

# REFORMING THE OFFICE OF SPEAKER

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The speakership of the House of Representatives has never enjoyed independence — in the sense of the freedom to act impartially without fear of removal — in the same way as does the Speaker of the House of Commons in the United Kingdom. However, the recent tenure of Bronwyn Bishop was particularly damaging for the office, and highlighted the extent to which the speakership is subservient to the governing party in the House. This article argues that the office should be reformed in order to ensure that the speakership fulfils its role as an independent arbiter of the workings of the House, and considers what constitutional amendments would be necessary to achieve this.

## Historical origins in England

The office of Speaker in the Commonwealth and State Parliaments has its roots in the UK, where the office is traced back to 1377.<sup>1</sup> The incumbent was often placed in an invidious position during periods of conflict between the monarch and Parliament — seven Speakers were executed between 1394 and 1535.<sup>2</sup> The Speaker's role became particularly fraught during the struggles between monarch and Parliament during the 17th century when, in order to crush what he saw as treasonous dissent by MPs, Charles I sought to arrest five members of the House of Commons and demanded that the Speaker deliver them up to him. The response by Speaker Lenthall has gone down in history as an affirmation of the Speaker's role both as a servant of Parliament and as its protector from outside interference.<sup>3</sup>

May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here, and I humbly beg Your Majesty's pardon that I cannot give any other answer than this to what Your Majesty is pleased to demand of me.

The dangers inherent in the job of Speaker are recalled in the practice, used in the UK parliament and in Australia, that the Speaker is dragged to the chair by fellow MPs.

## The establishment of an independent speakership

In the UK the tradition is that, once elected, the Speaker abandons whatever party loyalty they had, and is absolutely impartial in their management of the House. This principle became established in the wake of a series of politically-charged elections to the speakership during the 1830s which

undermined the prestige of the office. The cycle of partisan votes was ended in 1841 when Sir Robert Peel's Tory government refrained from using its Commons majority to vote out the Speaker elected under the preceding Liberal government.<sup>4</sup> Peel expressly stated that his purpose was to ensure that no party should seek advantage through the election of the Speaker and that the authority of the speakership in maintaining order would be enhanced if the incumbent had been elected on the basis of the general good will of the House. Since then, sitting Speakers have been re-elected by each new parliament until retirement, irrespective of changes in government. They also sever links with their party upon election.<sup>5</sup> This independence is of critical importance to the effective operation of the office, because it helps resolve the paradox inherent in fact that the Speaker is both controller of the House (in that they are responsible for disciplining members and enforcing good behaviour) and its servant (in that the Speaker is elected by the House and relies for their continuation in office on retaining the confidence of the House). Clearly these two aspects of the role are in tension: a Speaker who fears replacement by the House — which in reality means replacement by the government which, by definition, has a majority in the House — would be reluctant to enforce discipline against government MPs. By de-politicising the speakership and ensuring that the Speaker does not feel vulnerable to political pressure, the House of Commons has ensured that the office is truly independent and thus able to act impartially. Furthermore, this independence has endured despite the fact that it is wholly reliant on convention.

## The speakership of the House of Representatives

The very different experience of the speakership of the House of Representatives illustrates the vulnerability of conventional protections, because although in theory Westminster traditions were transplanted to Australia, from its inception the speakership in Australia has never enjoyed the same degree of independence as applies in the UK, nor have incumbents displayed the same degree of impartiality.<sup>6</sup> Indeed, to put it bluntly, the expectation in Australia is that the speakership is an office at the disposal of the government, and experience shows that the Speaker is expected to favour the government that elected him or her.<sup>7</sup> A reason for this may lie in the fact that the speakership

## REFERENCES

1. Philip Laundy, *The Office of Speaker* (Cassell, 1964) 139.
2. UK Parliament, 'Offices and Ceremonies: The Speaker' (Living Heritage) <<http://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentwork/offices-and-ceremonies/overview/the-speaker/>>.
3. Laundy, above n 1, 211.
4. *Ibid* 22–5.
5. *Ibid* 7.
6. Gavin Souter, *Acts of Parliament* (Melbourne University Press, 1988) 115–6.
7. Gwynneth Singleton et al, *Australian Political Institutions* (Pearson, 10th ed, 2012) 154.

of the Commonwealth Parliament drew not only upon Westminster but also on practices which had evolved in Australian colonial Parliaments which, unlike their counterpart in the UK, had relatively few members. This led to Speakers exercising casting votes in favour of the government (rather than in the negative, as is the custom in the UK) and actively participating in debates.<sup>8</sup> Similarly, the fact that colonial Speakers usually returned to the floor of the House after their tenure, whereas Speakers in the House of Commons were given a peerage, was also a reason why Speakers did not sever political allegiances while in the chair.<sup>9</sup> Thus while the first Speaker of the House of Representatives, Sir Frederick Holder, was elected unanimously, the legacy of the practice of the colonial Parliaments, coupled with the emergence of a fully developed party system in the Commonwealth Parliament, had the consequence that from the election of the second Speaker (Carty Salmon) onwards, the speakership was filled on a partisan basis – that is, by the government's nominee without consultation with the opposition.<sup>10</sup> In passing one can also note that the same model continues to operate at State level where, despite the occasional report by parliamentary committees arguing for the establishment of independent speakerships, no government has surrendered the power that the current election process gives it.<sup>11</sup>

The willingness of governments to subject the Speaker to pressure has become increasingly apparent over the last few decades. In 1975, the Whitlam government used its majority on the floor of the House to over-rule a decision by the Speaker, Jim Cope, to name and put a motion to suspend a cabinet member for misbehaviour. Cope believed that it made his position untenable and he resigned immediately.<sup>12</sup> Controversy also arose during the speakership of Billy Snedden, who narrowly

survived in office when he attracted the ire of the government after refusing to put to the House a motion that then opposition leader Bob Hawke be named for calling Prime Minister Fraser a liar.<sup>13</sup> Hopes that the office of Speaker might be de-politicised were raised when, during the 1996 election, then opposition leader John Howard pledged a future Coalition government to a system with a 'completely independent Speaker' within two years of coming to power.<sup>14</sup> Yet after its election, the Coalition government did nothing to fulfil its promise, and provided a stark illustration of the subservience of the office to the government of the day by forcing Speaker Bob Halverson to step down after becoming frustrated at his impartiality in enforcing discipline on both Coalition and Labor MPs,<sup>15</sup> and at the increased opportunity for scrutiny of the government arising from his practice of allowing opposition MPs to ask supplementary questions of government ministers when original answers were evasive.<sup>16</sup> Controversy over the role of the Speaker arose again in 2003 and 2004, when proposals for an independent speakership along the lines of that which exists in the UK, were floated by then Labor opposition leaders Simon Crean<sup>17</sup> and Mark Latham,<sup>18</sup> but were rejected by the then Coalition government.

The role of the Speaker became mired in controversy after the 2010 election, when Labor won more seats than the Coalition but did not have a majority in the House, and Independents held the balance of power. Paradoxically, in these circumstances an exercise by the government of its usual power to elect a Speaker would be detrimental to it, as traditionally the Speaker does not cast a vote in Parliament (other than in the event of a tied vote), and so the election of a Labor Speaker would deprive the government of a much-needed vote on the floor of the House. The period immediately after the election saw a flurry of negotiations between the major parties and Independents, the latter demanding parliamentary reform (including an independent speakership) as part of the price for their support. Both major parties initially agreed to a Speaker drawn from the governing party and a deputy from the opposition, with both being independent and abstaining from attending their party caucus.<sup>19</sup> However, within a few days the Coalition withdrew their agreement, with the result that Labor's Harry Jenkins remained Speaker. Some months later, in order to increase its vote on the floor of the House, the Labor government pressured Jenkins into resigning, and installed Peter Slipper, a renegade Queensland Liberal-National Party member, who had had a falling out with his own party, as Speaker.<sup>20</sup> However, Labor's blatantly political tactic had negative repercussions for it, as Slipper subsequently faced allegations of misuse of parliamentary entitlements and sexual harassment of a former staffer, ultimately resigning over a separate scandal involving sexist phone texts.

The Coalition election victory in 2013 saw the election of Bronwyn Bishop to the speakership. Even prior to taking office, hopes that she would act impartially were undermined by statements that in her view

8. Neil Andrew, 'The Australian Federal Speakership: The First Hundred Years and Some Future Directions' in Clement Macintyre and John Williams (eds), *Peace, Order and Good Government: State Constitutional and Parliamentary Reform* (Wakefield Press, 2003) 280.

9. *Ibid.*

10. Steven Radenbach, 'Servant of Two Masters? An Exploration of the Speaker's Role in the Australian Commonwealth Parliament' (PhD thesis, La Trobe University, 1999) 59.

11. For examples of abortive reform recommendations, see Kevin Rozzoli, *Gavel to Gavel: An insider's view of Parliament* (UNSW Press, 2006) 194–7.

12. Bernard Wright (ed), *House of Representatives Practice* (Department of the House of Representatives, 6th ed 2012), 539.

13. Billy Snedden and Bernadette Schedvin, *Billy Snedden: An unlikely Liberal* (Macmillan, 1990) 219–24.

14. Mike Seccombe, 'Unlike Howard, at least Halvo was True to his Word', *Sydney Morning Herald* (Sydney), 4 March 1998, 2.

15. Gerard Henderson, 'PM's backflip on Speaker reform', *Courier Mail* (Brisbane), 9 March 1998, 2.

16. Grahame Armstrong, 'Damage Control as Speaker Quits', *The West Australian* (Perth), 4 March 1998, 6.

17. Phillip Coorey, 'Behaviour hits the bottom line', *Adelaide Advertiser* (Adelaide), 1 July 2002, 19.

18. Dennis Atkins, 'Proposal to have an impartial speaker', *Courier Mail* (Brisbane), 19 March 2004, 2.

19. Matthew Franklin, 'Independents secure overhaul of Parliament', *The Australian* (Sydney), 7 September 2010, 1.

20. The Slipper saga is discussed in Singleton et al, above n 7, 154.



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Labor bore the brunt of the blame for low standards of behaviour in the previous Parliament.<sup>21</sup> Yet the lack of evenhandedness that was displayed went beyond expectations — of 400 suspensions from the chamber she ordered, 393 were directed toward the opposition and only seven against government members.<sup>22</sup> Her tenure eventually ended when public outrage over excessive expenditure of parliamentary entitlements caused the government sufficient embarrassment to ask her to step down.

The recent history of the speakership makes it clear that, irrespective of what they say, neither of the major parties have any interest in an independent speakership. The office is treated as a spoil of government and a Speaker who dares to act independently of the government will find their career cut short. This subjection of the office to the party in government serves to diminish an important institution in the eyes of the public, at a time of widespread disenchantment with, and disengagement from, the political process.

### Control over debate

The capture of the office by the party in government, and the consequent lack of impartiality exhibited by the Speaker in controlling the House, contributes to a feverish and ill-disciplined atmosphere, of which boorish conduct is an all too frequent feature. However, the Speaker's ability to control the House is constrained not only by their vulnerability to government pressure, but also by the inadequacy of the disciplinary powers at their disposal.

Under Standing Orders, the Speaker's independent power to exclude a member for misbehaviour is limited to suspension from the House for one hour.<sup>23</sup> Suspension for longer periods (on a first suspension in a calendar year this is 24 hours)<sup>24</sup> requires that the Speaker formally 'name' the member, whereupon a motion is put to the house that the member be suspended.<sup>25</sup> Obviously when the named member is from the governing party the government can simply refuse to support the motion, which is indeed what happened when Labor MPs voted against the naming of one of their members in 1975, leading the Speaker to resign. The practical effect of the rules is that the Speaker is dependent on government MPs for the imposition of all but the mildest sanction.

### Reform of the office

There is a clear need to reform the office of Speaker so as to ensure its independence and enhance the ability of its incumbent to discipline the House. The fact that the history of the Australian Parliament indicates that conventions provide insufficient protection for the speakership means that statutory reform is required.

As noted above, since the mid-19th century, the independence of the Speaker of the House of Commons has been protected by a number of conventions: once elected by the House, a Speaker relinquishes their party ties, does not participate in meetings of their parliamentary party.<sup>26</sup> Furthermore, although the Speaker must, like any other MP, secure re-election to Parliament, they run as 'the Speaker seeking re-election', not as a member of a party, and the major parties by convention do not run candidates in their constituency — effectively meaning that the Speaker runs unopposed.<sup>27</sup>

The key defect in the UK model which militates against its adoption here is the unfairness that would arise in relation to the constituents who elected the Speaker if the office became apolitical and the Speaker was returned to Parliament uncontested at each election. A solution to this was proposed by Kevin Rozzoli who served as Speaker of the New South Wales Legislative assembly for seven years.<sup>28</sup> Although writing about reform of a State Parliament, his proposal could be applied to the Commonwealth.

Rozzoli proposed that once chosen by a secret ballot of MPs, the Speaker would then become a 'member at large', serving a notional electorate until retirement, while his actual electorate seat would automatically be filled by a nominee of the party for which the Speaker had stood, and would be contested in the usual way at the next election. So, while remaining an MP, the Speaker would cease to be the representative of their electorate and party, and would therefore leave Parliament upon retirement (unless they sought election in the usual way). The fact that the Speaker would no longer be a member of their party caucus would ensure that the Speaker was elevated above party politics. The nomination of a replacement in their electorate, and the contestation of that electorate as usual at the next election, would mean that the Speaker's constituents would not be deprived of current or future representation. Allowing the Speaker's party to nominate a replacement would also avoid the unfairness of requiring the party which had already

21. ABC Radio National, 'Bishop: Gillard's misogyny speech should not have been allowed', *RN Breakfast*, 17 September 2013 (Bronwyn Bishop) <[http://mpegmedia.abc.net.au/rn/podcast/2013/09/bst\\_20130917\\_0832.mp3](http://mpegmedia.abc.net.au/rn/podcast/2013/09/bst_20130917_0832.mp3)>.

22. Paul Malone, 'Tony Smith as Speaker returns order to the Parliament', *Sydney Morning Herald* (Sydney), 6 February 2016, 2 <<http://www.smh.com.au/comment/tony-smith-as-speaker-returns-order-to-the-parliament-20160205-gmmjrh.html>>.

23. Wright, above n 12, 536–40 and Commonwealth of Australia, *House of Representatives Standing Orders*, (2015) SO 94(a).

24. Standing Orders, above n 23, SO 94(d).

25. *Ibid* SO 94(b).

26. Laundy, above n 1, 7.

27. *Ibid* 108–15. The contrasts in this regard between the speakership in the UK and Australia are discussed in Alan Ward, *Parliamentary Government in Australia* (Australian Scholarly Publishing, 2012) 180–1.

28. Rozzoli, above n 11, 194–201.

won the seat to win a by-election. Rozzoli's other key recommendation was that de-politicisation of the office would require that the Speaker should be able to be removed only by a two-thirds majority of Parliament — which in practical terms would mean only with the concurrence of both government and opposition. Although not included in Rozzoli's model, the same reasoning suggests that the Speaker should also be elected by a two-thirds majority. This would also ensure that whoever was chosen as Speaker enjoyed the support of both government and opposition, and would therefore be likely to be someone who both sides of politics were confident would be impartial in the exercise of their powers — an important consideration if, as is recommended below, the Speakers' disciplinary powers were enhanced.

Could such a system be established at Commonwealth level? The answer to this is 'Yes', but ordinary legislation would not suffice, as a number of constitutional provisions stand as impediments:

The first of these is section 35 of the Constitution, which provides as follows:

#### Election of Speaker

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

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

Clearly this section would have to be amended so as to be consistent with the proposed reforms. A re-drafted s 35 appears below.

Next is s 24 which requires that members be 'directly chosen by the people' and that the members chosen in each State 'shall be in proportion to the respective numbers of their people'. The fact that the scheme proposed above would require that a new member be selected by the Speaker's party would raise the problem that the new incumbent could not be said to have been 'directly chosen' by the people. Section 24 would also be infringed by the fact that, after the (re)filling of the seat there would be an additional member from the Speaker's State, which would distort the proportional allocation of members to States.

The final constitutional difficulty arises from s 40, which states that questions in the House are decided by a majority of votes. Election and dismissal of the Speaker by a two-thirds majority would be inconsistent with this provision.

As indicated above, Standing Orders currently limit the Speaker's power to suspend a member for only one hour, a sanction which appears to be of insufficient deterrent effect, given the unchanging standards of parliamentary behaviour. I would suggest that the Speaker should be vested with a more drastic power in order to deter unruly conduct.

Therefore, constitutional reform which achieved these objectives while overcoming textual difficulties could be achieved by amending s 35 so that it would read as follows:

#### Election of Speaker

Notwithstanding anything contained in s 24 or s 40 of this Constitution, the House of Representatives shall, before proceeding to the despatch of any other business, choose a member to be the Speaker of the House by a two-thirds majority of members voting, and as often as the office of Speaker becomes vacant the House shall again choose a member to be the Speaker.

The seat to which the Speaker was elected shall, within 7 days of the election of the Speaker, be filled by a nominee of the party of which the Speaker was a member or, if the Speaker was not a member of a political party, then by a nominee of the Speaker.

Upon assuming office, the Speaker must cease to be a member of a political party

The Speaker may be removed from office by a two-thirds vote of members of the House voting on the question, or he may resign his office by writing addressed to the GovernorGeneral.

The Speaker may, on his own authority, suspend a member from the House for a period of not more than 7 days.

## Conclusion

In an era of public disenchantment with the institutions of government in general,<sup>29</sup> and with parliamentary behaviour in particular,<sup>30</sup> the proposed reforms would render the Speaker immune from political pressure, and enable them to discipline MPs impartially, without fear of losing their position. This would enhance the standing of the office and have a salutary effect both on behaviour among MPs and standards of debate. Both major parties have, at differing times, made a commitment to establishing an independent speakership. It is time to hold them to their promise. Despite the difficulty in achieving constitutional amendment in Australia, this reform would in all likelihood be popular among voters, given public disquiet arising from the partisanship of the office of Speaker and long-standing dissatisfaction with the behaviour of parliamentarians.

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29. ABC Television, 'Apathetic Aussies', *Lateline*, 11 August 2014 (Margot O'Neill).

30. Andrew Trounsen, 'Swinburne Uni survey: politicians seen as selfish, incompetent', *The Australian* (Sydney), 14 April 2015, 6.