

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Maintenance of the Standing Orders

Final Report

House of Representatives Standing Committee on Procedure

© Commonwealth of Australia

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Foreword

The reference typically adopted by the Procedure Committee early in a new parliament to inquire into the maintenance of the standing orders provides a formal mechanism for the Committee to monitor and consider the practical operation and effectiveness of House procedures.

In our interim report of May 2018, we identified some relatively minor technical issues and inconsistencies in the standing orders and suggested amendments to address them. The interim report also noted that the Committee had identified some additional issues that we felt warranted further consideration and consultation.

This final report reflects our deliberations on those issues. The Committee's views were informed by a number of private roundtables with key officeholders and interested Members where we were able to test our proposals and obtain considered feedback. On behalf of the Committee, I thank all those who participated in these discussions.

I also thank my Committee colleagues for their consideration of these matters.

Tony Pasin MP
Chair

Membership of the Committee

Chair

Mr Tony Pasin MP

Deputy Chair

Mr Milton Dick MP

Members

Ms Terri Butler MP (to 10.9.2018)

Mr Andrew Gee MP

Mr Ian Goodenough MP

Mr Patrick Gorman MP (from 10.9.2018)

Hon Steve Irons MP (to 28.8.2018)

Hon Jane Prentice MP (from 10.9.2018)

Ms Joanne Ryan MP

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Jeff Norris, Inquiry Secretary

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Penny Branson, Research Officer

Terms of Reference

To inquire into and report on the operation of the standing and sessional orders.

List of Recommendations

Recommendation 1

1.16 The Committee recommends that standing order 13(c) be amended to read:

13(c) *If a government Member is elected as Deputy Speaker, only* ~~Only~~ a non-government Member may be elected as Second Deputy Speaker. *If a non-government Member is elected as Deputy Speaker, only a government Member may be elected as Second Deputy Speaker.*

Recommendation 2

1.18 The Committee recommends that standing order 80 be amended to read:

80 If a Member is speaking, other than when ~~giving a notice of motion~~ ~~or~~ moving the terms of a motion, another Member may move—

That the Member be no longer heard.

The question must be put immediately and resolved without amendment or debate.

Recommendation 3

1.29 The Committee recommends that standing order 131(a) be amended to read:

(a) If a division is called following a division and there is no intervening debate, the Speaker ~~shall~~ may appoint tellers immediately and order the bells to be rung for one minute.

Recommendation 4

1.52 The Committee recommends that standing order 190(c) be amended to read:

(c) If, at the time of the adjournment of the House, the Federation Chamber has not been adjourned, the Federation Chamber stands automatically adjourned, with the Deputy Speaker interrupting business before the Federation Chamber if it is meeting.

1. Maintenance of the standing orders

- 1.1 The Committee has considered the following matters in connection with the maintenance of the standing orders. These matters were discussed in private briefings with the Speaker, the Clerk, the Chief Government Whip, the Manager of Opposition Business and other interested Members.
- 1.2 On 21 May 2018, the Committee presented its interim report, proposing mostly minor, technical amendments to the standing orders. To date, these proposed amendments have not been considered by the House.

Election of Speaker with Clerk acting as Chair – Standing order 10

- 1.3 An election for the Speaker takes place at the opening of a new parliament and any time when the office of Speaker is vacant. Standing order 10(b) provides that the election is conducted by the Clerk acting as Chair. A number of former Procedure Committee reports have highlighted the potential vulnerabilities of having the Clerk preside, and have recommended that a Member preside over the House for the election of the Speaker instead.¹ For example, in its 1989 report, the Committee said:

¹ Standing Committee on Procedure reports: *The election of Speaker* (1989), *The standing orders governing: General rule for conduct of business and procedures for the opening of Parliament* (1991), *The standing*

Although the present procedure, with the Clerk taking the Chair for the election of Speaker, has a long tradition with few problems or disruptions, the committee is of the view that having a Member preside is more appropriate in that it gives the House the opportunity to recognise and honour longstanding service by a Member and that, being an elected representative, a Member will have more authority and power under the standing orders to deal with any difficulties that may arise.²

- 1.4 The Committee considers that the practice of having the Clerk preside over the election of Speaker conflicts somewhat with the principle that the House is the Members' House, with the role of the Clerk and other departmental staff being one of facilitation and support.
- 1.5 It is also unclear what authority the Clerk would have to deal with unexpected circumstances, such as disorder, in the Chamber. The Clerk and the Speaker suggested to the Committee that this question of authority could potentially place the Clerk, and the House, in a vulnerable position.
- 1.6 Both the United Kingdom and the Canadian House of Commons have adopted procedures providing, in certain circumstances, for the longest serving Member to preside at the election of the Speaker.³ In consultation with Members, the Committee proposed adopting similar procedures.
- 1.7 Members indicated to the Committee that they were not convinced of the need to change a procedure that, in practice, worked well. In fact, it was suggested that the tenor in the Chamber is ceremonial and the behaviour of Members is respectful because the Clerk presides.
- 1.8 The Committee therefore recommends no change to the procedures for the election of Speaker at this time.

orders governing the Speaker, Chairman, Deputy Chairman and Officers (1992), Procedures for the opening of Parliament (1995), Balancing tradition and progress: Procedures for the opening of Parliament (2001), and Re-opening the debate: Inquiry into the arrangements for the opening day of Parliament (2008).

² Standing Committee on Procedure, *Fifth report: The election of the Speaker*, May 1989, p. 4.

³ *Standing Orders – Public Business 2018*, United Kingdom House of Commons, 1 May 2018, p. 1; *Standing Orders of the House of Commons*, Canada, 20 June 2018, p. 3.

Election of Deputy Speaker and Second Deputy Speaker – Standing orders 13 and 14

- 1.9 Standing order 13(c) currently provides that only a non-government Member may be elected as Second Deputy Speaker. However, this mandated outcome is not consistent with the election procedures for Deputy Speaker and Second Deputy Speaker outlined in standing order 14.
- 1.10 Standing order 14(c) provides that ‘If two or more Members are nominated, the nominee with the most votes shall be the Deputy Speaker, and the nominee with the next greatest number of votes shall be the Second Deputy Speaker’.
- 1.11 It is usual for only one government and one non-government Member to be nominated and, as the government typically holds a majority, for the government Member to be elected as Deputy Speaker and the non-government Member as Second Deputy Speaker. This outcome, however, is not guaranteed.
- 1.12 On 9 October 2012 (midway through the 43rd Parliament, in which the government did not hold a majority in the House) a ballot was held for the positions of Deputy Speaker and Second Deputy Speaker. A government Member (Mr Georganas) and an opposition Member (Mr Scott) were nominated and the opposition Member received the most votes (74 to 70).⁴ The opposition Member was elected Deputy Speaker but the government Member, despite receiving the next most votes, could not be elected Second Deputy Speaker because of the requirement under standing order 13(c) that the Second Deputy Speaker be a non-government Member.
- 1.13 The following sitting, the House agreed to delete standing order 13(c) and the government Member was elected Second Deputy Speaker.⁵ In moving the amendment, the Leader of the House stated:

The Second Deputy Speaker position was created so that there would be some representation from both sides of politics. Therefore, in the circumstances in which the Deputy Speaker is from one side of politics, it is appropriate that the Second Deputy Speaker be from the other side of politics.⁶

⁴ Votes and Proceedings No. 136, 9 October 2012, 1845.

⁵ Votes and Proceedings No. 137, 10 October 2012, 1853-4, 1857-8.

⁶ House of Representatives *Hansard*, 10 October 2012, p. 11758.

- 1.14 At the beginning of the 44th Parliament, the House amended standing order 13, re-inserting the requirement that the Second Deputy Speaker be a non-government Member.⁷ It is therefore possible that the situation outlined above could occur again, particularly in the case of a minority government.
- 1.15 To resolve the conflict within the standing orders and to ensure representation from both sides of the House, the Committee proposes that standing orders should be amended to provide that when the Deputy Speaker is a government Member, the Second Deputy Speaker is a non-government Member, and vice versa.

Recommendation 1

- 1.16 The Committee recommends that standing order 13(c) be amended to read:

13(c) If a government Member is elected as Deputy Speaker, only a non-government Member may be elected as Second Deputy Speaker. If a non-government Member is elected as Deputy Speaker, only a government Member may be elected as Second Deputy Speaker.

Closure of a Member speaking – Standing order 80

- 1.17 Standing order 80 provides that if a Member is speaking, other than when **giving a notice of motion** or moving the terms of a motion, another Member may move – *That the Member be no longer heard*. The standing orders no longer provide for a Member to give an oral notice of motion.⁸ Instead, any Member giving a notice of motion must deliver it in writing to the Clerk at the Table. The Committee therefore recommends that standing order 80 be amended to remove the redundant reference.

⁷ Votes and Proceedings No. 2, 13 November 2013, 47-65.

⁸ Standing order 106 was amended on 12 March 2008, Votes and Proceedings No. 10, 12 March 2008, 146.

Recommendation 2

1.18 The Committee recommends that standing order 80 be amended to read:

80 If a Member is speaking, other than when giving a notice of motion or moving the terms of a motion, another Member may move—

That the Member be no longer heard.

The question must be put immediately and resolved without amendment or debate.

Successive divisions – Standing order 131

1.19 When a division is called in the House, the bells are rung for four minutes before the doors are locked. The Speaker then states the question to the House; directs Members to move to either side of the Chair; and appoints tellers for each side.⁹ However, when a division is called following a previous division and there is no intervening debate, standing order 131 provides that the Speaker shall appoint tellers immediately and the bells shall be rung for one minute only.

1.20 In a successive division, Members remain seated and the tellers may record each vote as being the same as it was in the previous division unless a Member reports to them that they wish to vote differently. The vote is counted, as it would be in a regular division, if the Speaker believes most Members will vote differently to the previous division or if there is confusion or error in the count by the tellers.

1.21 The procedures for successive divisions are intended to save the time of the House. There may, however, be certain situations where ringing the bells for only one minute could mean that some Members who did not attend the Chamber to vote in the first division, but who intended to vote in the subsequent division, do not arrive in the Chamber in time before the doors are locked.

1.22 This scenario played out in the House on 15 August 2017. A division was deferred (in accordance with SO 133) on an amendment to an opposition

⁹ Standing order 129, at 4 December 2017.

Member's amendment to the motion for the second reading of a government bill. Later, the House proceeded with the deferred division and, there being fewer than five Members on the side for the 'Ayes', the Speaker declared the question negatived without completing the count (in accordance with SO 127). The question was then put on the second reading amendment. A division was called and as there had been no debate since the previous division, the bells were rung for only one minute. The government lost the vote and the second reading amendment was agreed to. The Leader of the House suggested that, had the bells been rung for four minutes, more Members would have attended the division and the outcome would have been different.¹⁰

- 1.23 The Leader of the House then moved that the House divide again on the second reading amendment, in accordance with standing order 132. The question was agreed and the second reading amendment was negatived on the repeated division.¹¹
- 1.24 The Speaker observed that it might be practical for the bells to be rung for four minutes for successive divisions where the previous division has fewer than five Members on one side and the Speaker declares the result without completing the count.¹²
- 1.25 The Committee agrees that in most cases, ringing the bells for one minute for successive divisions is an effective time saving measure. There are certain circumstances, however, where the bells may need to be rung for four minutes to ensure that all Members who wish to do so are able to participate in a successive division.
- 1.26 The Committee notes that, in practice, the Speaker exercises some discretion with regard to the ringing of the bells for successive divisions in cases where he feels that the circumstances warrant it.
- 1.27 The Committee proposes amending the standing orders to explicitly provide the Speaker with some discretion with regard to the ringing of the bells for successive divisions, to support Members' full participation in decisions of the House.

¹⁰ House of Representatives *Hansard*, 15 August 2017, pp. 8515-7.

¹¹ House of Representatives *Hansard*, 15 August 2017, pp. 8518-22.

¹² House of Representatives *Hansard*, 15 August 2017, p. 8517.

- 1.28 In order to ensure an accurate record of the vote, the Committee expects that where the Speaker decides that the bells should be rung for four minutes for a successive division, a full count would follow, as provided by standing order 130.

Recommendation 3

- 1.29 The Committee recommends that standing order 131(a) be amended to read:

(a) If a division is called following a division and there is no intervening debate, the Speaker ~~shall~~ may appoint tellers immediately and order the bells ~~shall~~ to be rung for one minute.

New division in case of misadventure – Standing order 132

- 1.30 Since 1901, the standing orders have provided for the House to divide again in cases where confusion, or error concerning the numbers reported by the tellers, occurs and cannot be corrected.
- 1.31 At the beginning of the 43rd Parliament, the standing orders were amended to also provide for a repeated division in cases of ‘misadventure’:
- 132 (b) If a division has miscarried through misadventure caused by a Member being accidentally absent or some similar incident, any Member may move without notice and without the need for a seconder, *‘That standing orders be suspended to enable the House to divide again’*.
- 1.32 This amendment was agreed in the context of a minority government.¹³ Given the finely balanced numbers in the House in the 43rd Parliament, it was understood that even a single Member being accidentally absent could impact on the outcome of a decision of the House.
- 1.33 Early in the 45th Parliament, the House agreed to amend standing order 132(b) to remove the requirement that standing orders be suspended to

¹³ *Agreement for a better Parliament: Parliamentary reform*. See Standing Committee on Procedure, Interim Report No. 1: Monitoring and review of procedural changes implemented in the 43rd Parliament, May 2011, Appendix A, p. 7.

allow for a repeated division (removing the need for an absolute majority of Members to vote in support).¹⁴

1.34 On moving the amendment, the Leader of the House said:

That is the purpose of standing order 132—that the will of the people at the election be reflected in the votes in the parliament. Therefore, if a member, through misadventure, fails to attend the chamber but would otherwise have been here to vote either aye or nay, that vote should be recommitted, and the government should have that capacity in the standing orders, under section 132, to do so on a simple majority.¹⁵

1.35 The current standing order reads:

132 (b) If a division has miscarried through misadventure caused by a Member being accidentally absent or some similar incident, any Member may move on the same sitting day, without notice and without the need for a seconder, *'That the House divide again'*.

Practice in the House

1.36 In the 43rd Parliament, standing orders were suspended to allow the House to divide again in accordance with standing order 132(b) on two occasions.¹⁶ In the 44th Parliament, the government held a large majority of seats in the House and there were no repeated divisions.

1.37 In the current parliament, at 19 November 2018, the House has agreed to repeat a division in accordance with standing order 132(b) on two occasions. On the most recent occasion, the Leader of the House moved that a resolution of the Senate be disagreed to and the Australian Greens Member moved, as an amendment, that the resolution be agreed to. The House divided and the amendment was agreed to (the government having lost the vote). The Leader of the House then moved that the House divide again in accordance with standing order 132.

1.38 The Manager of Opposition Business argued against the motion:

Mr Speaker, I put it to you that the standing order requires that you can only have the vote again if there was confusion, and there was no confusion; if

¹⁴ Votes and Proceedings No. 5, 13 September 2016, 123.

¹⁵ House of Representatives *Hansard*, 13 September 2016, p. 762.

¹⁶ House of Representatives *Hansard*, 10 February 2011, pp. 397-8; House of Representatives *Hansard*, 15 May 2013, pp. 3315-5.

there has been an error concerning the numbers, and there has been no error concerning the numbers of who was here; or if it has been miscarried through misadventure caused by a member being accidentally absent or some similar incident. The fact that a member is doing a television interview is not covered by misadventure.¹⁷

1.39 The Speaker responded:

The difficulty that I have as Speaker, of course, is that the standing order provides for missing a vote through 'misadventure', which in my interpretation is pretty much everything other than deliberately not voting.¹⁸

1.40 At the direction of the Speaker, the two government Members who had missed the vote explained to the House that they had done so due to misadventure and apologised.

1.41 The question that the House divide again in accordance with standing order 132 was carried on division. The amendment was negatived on the repeated division and the original motion was carried.

Practice in other jurisdictions

1.42 Most Australian state and territory legislatures provide for a division to be repeated where there is confusion or error concerning the numbers reported, and the confusion or error cannot be otherwise corrected. However, none of these legislatures include in their standing orders provision to repeat a division in cases where a division has miscarried through 'misadventure'.

1.43 There is also no provision for repeating a division due to 'misadventure' in the United Kingdom House of Commons, the New Zealand House of Representatives nor the Canadian House of Commons.

1.44 It has, however, been the longstanding practice of the Australian Senate to allow for divisions to be repeated, by leave, due to misadventure. Odgers' Senate Practice notes:

Divisions are taken again by leave when it is discovered that senators have been accidentally absent or some similar accident has caused a division to miscarry, on the principle that decisions of the Senate should not be made by misadventure.¹⁹

¹⁷ House of Representatives *Hansard*, 4 December 2017, p. 12413.

¹⁸ House of Representatives *Hansard*, 4 December 2017, p. 12416.

¹⁹ Odgers' Australian Senate Practice, 14th Edition, 2016, pp. 290-1.

- 1.45 Examples of circumstances where the Senate has allowed for a division to be repeated due to misadventure include: the bells failing to ring in a Senator's office²⁰; a faulty beeper²¹; a mistake in pairing²² and a Senator being in a media interview.²³

Committee comment

- 1.46 The Committee has considered standing order 132(b) in response to concerns raised in the House regarding its application. For example, the Manager of Opposition has argued that divisions should only be repeated when a Member is absent from a division for a serious reason or due to circumstances beyond his or her control:

When this matter was debated in 2010 by me, the crossbenchers and the Leader of the House we envisaged that such occasions were when a member had a very unfortunate health incident that caused them not to be able to get here, when they might be locked inadvertently in a room in the building and not be able to escape, and when they might have had a family emergency which caused them to not be able to leave their office or attend the chamber.²⁴

- 1.47 Having consulted with Members, the Committee understands that there is general support for providing recourse in the standing orders where divisions have miscarried due to misadventure. Although one view expressed was that such decisions should only be made by leave of the House (unanimous support) or by an absolute majority of the House (at least 76 Members).
- 1.48 In these discussions, it was proposed that the House could require that a Member who is accidentally absent from a division provides an explanation of the circumstances to the House before the House decides whether or not to support a motion to repeat the division. There was some concern, however, that requiring such an explanation could potentially embarrass a Member who had missed a division for a legitimate reason.
- 1.49 The Committee will continue to monitor the practice in relation to standing order 132(b), but does not recommend any change at this stage.

²⁰ Senate *Hansard*, 5 December 1974, p. 3212.

²¹ Senate *Hansard*, 13 May 1998, p. 2703.

²² Senate *Hansard*, 2 December 1998, p. 1130.

²³ Senate *Hansard*, 15 June 2006, pp. 118-9.

²⁴ House of Representatives *Hansard*, 15 May 2013, p. 3316.

Suspension and adjournment of the Federation Chamber – Standing order 190

- 1.50 Standing order 190(a) provides that the Deputy Speaker must suspend proceedings in the Federation Chamber to enable Members to attend divisions in the House. On occasion, this suspension can continue close to or beyond the expected time for the adjournment of the Federation Chamber, and has resulted in adjournment arrangements where Members are not present in the Federation Chamber. For example, the Deputy Speaker has adjourned the Federation Chamber when a quorum was not present, as Members did not return from the House Chamber following a suspension. The Deputy Speaker has also adjourned the Federation Chamber when the House has adjourned during a suspension.
- 1.51 It is not practical to expect that Members will return to the Federation Chamber close to or beyond the expected time of adjournment to simply adjourn the meeting. After consulting interested parties, the Committee considers that providing for the automatic adjournment of the Federation Chamber at the time that the House adjourns would address the issues outlined above.

Recommendation 4

- 1.52 The Committee recommends that standing order 190(c) be amended to read:
- (c) If, at the time of the adjournment of the House, the Federation Chamber has not been adjourned, the Federation Chamber stands automatically adjourned, with the Deputy Speaker interrupting business before the Federation Chamber if it is meeting.**

Tony Pasin MP
Chair
29 November 2018