 14. The motions which are moved do not require notice.

The Assistant Speaker’s principal responsibility is presiding over the proceedings when a bill or other matter is considered in detail (previously known as committee of the whole).⁴² The Assistant Speaker ensures that the proceedings are orderly and conducted in accordance with the standing orders. The Assistant Speaker also certifies under standing order 239 that a bill originating in the Assembly which is to be presented to the Governor for assent is the same as that which was passed by both Houses (by indicating so on the vellum copy).

The Assistant Speaker has the same authority as the Speaker when in the Chair. In contrast, under the previous standing orders certain restrictions were placed on the Chairman’s authority in committee. For instance, the Chairman could remove a

³⁸ Parliamentary Staff are covered by the Crown Employees (Parliament House Conditions of Employment) Award.

³⁹ A sessional order has been adopted for the current Parliament to provide for two Assistant Speakers. VP 08/05/2007, pp. 7-8.

⁴⁰ VP 11/05/1999, p. 7; VP 29/04/2003, p. 6.

⁴¹ Advice received from the Crown Solicitor re: Remuneration of Deputy Speaker of the Legislative Assembly, dated 16 March 2007.

⁴² See Chapter 21 of Part One for information on the consideration in detail procedure.

member repeatedly called to order but if a member was named, the Chairman would have to suspend the proceedings and report the matter to the House, which then considered the matter. Similarly, if a ruling from the Chairman was objected to, the objection was reported to the Speaker who then made a ruling on the matter.⁴³

5.2.1 Absence of Speaker, Deputy Speaker or Assistant Speaker

During the unavoidable absence of the Speaker, the Deputy Speaker takes the Chair in the House.⁴⁴ Section 31A of the *Constitution Act 1902* provides for the Deputy Speaker to act as the Speaker whilst the Speaker is absent from the State. It provides:

- (1) During the absence from New South Wales of the Speaker the Deputy Speaker of the Legislative Assembly shall act in his place, and for all purposes, whether of this Act or otherwise, shall have and may exercise and perform all the powers, authorities, duties and functions of the Speaker.
- (2) Without prejudice to the generality of subsection (1) the Deputy Speaker of the Legislative Assembly, while acting in the place of the Speaker under that subsection, shall be deemed to be the Speaker for the purposes of section 71 of the *Parliamentary Electorates and Elections Act 1912*.⁴⁵

In instances where the Speaker is absent from the House but not necessarily absent from the State, the standing orders provide for the Deputy Speaker to perform the duties of the Speaker on any day when the Speaker is absent and the House is sitting (S.O.15). If the Speaker and Deputy Speaker are both absent on a day when the House is sitting the Assistant Speaker will perform the duties of the Speaker (S.O.15).

Whilst it is highly unlikely that all three office holders would be absent from the House at any one time, the current standing orders provide for the situation where the Speaker, Deputy Speaker and Assistant Speaker are all absent from the House. Standing order 18 authorises the House, in the absence of all three, to elect an Acting Speaker so long as a quorum is present.⁴⁶

The need to include such provision within the standing orders first arose in 1899. At the time there was no provision for the House to appoint a member to act in the absence of the Speaker and Chairman and on 5 December 1899 when both office holders were absent, the Clerk announced the fact and, pursuant to the standing orders, adjourned the House.⁴⁷ On 7 December 1899 the House agreed to amend the standing orders to provide that in the absence of both the Speaker and Chairman the House could elect one of their number to act as Deputy Speaker so long as a quorum

⁴³ VP 21/11/1994, p. 520. However, it was argued by a Chairman on one occasion that he was not bound to accept a motion that he report a ruling to the Speaker for the latter's determination if the rulings were given in accordance with the standing orders and long established practices of the committee. On this occasion the Chairman refused to leave the Chair to accept the motion as it was in his opinion that it was likely to cause obstruction to the debate. See PD 03/05/1994, pp. 1817-8 where the Chairman ruled that proposed amendments were out of order for being subversive to the principles of the bill and a member raised an objection to the ruling and moved that the Chairman leave the Chair so that the House could consider his point of order that the Chairman was in error in ruling that the proposed amendments were not relevant.

⁴⁴ VP 13/11/1992, p. 647; VP 15/05/1997, p. 887 (Acting Chairman of Committees took the Chair); VP 15/11/2001, p. 1629.

⁴⁵ Section 71 provides for the Speaker to issue writs for by-elections when a vacancy occurs in the House.

⁴⁶ See for example, VP 07/05/1997, p. 838. Under the previous standing orders provision was made for the House to elect an Acting Speaker if the Speaker was to be absent from the House for more than three consecutive sitting days. When the standing orders were reviewed in 2006 the standing order was deemed unnecessary given that there is both a Deputy Speaker and an Assistant Speaker which can act in the Speaker's place if he is to be absent from the House for any length of time.

⁴⁷ VP 05/12/1899, p. 251.

was present.⁴⁸ The following week the Speaker informed the House that the Governor had approved the standing order as passed by the House.⁴⁹

The indulgence of the House has also been asked for the Speaker to absent himself to attend an overseas parliamentary seminar during a named period. This having been readily given, it was not necessary for the Clerk to inform the House later of the Speaker's absence.⁵⁰

5.2.2 Procedure for election of Deputy Speaker and Assistant Speaker

A member is elected Deputy Speaker or Assistant Speaker by motion (notice is not required) and holds office for the duration of the Parliament unless the House otherwise directs.

The elections for each office are conducted separately and more than one nomination for each office may be proposed. No member may speak to the motion for nomination for more than five minutes. The closure may be moved. Nevertheless, before putting the question "That the question be now put" the Speaker must accept any additional nominations without debate. After the closure has been carried the candidates are proposed in the order in which they have been nominated⁵¹ until one receives a majority of the votes recorded (S.O. 13).

Upon election, the Deputy Speaker or Assistant Speaker is not required to return his acknowledgments to the House but it has become customary for them to do so.⁵² On one occasion an unsuccessful candidate also thanked the House.⁵³

5.2.3 The Deputy Speaker's and Assistant Speaker's vote

When not occupying the Chair, the Deputy Speaker and Assistant Speaker exercise independence of voice and vote.⁵⁴ However, when presiding as Deputy Speaker or Assistant Speaker, a casting vote only may be exercised and any reason given may be recorded. (S.O. 184).⁵⁵

5.3 Temporary Speakers

At the beginning of each Parliament, the Speaker nominates not more than five members to act as Temporary Speakers (S.O. 19).⁵⁶ These members take the Chair for the Speaker, Deputy Speaker and the Assistant Speaker whenever requested and any advice or ruling given by them is independent and outside the responsibility of the Speaker, Deputy Speaker or Assistant Speaker.⁵⁷ Temporary Speakers are referred to as Acting Speakers when in the Chair (S.O. 19).

⁴⁸ VP 07/12/1899, p. 265.

⁴⁹ VP 12/12/1899, p. 271.

⁵⁰ VP 19/02/1975, p. 301.

⁵¹ VP 02/09/1919, pp. 34-5.

⁵² VP 26/03/1858, p. 18; On the occasion of the election of the first member to the office of Deputy Speaker, Mr Price made his acknowledgments to the House VP 11/05/1999, p. 8.

⁵³ VP 23/12/1868, p. 77.

⁵⁴ On one occasion a Chairman voted when a Temporary Chairman occupied the Chair. See VP 20/02/1963, p. 660.

⁵⁵ See section 5.7 for information on the exercise of the casting vote of the Chair.

⁵⁶ For example, see VP 29/04/2003, p. 37 where three Government members and two opposition members were nominated by the Speaker to serve as Temporary Chairmen of Committees for the 53rd Parliament. When the Speaker is a member of the governing party only the Government members act in the Chair.

⁵⁷ See ruling given by Chairman of Committees – George Booth, PD 28/10/1954, p. 1323.

The Speaker at any time may revoke the nomination of a member as a Temporary Speaker and nominate another member (S.O. 20).⁵⁸

5.4 The Leader of the House and the Manager of Opposition Business

The Leader of the House is a member appointed by the Government to manage government business in the Legislative Assembly. The Leader sets and arranges the Government's legislative program (the days on which the House will sit and the bills Cabinet has decided will be dealt with) and is the Government's main spokesperson on procedural matters. The Leader and the Manager of Opposition Business consult together in an effort to facilitate the orderly conduct of business.

Traditionally, the Leader of the House has been a Minister. However, on occasions the Leader of the House is not a Minister, which requires sessional orders to enable the Member to operate in that role and to move certain motions such as the adjournment of the House.⁵⁹

5.5 The party whips

The duties of the whips are in the main to liaise with Ministers in regard to the business of the House, secure the attendance of members in the House, arrange speakers for debates, arrange "pairs" and generally act as intermediaries between the party leaders in the House and backbench members.

Whips hold office during the continuance of that Parliament only, and the office is automatically relinquished on the dissolution of the Parliament.

5.6 Parliamentary Secretaries

Part 4A of the *Constitution Act 1902* provides for the appointment by the Premier of Parliamentary Secretaries to perform such functions as the Premier, from time to time, determines. The Act does not authorise Parliamentary Secretaries to perform any function that by any law may only be performed by some other person.

Standing order 366 permits Parliamentary Secretaries to act on behalf of Ministers and for references to Ministers in the standing and sessional orders to be taken to include references to Parliamentary Secretaries except in respect of certain standing orders.⁶⁰ Parliamentary Secretaries, acting on behalf of Ministers, are able to:

- give notice of, introduce and have carriage of the Government's business⁶¹;
- be seated at the Table in order to undertake the functions undertaken by Ministers in this role. The Speaker has ruled that the requirement for a Minister to be seated at the Table during debate is a convention rather than a rule;⁶²
- have the same time limits apply to their contributions as apply to Ministers (S.O. 85);

⁵⁸ VP 17/09/1996, p. 365 First used after Temporary Chairman became a Parliamentary Secretary.

⁵⁹ VP 27/11/2001, p. 1647 and VP 08/05/2007, pp. 7-8.

⁶⁰ Prior to the adoption of the current standing orders in 2006 a sessional order first adopted in 1999 has provided for the same provisions VP 11/05/1999, pp. 40-1. See also VP 26/02/2002, pp. 17-18; VP 29/04/2003, p. 31.

⁶¹ On one occasion standing and sessional orders were suspended to enable the Premier to make a further contribution to a debate for which the second reading had been moved by a Parliamentary Secretary on his behalf. VP 03/05/2000, p. 438.

⁶² PD 26/06/2001, p. 15332. See also PD 06/06/2000, p. 6643 when a point of order was taken that the sessional order precluded a Parliamentary Secretary from sitting at the Table during a motion of no confidence in a Minister. The Speaker ruled that the sessional order did not provide that the Parliamentary Secretary could not sit at the Table.

- table papers and, if desired, move motions to restrict inspection (S.O.s 264, 266 and 267);
- reply to a private member's statement (S.O. 108);
- give consecutive notices of motion (S.O. 138); and
- move a motion, without leave, to suspend standing and sessional orders to deal with any item or items of business before the House (S.O. 365).

Parliamentary Secretaries are not able to:

- inform the House when the Governor will give reasons for opening of Parliament (S.O. 2(9));
- inform the House when the Governor will receive the House with its new Speaker (S.O. 11(3));
- sit on the front bench during Question Time (S.O. 26);
- move a motion for the days and times of meeting and adjournment (S.O. 34);
- adjourn the House (S.O. 46);
- issue a notification for the allocation of time (guillotine) (S.O. 90);
- arrange government business (S.O. 101);
- receive notices of matters of public importance (S.O. 110(3));
- be the subject of a no confidence motion in a Minister or speak for the Minister (S.O. 112);
- receive copies of petitions sent to Ministers (S.O. 125);
- answer questions either on notice or without notice (S.O. 126, S.O. 131(5) and S.O. 132);
- declare a bill urgent (S.O. 189);
- introduce a money or taxing bill (see also s. 46(2) of the Constitution Act) (S.O. 190 and S.O. 243);
- appoint estimates committees (S.O. 246(1));
- move a motion for the suspension of a member (S.O. 251(1));
- be the subject of an order for papers (S.O. 269);
- be required to provide resources to a legislation committee (S.O. 323(10)); or
- speak in response to a motion for the suspension of standing orders (S.O. 365(4)).

5.7 Exercise of the casting vote of the Chair

Section 32(2) of the Constitution Act provides the authority for the exercise by the Speaker of a casting vote. Standing order 184 states that in the case of an equality of votes, the Speaker *shall* give a casting vote and that any reasons given *may* be entered in the *Votes and Proceedings*.

In practice this means that the Speaker is not obliged to give reasons for casting a vote one way or the other and even if the Speaker does, the reasons do not have to be recorded in the *Votes and Proceedings*. Traditionally, the Speaker will use his casting vote to avoid making the decision before the House final – thus giving the House another opportunity of considering the matter.⁶³

⁶³ See *May*, p. 413. See also ruling of Speaker Cameron, PD 09/09/1975, p. 869 where he commented that "consistent with the long standing principle that where there is an equality of votes the Speaker should cast his vote in order to permit further discussion to take place."

5.7.1 New South Wales Legislative Assembly practice in exercise of a casting vote

The first casting vote in the Legislative Assembly was given on 12 August 1856 by the first Speaker, Sir Daniel Cooper, who before voting said "As I can find no precedent to guide me, I must use my own judgement." He voted against the government members on a motion for the adjournment of the debate upon a private member's motion.⁶⁴

Since that date, there have been many cases of casting votes, though not one, as far as can be gathered from the official records, was cast to the embarrassment of the Government, i.e. no Premier has resigned as a result of a casting vote.

Under the former standing orders the Chairman of Committees was restricted to exercising a casting vote only when the House was in committee. The first casting vote in committee was required on 11 December 1856. The Chairman gave his voice with the "noes" against an amendment to reduce an item in the Estimates. He did not give any reasons.⁶⁵

During the remainder of the 1856-57 session of Parliament, the Chairman was called upon on two further occasions to give his casting vote – and each time did so without comment. However, it would appear that the Chairman followed the Speaker's lead and exercised "his own judgement." Over the years, with a negligible number of exceptions, the Chairman has not offered comment upon the casting vote.

The following precedents in respect of the casting vote have been recorded:

- Speaker gave his casting vote with the "ayes" on the question that a motion for urgent consideration (now motion accorded priority) be proceeded with;⁶⁶
- Speaker gave his casting vote with the "ayes" on the motion that the debate be now adjourned;⁶⁷
- On the question, "That the [committee] report be adopted", the Acting Speaker, gave his casting vote with the "ayes";⁶⁸
- On the question, "That standing orders be suspended to allow the resumption of the adjourned second reading debate on certain bills", the Speaker gave his casting vote with the "ayes";⁶⁹
- On the question, "That standing orders be suspended to allow government business to have precedence of all other business at this sitting", the Speaker gave his casting vote with the "ayes";⁷⁰
- On the question, "That Mr Armstrong, member for Lachlan be not further heard" (having been asked a question about his private member's bill under a previous standing order), the Speaker gave his casting vote with the "ayes";⁷¹

⁶⁴ VP 12/08/1856, p. 61.

⁶⁵ VP 11/12/1856, p. 627.

⁶⁶ VP 01/06/1995, pp. 111-2; VP 14/11/1995, pp. 326-7.

⁶⁷ VP 16/09/1997, p. 33.

⁶⁸ VP 13/12/1995, p. 550-1.

⁶⁹ VP 12/12/1995, p. 537-8.

⁷⁰ VP 12/12/1995, p. 536.

⁷¹ VP 23/11/1995, pp. 441-2, PD 23/11/1995, pp. 3931-2. This formed a ground for a motion of no confidence in the Speaker, VP 05/12/1995, pp. 469-70, VP 07/12/1995, pp. 508-9.

- Speaker gave his casting vote with the "noes" on motion of dissent against Speaker's ruling;⁷²
- On the question, "That General Business Notice of Motion (General Notice) No. 19 be re-ordered to take precedence", the Speaker gave his casting vote with the "ayes" ;⁷³
- On the question, "That the amendment [to a vote of censure of the Minister for Transport and for Tourism] be agreed to", the Speaker gave his casting vote with the "ayes";⁷⁴
- Speaker gave his casting vote with the "noes" on the second reading of a private member's bill;⁷⁵
- On a vote of no confidence in the Premier, the Speaker gave his casting vote with the "noes";⁷⁶
- Additional sessional orders relating to suspension of standing orders for consideration of government business and for the extension of the sitting carried on casting vote of Speaker;⁷⁷
- Motion for urgent consideration to consider forthwith three notices given this day for tomorrow proposing a new sessional order and amendments to two others. Agreed to on Speaker's casting vote;⁷⁸
- Speaker gave his casting vote with the "ayes" on the question "That a motion for urgent consideration be proceeded with";⁷⁹
- Motion moved that member be not further heard on motion of dissent against Speaker's ruling. Speaker gave his casting vote with the "noes" – "to ensure that freedom of speech in this House is not infringed";⁸⁰
- Speaker voted against an amendment in order to preserve the original motion;⁸¹
- Speaker voted against a motion to suspend standing orders to bring on a debate in order to leave control of the business in the hands of the Government;⁸²
- Speaker voted to adopt the report of the committee of the whole;⁸³
- Speaker voted to adopt the report of the committee of the whole and for the bill to be read a third time;⁸⁴
- Speaker voted against a motion to adjourn debate on a bill;⁸⁵
- Speaker voted with the "noes" on the question of whether a motion be noted as a matter of public importance;⁸⁶
- Speaker voted with the "ayes" for a bill to be read a second time;⁸⁷
- Speaker voted with the "noes" to an amendment to a motion for papers to be printed;⁸⁸

⁷² VP 22/11/1995, p. 421.

⁷³ VP 25/10/1995, p. 334.

⁷⁴ VP 25/10/1995, p. 346-7.

⁷⁵ VP 19/10/1995, pp. 318-9; VP 26/10/1995, pp. 352-3; VP 23/11/1995, pp. 434-5.

⁷⁶ VP 19/10/1995, pp. 208-10.

⁷⁷ VP 01/06/1995, pp. 113-7.

⁷⁸ VP 01/06/1995, p. 113.

⁷⁹ VP 18/11/1997, pp. 265-6; VP 14/11/1995, pp. 371-2; "for the reasons advanced by the Deputy Premier", PD 14/11/1995, p. 3097.

⁸⁰ VP 01/06/1995, pp. 109-10; PD 01/06/1995, p. 596.

⁸¹ PD 22/08/1991, p. 466.

⁸² VP 29/08/1991, p. 115.

⁸³ PD 10/03/1992, p. 930.

⁸⁴ VP 25/03/1992, p. 172.

⁸⁵ VP 10/04/1991, p. 234.

⁸⁶ PD 01/09/1992, p. 5302.

⁸⁷ VP 24/09/1992, p. 515.

- Speaker voted with the “noes” for a bill to be read a second time;⁸⁹
- Speaker voted with the “noes” to a motion to censure a Minister;⁹⁰
- Speaker voted with the “noes” to a motion referring a matter to the Public Accounts Committee for investigation and report;⁹¹
- On the question, “That the motion as amended be further amended” the Speaker gave his casting vote with the “noes”;⁹²
- Speaker voted against a motion to refer a bill to a legislation committee;⁹³
- In committee – Question “That the words proposed to be left out stand”. Carried on casting vote;⁹⁴
- In committee – Question “That the clause as read stand a part of the bill”. Carried on casting vote;⁹⁵
- In committee – Question “That the remaining amendments as printed and circulated by the Minister be agreed to”. Carried on casting vote;⁹⁶
- In committee – Question “That words proposed to be inserted be so inserted”. Carried on casting vote;⁹⁷
- In committee – closure carried on casting vote of Chairman;⁹⁸
- Special Adjournment. Carried on casting vote of Speaker;⁹⁹
- Question “That the question be now put”. Carried on casting vote;¹⁰⁰
- Urgency – consideration of certain notices of motions of general business or other motions. Negatived on casting vote;¹⁰¹
- Amendment to motion for second reading of Anti-Discrimination Bill to provide for second reading “this day three months”. Question that the word proposed to be left out (now) stand part of the question, carried on casting vote of the Speaker. Bill was read a second time;¹⁰²
- On the closure, the Chairman gave his casting vote with the “ayes”. On objection being taken, the Chairman explained that the Chairs give their casting vote “by their best judgements of the merits of the question”;¹⁰³
- Rescission of resolution disallowing by-laws under *Government Railways Act*. Carried on casting vote. The Speaker stated that he was guided by the principles in *May* and that it was his duty to give his casting vote in such a manner as would not preclude the House at some future date from resolving the matter. The Leader of the Opposition could give a fresh notice of motion to disallow;¹⁰⁴
- Disallowance of regulations under *Transport Act*. Negatived on casting vote of the Speaker – no reasons given ;¹⁰⁵

⁸⁸ PD 15/10/1992, p. 7169.

⁸⁹ VP 04/03/1993, p. 71.

⁹⁰ VP 10/03/1993, p. 89.

⁹¹ VP 11/03/1993, p. 98.

⁹² VP 13/10/1993, p. 426.

⁹³ VP 16/11/1993, p. 555.

⁹⁴ Report of Divisions, 23 August 1977, p. 904; 24 November 1977, p. 936.

⁹⁵ Report of Divisions, 7 June 1977, p. 895.

⁹⁶ Report of Divisions, 30 March 1977, p. 893.

⁹⁷ Report of Divisions, 30 March 1977, p. 892.

⁹⁸ Report of Divisions, 30 March 1977, p. 891.

⁹⁹ VP 16/03/1978, p. 732.

¹⁰⁰ VP 17/08/1977, p. 408; 08/11/1977, p. 529; 09/11/1977, p. 538; 25/01/1978, p. 619

¹⁰¹ VP 25/11/1976, p. 210; 23/03/1977, p. 315; 02/06/1977, p. 370; 09/11/1977, p. 537

¹⁰² VP 24/11/1976, p. 205.

¹⁰³ PD 09/11/1976, pp. 2585-7.

¹⁰⁴ VP 09/11/1950, p. 105.

¹⁰⁵ VP 09/11/1950, p. 102.

- Motion for the adoption of a Report from the Select Committee on the Employment of Youth in Industry. Negatived on casting vote. The Deputy Speaker said that he would follow the usual practice and leave the position as it was;¹⁰⁶
- Motion to suspend standing and sessional orders to allow consideration of a motion that the prayer of a petition on the Public Service (Salaries Reduction) Bill be granted and that the President of the Public Service Association be heard at the Bar of the House. Carried on casting vote. The Speaker stated that as the House had already agreed to the urgency motion he would vote for the motion in order not to prevent a discussion of the substantive resolution;¹⁰⁷
- Substantive motion (above). Negatived on casting vote. The Speaker stated that it was his duty not to cast his vote in such a way as to take the business of the House out of the hands of the Government;¹⁰⁸
- Consideration of an urgency motion was agreed to on the casting vote of the Speaker to allow further discussion on the issue.¹⁰⁹
- On a closure motion, the Speaker cast his vote with the “noes” in order that the debate on the second reading of a bill could be continued.¹¹⁰
- Following an attempt to adjourn the second reading debate on a bill, which was negatived on division, the closure was moved. The Speaker gave his casting vote against the motion to enable the debate to continue.¹¹¹
- When the previous question was put, the Speaker gave his casting vote with the “ayes” so that the substantive motion before the House could be put rather than shelved.¹¹²

5.7.2 Imperial practice – Speaker’s casting vote

As standing order 184 does not elaborate on the exercise of the casting vote by the Speaker, reference may be made to the principles set out in *May* at pages 413-17.

May distils various principles from the way Speakers have exercised their casting votes in the House of Commons.

In summary, the principles are:

- (1) The Chair should always vote for further discussion where this is possible (Speaker Addington 1796);
- (2) Where no further discussion is possible, decisions should not be taken except by a majority (Speaker Denison 1861 and 1867); and
- (3) A casting vote on an amendment to a bill should leave the bill in its existing form (Speaker Denison 1860). Note: in the House of Commons bills as amended in committee may then be considered in the House.

Bearing in mind that the above-mentioned principles were first conceived in the House of Commons between 1796 and 1867 and that, because of the size of the

¹⁰⁶ VP 04/12/1940, p. 178.

¹⁰⁷ VP 20/05/1930, p. 386.

¹⁰⁸ VP 20/05/1930, p. 387.

¹⁰⁹ VP 04/11/1925, p. 125.

¹¹⁰ VP 23/09/1925, p. 64.

¹¹¹ VP 10/10/1922, pp. 150-1.

¹¹² VP 11/10/1859, p. 168.

House, the Speaker has rarely had to exercise a casting vote, the relevance of these principles to the New South Wales Legislative Assembly today could be questioned.¹¹³

It should also be noted that *May* at page 413 predicates his remarks with "In the performance of this duty to give a casting vote, the Speaker is at liberty to vote like any other member, according to his conscience, without assigning a reason; but in order to avoid any imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the House final". This is the proviso which governs the principles involved.

Precedents from the House of Commons related in *May* (pages 414-17) include:

- the Chair should always give its casting vote in favour of leave to bring in a bill (on the basis that the House should deal with the bill), its first and second readings and in favour of motions that the bill be considered in committee (or re-committed) on the basis that he or she should always vote for further discussion;
- on the question of an amendment proposed to the question that a bill be read a second time a ruling in 1828 was made that to best discharge the Speaker's duty, a bill should be left open to further consideration – the Speaker would vote against the amendment.
- on the question of the third reading of a bill, Speaker Addington in 1796 said – "...when the question turned upon the measure itself – for instance, that a bill do or so not pass – he should then vote for or against it, according to his best judgement of its merits...". In 1861 Speaker Denison voted against the third reading of a bill on the basis that "...he should best discharge his duty by leaving to the future judgement of the House to decide what change in the law should be made, rather than take the responsibility for the change on his single vote."
- the previous question "That that question be now put" was the subject of a casting vote in favour of the ayes on the basis that in the Speaker's opinion, the original question was now fit to be submitted to the judgement of the House.

5.7.3 House of Representatives – Speaker's casting vote

*House of Representative Practice*¹¹⁴ also provides some examples on pages 182-185:

- An amendment to the second reading of a bill was negatived in order to enable a further decision of the House.
- A motion for the closure of a debate has been negatived to enable debate to continue.
- Several examples are recorded where the Speaker has had to finally decide a matter before the House – a few examples will suffice – in favour of a

¹¹³ Prior to the adoption of the current standing orders a standing order was in place which allowed recourse to Imperial practice in cases not provided for by standing orders, sessional or other orders or practice of the House. The Standing Order stated that the current practice of the House of Commons shall be followed only *as far as it can be applied*. This standing order was removed as it was considered that the 150 years of the New South Wales Legislative Assembly provided ample precedent. However, the principles are still worthy of note.

¹¹⁴ 5th edition, 2005.

member being suspended from the service of the House; against an amendment to add words to the Address in Reply; against a report being printed; against a motion for expulsion of a member from the press gallery on the basis that it was a matter for the House to decide; against an amendment to the standing orders in view of an undertaking that the matter would be referred to the Standing Orders Committee.

- In respect of motions at the various stages in the passage of a bill, Speaker Johnson in 1914, in regard to the Government Preference Prohibition Bill, exercised his casting vote against an amendment to the motion for the first reading, and for the first, second and third readings.

5.7.4 New Zealand – Speaker’s casting vote

With the move to the MMP (Mixed Member Proportional) voting system, which was enacted in the *Electoral Act 1993* (NZ) following a referendum and subsequent changes to the standing orders, the Speaker in the New Zealand House of Representatives no longer has a casting vote. The Speaker has an ordinary vote, which is included in the collective vote of the party they were elected to represent. This ensures that the party proportionality determined at the general election is maintained.¹¹⁵

However, past practice provides some examples of how the casting vote has been used:

- On questions of confidence the Speaker should use the casting vote with the Government, as it should not be the Speaker’s vote which precipitates the fall of a Government or the dissolution of Parliament.
- The Speaker would vote in favour of motions for the first and second readings of a bill and for referral to a committee but would vote against the third reading unless this has been made a question of confidence by the Government or the bill was a conscience issue. On appropriation bills, the Speaker would vote to sustain the Government.¹¹⁶

5.7.5 Summary

The New South Wales Legislative Assembly has developed its own practice to a large extent in regard to the exercise of the casting vote. However, recourse may be had to House of Commons practice and particularly to the principles which evolved in the period between the late 1700’s and late 1800’s in that House, in the end, the Speaker is entitled to exercise a vote according to conscience. In modern times the Speaker is usually from the governing party and invariably gives a casting vote to enable the Government to govern effectively.¹¹⁷

5.8 Rulings from the Chair

The primary responsibility of the Speaker or other occupant in the Chair, when required to give rulings, is to interpret the standing orders, other orders and practice of the House. As far as is practicable, the Chair is not expected to interpret the *Constitution Act 1902* or other Acts, adjudicate upon points of law, decide technical

¹¹⁵ See New Zealand Office of the Clerk of the House of Representatives, *Parliament Brief: Officers of the House*, June 2004, available at www.clerk.parliament.govt.nz

¹¹⁶ McGee, David, *Parliamentary Practice in New Zealand*, 2nd edition, 1994, p. 181.

¹¹⁷ For example, see VP 19/10/1995, pp. 208-10 where the Speaker gave his casting vote with the “noes” on a motion of no confidence in the Premier.

questions or interpretation in any bill, or to judge the correctness or otherwise of statements made by a member.

5.8.1 Dissent from ruling or decision of the Chair

If a ruling is given from the Chair and no objection is taken, that ruling is equivalent to a resolution and must be complied with. However, as the House itself is the final arbiter on all questions of order, if any objection is taken to a ruling of the Speaker, the point is considered by the House upon substantive motion, of which notice must be given at the time for notices for business with precedence within three clear sitting days after the ruling. Debate on the motion is accorded precedence of all other business (S.O. 95).¹¹⁸ Any motion of dissent which is given notice of outside of these three sitting days is out of order.¹¹⁹

The procedure for dissent motions set out in standing order 95 must be read in conjunction with the other standing orders which lay down the general procedure concerning notices of motion, as these also apply to dissent motions.¹²⁰ Standing order 95 only provides for dissent from “a ruling or decision of the Chair” although this is taken to mean any interpretation of standing orders by the Speaker.¹²¹

There are however two important exceptions to this ruling:

- (1) It has been ruled that a dissent motion cannot be moved in relation to a privilege matter which was not established as a prima facie case “to the satisfaction of the Speaker”, because the Speaker’s state of mind cannot be changed by a motion of the House;¹²² and
- (2) There has been a ruling that a statement made for the guidance of the House is not necessarily subject to dissent. Speaker Ellis commented:

“It is not to be taken as a precedent that, because the Speaker replies to a question and makes a statement for the guidance of the House, it necessarily follows that it is capable of dissent.”¹²³

A number of Speakers have also deplored members of the House attacking or criticising the Chair through media reports rather than by a motion of dissent, given that such behaviour was “unchivalrous”, a violation of the traditions of Parliamentary procedure,¹²⁴ and “despicable and cowardly”.¹²⁵

It is interesting to note that the attitudes of former Speakers of the House towards the debate on dissent stand in marked contrast. Speaker Ellis expressed the view that the occasion was not one for airing general grievance and discussion should be strictly restricted to the ruling being dissented to.¹²⁶ Speaker Cameron on the other hand, in supporting the opposite principle, that limits should be minimal so that

¹¹⁸ Notice not accepted as it was not in the correct form. PD 25/10/01, pp. 18033 and 18036.

¹¹⁹ See ruling of Speaker McCourt, VP 1902, p. 71 and ruling of Speaker Willis, VP 06/09/1911, p. 17; PD 06/09/1911, p. 359.

¹²⁰ See ruling of Speaker Cameron, PD 25/02/1975, p. 3810.

¹²¹ See comments made by Speaker Ellis in relation to motions of dissent from the Speaker’s rulings, PD 12/10/1971, pp. 1758-64.

¹²² 16/03/1967, p. 4387.

¹²³ PD 18/09/1973, p. 934 where a motion of dissent was moved in relation to a statement made by the Speaker about the application of the sub judice rule to Royal Commissions.

¹²⁴ See ruling of Speaker Clyne, PD 13/04/1943, p. 2364-5.

¹²⁵ See ruling of Speaker Weaver, PD 03/04/1940, p. 7719.

¹²⁶ PD 30/08/1972, p. 465.

justice should manifestly and undoubtedly be seen to be done, commented on one occasion that the Chair will always be extremely reluctant to fetter a member moving a motion of dissent.¹²⁷

Generally, motions of dissent in relation to decisions made by the Speaker are negated on party lines.¹²⁸

5.8.2 Objection to decision of Chair in former committee of the whole

Under the current standing orders adopted in 2006 there is no provision for the House to constitute itself as a committee of the whole. Rather, the House considers matters such as amendments to bills in the consideration in detail stage.¹²⁹ Accordingly, any decisions made by the occupant of the Chair when the House is considering a matter in detail must be dissented to in the same way as any ruling in the House (i.e. by notice). A member may also seek the leave of the House to suspend standing and sessional orders to provide for a motion of dissent to be moved forthwith.

In contrast, under the former committee of the whole procedure an objection to a decision of the Chairman was required to be taken immediately, be in writing and handed to the Chairman. An example was as follows:

- I object to the Chairman's decision that the proposed amendment to clause of the ABC Bill is not in order on the ground that it is not relevant to the subject matter of the bill.

A motion was then required to be moved by the member, such as:

- That you do now leave the Chair to report an objection and ask leave to sit again as soon as the objection is ruled upon by the Speaker. The objection is that the Chairman was in error in deciding that the proposed amendment to clause ... of the ABC Bill was not in order on the ground that it was not relevant to the subject matter of the bill.

No debate was allowed on a motion for referring a point to the Speaker. The mover was however permitted to make a statement of their objections to the ruling, limited to five minutes. If this question was agreed to, the Chairman left the Chair and the House resumed.

When the Speaker took the Chair of the House, the Chairman reported the dissent, in writing.

For example:

- Mr/Madam Speaker, I have to report that in the committee of the whole on clause of the ABC Bill, the member for moved the following amendment: I made a decision that the amendment was not in order on

¹²⁷ PD 17/10/1974, p. 1971.

¹²⁸ For examples see VP 23/08/1977, p. 424; VP 21/08/1979, pp. 28 and 29; VP 05/11/1981, p. 26; VP 11/11/1982, p. 144; VP 23/11/1982, p. 151; VP 22/09/1983, p. 84; and VP 23/10/1984, pp. 138-40.

¹²⁹ See Chapter 21 of Part One for further information on the consideration in detail procedure.

the ground that it was not relevant to the subject matter of the bill. The member for objected to my decision and submitted a dissent in writing.

The matter was then dealt with in the House as a point of order, that is, members were able to speak as many times as they desired until the Speaker heard sufficient to make a ruling. Of course, it was still open for the House to dissent from the ruling given by the Speaker, but notice of such a motion was required.

There were certain situations in which the Chairman was not bound to accept a motion for a ruling to be given by the Speaker. For example, those rulings which were given in accordance with the standing orders¹³⁰ or the long-established practice of the Committee and those objections not taken at once, i.e. before another member speaks.

5.9 Permanent officers of the House

The permanent officers of the House are the Clerk of the Legislative Assembly, the Deputy Clerk, Clerk-Assistant (Committees) and Clerk-Assistant (Procedure) & Serjeant-at-Arms. Since 1860, when the House agreed to a resolution regarding the permanent officers of the House, these officers have been appointed by the Executive Council, on the recommendation of the Speaker.¹³¹ The Clerks are only accountable to the Speaker and the House and are totally independent of the Government and the Opposition. As such, it is the duty of the Clerk of the House to always objectively interpret the position arising from any set of circumstances without any influence of political considerations.

A commission under the Public Seal is issued in the case of the Clerk and the Serjeant-at-Arms. On assuming office the Clerk takes an oath of allegiance¹³² and a second oath, taken from the practice of the House of Commons¹³³ before the Governor. The Serjeant-at-Arms also takes an oath of allegiance before the Governor.

In the absence of the Clerk the duties of Clerk are performed by the officer next in seniority (S.O. 22). If it is known, or if there is a distinct possibility, that the Clerk will be absent for some time when the House is sitting, it is customary for the Deputy Clerk to be issued with a Commission as Acting Clerk. In this event the Deputy Clerk takes the same oath as taken by the Clerk before the Governor.¹³⁴

5.9.1 Role of the Permanent Officers of the House

The position of Clerk is referred to in the earliest records of the House of Commons (UK) written around 1327. However, it was not until 1363 that the Clerk was first appointed by letters patent and 1388 before the Clerk was recorded as a permanent official of the House as the "Communes

¹³⁰ PD 11/12/1925, p. 3317; PD 30/05/1928, p. 1105.

¹³¹ See VP 24/01/1860, pp. 367-8, where clause (2) of the resolution agreed to by the House stated "That it is the opinion of this House, That in order to maintain the dignity and usefulness of the office of Speaker, all the Clerks and other Officers of the House ought to be appointed by the Executive upon the recommendation of the Speaker of the Legislative Assembly." This resolution was reinforced by a legal opinion obtained by the House in 1912 which specified that under the provisions of the *Constitution Act 1902* it appeared that the officers of the House are appointed by the Governor in Council on the recommendation of the Speaker.

¹³² The Clerk takes an oath of allegiance in accordance with section 7 of the *Oaths Act 1900*.

¹³³ *May*, p. 229. "to make true entries, remembrances and journals of things done and passed during my continuance in Office as Clerk of the Legislative Assembly"

¹³⁴ VP 27/01/1886, p. 73; VP 22/10/1968, p. 147; Acting Clerk appointed following resignation of the Clerk, VP 05/09/1990, p. 367 and VP 11/09/1990, p. 402.

Clerk".¹³⁵ The first Clerks were officers of the Crown but, by the seventeenth century, their loyalties had become solely to the House.

The Clerk of the House of Commons began keeping a record of proceedings during the sixteenth century and developed the role of advising on precedents and procedure during the seventeenth century. Since that time Clerks have continued to have a crucial role as impartial (non-political) advisors on the procedures of the House.

The Clerk of the Legislative Assembly has overall responsibility for the procedural advice given, the administration of the House and the management of the Department of the Legislative Assembly. In particular, the Clerk:

- Records what happens in the House (i.e. the *Votes and Proceedings*) and keeps a record of all papers tabled;
- Assists in the running of the House;
- Advises and assists the Speaker on procedural matters;
- Chairs the election of the Speaker;
- Certifies that Assembly bills have passed both Houses and sends them to the Governor for Royal Assent;
- Maintains custody of papers and documents presented to the House;¹³⁶ and
- Manages the Department of the Legislative Assembly and, in conjunction with the Clerk of the Legislative Council (also known as the Clerk of the Parliaments),¹³⁷ Parliament House as a whole.

In the Chamber, the Clerk sits in front of the Speaker at the Speaker's right. From there the Clerk is able to converse with the Speaker, the Premier, Leader of the House and other members who require advice and guidance.

The Clerk reads the order of the day or next item of business to make members aware of the next matter to come before the House.¹³⁸ The practice of the Clerk reading the order of the day dates from centuries ago in England when few members could read and the Clerk read the whole text of a bill. In fact, the term "Clerk" historically meant a person who could read and write.¹³⁹ This was still the case in the early days of the Colony in that a Board which was assembled pursuant to an Order of the Governor of New South Wales in June 1837 had considered that any person appointed to the position of Clerk must have the following qualifications:

¹³⁵ Address delivered to Members of the Royal Australian Historical Society by H. Robbins, Clerk of the Legislative Assembly, 23 June 1951, pp. 17-19.

¹³⁶ Since the early years of the Parliament in the UK, the Clerk of each House has had absolute custody of all documents and papers belonging thereto, or presented to the Parliament, and this is the practice in the New South Wales Legislative Assembly.

¹³⁷ The designation of "Clerk of the Parliaments" is given to the Clerk of the Upper House (the practice in New South Wales) or in some bicameral Parliaments, the senior Clerk. The term is a direct link with the development of Parliament from the earliest times and recalls that before Parliament sat as a legislative body, the meetings of the Lords and the Commons took place separately in different cities at different times, being largely governed by the movement of the King's Court throughout the realm. It was therefore quite possible for the one official to attend upon the respective meetings held by each group. However, before 1316 no one was specially and permanently appointed to serve the King in the capacity of Clerk of the Parliaments, and to attend upon his councils. During the "developmental" period prior to 1316, officials required to perform this duty were lent for the purpose by the Court of Chancery. The title "Clerk of the Parliaments", who is today the Clerk of the House of Lords, dates from the time when the House of Commons, as such, was non-existent. The first Clerk of the Parliaments actually referred to in the Rolls was Henry of Edenstowe, who was appointed to his office in 1330. Extract from an address delivered to members of the Royal Australian Historical Society by H. Robbins, Clerk of the Legislative Assembly, 23 June 1951, pp. 17-19.

¹³⁸ Under the previous standing orders of the House when a bill was considered the Clerk read its title at the end of each of the three stages in the passage of legislation in addition to reading the order of the day.

¹³⁹ *House of Representatives Practice*, 5th edition, p. 205.

- The person appointed must have hand writing that is clear and legible in every aspect;
- The person appointed must be perfect in the common Rules of Arithmetic, viz. addition, subtraction, multiplication and division;
- The person appointed is required to write grammatically in the English language, and to be correct in his or her orthography.¹⁴⁰

The other Table Officers, namely, the Deputy Clerk and Clerks-Assistant sit at the Table at the left-hand of the Clerk. Not all Table Officers are in the House at the same time but are rostered according to the workload of the House and the officers' responsibilities outside the Chamber, although the Deputy Clerk is principally responsible for proceedings where bills or other matters are considered in detail.

The Serjeant-at-Arms has traditionally been responsible for a number of ceremonial duties and the preservation of order. Under the standing orders the Serjeant-at-Arms under the Speaker's direction is authorised to:

- Remove members from the Chamber for disorderly behaviour (S.O. 249);
- Admit visitors to the public galleries (S.O. 257);
- Remove visitors who are causing disturbance from the precincts of the House (S.O. 260); and
- Introduce witnesses before the House.

The name Serjeant-at-Arms derives from the Latin for servant – *serviens*. In the United Kingdom the office of the Serjeant-at-Arms dates back to 1415 and the reign of Henry V when the Serjeant was responsible for carrying out the orders of the House of Commons including making arrests. The ceremonial duties of the position holder such as being custodian of the Mace dates back to those early days.¹⁴¹

From March 2003, the Clerk-Assistant (Procedure) assumed the additional role of Serjeant-at-Arms. The Deputy Serjeant-at-Arms carries out a number of the Serjeant's duties under the Serjeant's delegated authority.

¹⁴⁰ *Proceedings of a Board assembled pursuant to the Order of His Excellency Sir Richard Bourke, KCB Governor of New South Wales*, dated 26 June 1837, p. 5.

¹⁴¹ Information from the House of Representatives website at <http://www.aph.gov.au/house/dept/saa.htm>