

House rules: their heritage, operation and future¹

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Introduction

Like other public institutions in Australia and elsewhere, the House of Representatives is subject to a range of rules affecting its proceedings and operations. In their nature they are akin in some ways to Hart's system of law that comprises at its centre a union of primary rules (of obligation) and secondary rules (that regulate the primary rules),² but their evolution as a system has been influenced by factors particular to parliament and to Australian culture. House rules, like those framing the operations of the executive, are subject to tensions and influence from other arms of the system of government, particularly the executive (whose actions parliament seeks to scrutinise and whose influence it seeks to withstand), and from the evolution of Australian society.

Some House rules are embodied in legislation (enabled by section 49 of the Constitution) that provides for the House and/or the Senate, and parliament as a whole. The necessity for legislative form may arise from the Constitution, from administrative requirements, or a need to clarify aspects of the

¹ For this paper, 'House rules' comprise the rules governing the operations of the House of Representatives, its standing and sessional orders, resolutions of continuing effect, conventions and practices, and aspects of some supporting legislation, particularly the *Parliamentary Privileges Act 1987*. A more comprehensive list is contained in Appendix 1.

² Hart, HLA (1961), extract from 'Law as the Union of Primary and Secondary Rules', in *The Concept of Law*, Oxford, Clarendon Press (Hart), at pp. 89-96.

parliament's role.³ But rules such as the standing orders, the principal focus of this paper, are chosen by the House to govern its internal proceedings. They do not have the status of legislation⁴ but are binding internally and also affect those external to the House who participate in its work.

The paper considers issues of heritage, implementation, influence and adaptation of the House rules, through a survey of:

- the purpose of the standing orders and conventions
- the heritage and framework for the House rules
- the way some aspects of the standing orders are interpreted and enforced
- review and amendment of the standing orders and
- the appropriateness of the standing orders and supporting legislation today, when there is increasing interaction between the House and its committees with Australian citizens.

The survey allows some broad comparisons to be drawn to the purpose, operation, and renewal of a more general system of law.

³ For example, the *House of Representatives (Quorum) Act 1989*; the *Parliamentary Precincts Act 1988*; and the *Parliamentary Privileges Act 1987*.

⁴ See *Stockdale v Hansard*, (1839), 9 Ad. & E 1, discussed in Mackay, W (2004), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (Erskine May)*, at p.184. The House of Commons' order to print Hansard was not a sufficient defence to an action for libel, although Hansard succeeded in a plea of justification. In Australia, the House is considered to be responsible only to itself when it makes an order or agrees to a resolution; it recognises the effect of orders and resolutions outside the House may be limited (see Harris, IC (2005), *House of Representatives Practice*, 5ed, (HRP) p. 313). House standing and sessional orders provide for the machinery of House operations, for example, the Speaker's role, the routine of business, rules of debate and order, scrutiny of government through questions, voting, passage of legislation, financial legislation, the establishment and proceedings of committees, communications with the Senate, and requirements of visitors and witnesses.

Purpose of the rules: then and now

What mischief were the standing orders designed originally to avoid? Hatsell, Clerk of the United Kingdom House of Commons in 1768, was quite direct:

[I]t is more material that there should be a rule to go by than what that rule is; in order that there may be a uniformity of proceeding in the business of the House, not subject to the momentary caprice of the Speaker or to the captious disputes of any of the Members.⁵

A description of the current House of Representatives standing orders is more circumspect but still sheds some light:

The standing orders:

- reflect traditional parliamentary practice in the conduct of business, for example, in the consideration of legislation; and
- reflect and complement constitutional provisions, for example, in the detailed rules laid down in the standing orders for the consideration of financial bills.⁶

Bach's general description of parliamentary rules is also a fair depiction of the House standing orders: providing for 'order, stability and predictability' in the way a parliament conducts its work; the parameters of the protection to be given to the opposition and minorities: a parliament's own 'rule of law'; the allocation of responsibilities and powers among members and organisational

⁵ John Hatsell, (1818), *Precedents of Proceedings in the House of Commons*, Vol. 2, at pp.207-08; cited in *Erskine May*, p. 10.

⁶ *HRP*, p. 186.

units; and regulation of relations with other national institutions of governance.⁷ This illustrates the continuing relevance of Hatsell's comment.

House rules (including the standing orders), have some similarities to the general legal system. They are a cobweb, with changes being made as the need becomes apparent, whether from changes in the parliamentary and social environment, or a need to deal with unintended consequences of earlier changes. They are also similar to the general legal system in that the formal rules are only a part of the framework. There are also many '[u]nwritten conventions, principles, concepts and values'⁸ that affect the exercise of power and behaviour in the House. One of the values that is fundamental to the rules (although not explicit in the standing orders, it is more apparent in the *Parliamentary Privileges Act*) and discussed only occasionally, is the privilege of freedom of speech.⁹ Other privileges and immunities fundamental to the rules, and confined by the Act, are the immunities of members from arrest and the ability to punish for contempt.

There are other values, practices and conventions which affect the operations of the House, but which are not required by the Constitution, or the standing

⁷ Bach, Stanley, (2008), 'Rules of Procedure for National Assemblies', *Parliamentary Studies Paper 1*, Australian National University, Canberra, accessed online on 25 March 2010 at http://www.parliamentarystudies.anu.edu.au/pdf/publications/PSP01_Bach.pdf (Bach), at pp. 1-2.

⁸ Creyke, R and J McMillan, (2005), 'Constitutional Considerations', in *Control of Government Actions: Text, Cases and Commentary*, LexisNexis, Sydney, pp. 232-41 (Creyke and McMillan), at p. 233.

⁹ Article 9 of the *Bill of Rights 1689* provides that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament; that provision became part of the House rules by virtue of section 49 of the Constitution. See Campbell, E, (2003) *Parliamentary Privilege*, (Campbell), at p. 10 and *HRP* at p. 711.

orders. These are rules traditional to Westminster-style parliaments, and include adherence to the *sub judice* convention, to avoid influencing the courts, and the practice that a charge against a member must be made by substantive motion, which allows a distinct vote of the House. An Australian innovation is the practice that the Chair alternates the call between government and non-government sides during debate and Question Time.¹⁰

In short, House rules, particularly the standing orders, currently provide for:

- orderly conduct of House proceedings: all members are subject to the rules and to the formula for sanctions provided in the rules
- time and means for non-government business to be debated; all members have a right to be heard although the government's influence is certainly strong
- scrutiny of government through questions and committee operations
- integrity of House processes in respect of Constitutional requirements and
- procedures to uphold fundamental freedoms and immunities.

In some ways the standing orders are like a constitution, but they are amended and avoided much more easily. They are binding unless suspended (in the way provided), or unless the House gives leave for something to be done which would otherwise be inconsistent.¹¹ In their own way they provide

¹⁰ *HRP* at p. 186.

¹¹ *HRP* at p. 186.

for a House rule of law, through the principles of legality, and equality of members.¹²

Heritage: from the United Kingdom and the Constitution

Sections 49 and 50 of the Constitution are the keys to House rules. Section 49 provides that the powers, privileges and immunities of the Senate and the House (and their members and committees) are as declared by the parliament and, until then, are those of the United Kingdom House of Commons (as at 1901). Section 50 enables each House to make rules and orders with respect to the manner in which the powers etc. may be exercised and upheld, and the order and conduct of business and proceedings.¹³

Accordingly, in 1901, the House adopted temporary standing orders. These were based on the rules and standing orders of the colonial legislative assemblies and were amended occasionally until permanent standing orders were adopted in 1950. These have been revised from time to time and to varying degrees.¹⁴ The process by which the current standing and sessional orders were arrived at is discussed in the section below on review.

What was the Commonwealth Parliament inheriting from the House of Commons? *Erskine May* surveys the development of procedures of the House of Commons, beginning with a comment that applies equally to the House standing orders and to much legislation: 'Parliamentary procedure does not exist in a vacuum. Its very origins and development proclaim their

¹² See Creyke and McMillan at pp. 234-36.

¹³ See *HRP* at pp. 15-16.

¹⁴ *HRP* at p. 186.

connection with the politics of their day'.¹⁵ While the key relationship was originally with the sovereign, the influence of the executive grew later.

Procedure for the passage of bills arose from the struggles of Henry VIII and Elizabeth I to push contentious legislation through the House. 'Standing order' first was used in 1678, to bolster arguments that the Speaker not be able to adjourn the House (at the request of the sovereign who was seeking an immediate adjournment) without first putting the question (that the House adjourn) and thus 'clothe with special authority an entirely new rule' and enable debate to continue. As *Erskine May* notes, the original change was political rather than procedural, but it became a 'useful procedural device'.¹⁶

The influence of executive government was apparent by the end of the 18th century, with the rules recognising the House not as a kind of opposition to the monarch, but as a House where the government had a majority. This began what continues today: the priority of government business over private business, and the streamlining of rules to allow the passage of large volumes of government legislation.¹⁷

Interpretation and enforcement

Interpretation of the House rules leads to the creation of precedents that are followed, in much the same way as judge-made law. Speaker's rulings are another form of House rule. They are usually made by the Chair (Speaker or member of a panel) in response to a point of order related to the business or

¹⁵ *Erskine May* at p. 4.

¹⁶ *Erskine May* at p. 5.

¹⁷ *Erskine May* at pp. 1-11.

operations of the House. Although rulings are not binding, those that are consistent with each other, the standing orders and House conventions, and supported by the House, form part of House practice. The Speaker may also make private rulings (when not in the Chair) to clarify practice and procedure, and these have the same authority as rulings from the Chair.¹⁸

Over time, the House has come to rely on its own body of law. Since 2004 the standing orders (specifically, 3(e)) have provided that the Speaker or Chair is responsible for rulings and may have regard to previous rulings of Speakers and established practice of the House (rather than referring back to House of Commons practice). The authoritative source of precedent is *House of Representatives Practice*, a reference that was developed and is maintained by the Department of the House of Representatives.¹⁹ Advice is also available to the Chair from the Clerk on duty in the chamber, and from the Clerk of the House.

While the Constitution is the source of House rules, Speakers have considered that except when determining points of procedure between the Houses, the obligation to interpret the Constitution is not a matter for them, but one for the High Court. Occasionally issues with a constitutional flavour arise when the Senate seeks to amend certain bills or to press requests for amendments. In these instances the Speaker draws the House's attention to the constitutional question that arises from the Senate message, and refers to section 53 of the Constitution. This action is considered to be taken as the

¹⁸ *HRP* at pp. 187-88.

¹⁹ See *HRP* at p.187, citing H.R. Deb. (10.03.2004) 26438-9.

custodian of privileges of the House, rather than interpreter of the Constitution.²⁰

House rules are no different from any others: the challenges to their effectiveness arise principally from their indeterminate nature. This means that the question can usually be asked: does the rule apply to the particular facts at issue? Interpretation of the rules may vary for a variety of reasons and may not always be purposive; nor may the audience be informed.²¹

An aspect of interpretation and enforcement that is peculiarly Australian is the capacity (through standing order 87) to dissent from a Speaker's ruling.²² Dissent motions rarely succeed (between 1901-2004, 168 were moved, of which seven were agreed).²³ The procedure is not available in other major Westminster-style lower houses and has been criticised as allowing the authority of the Chair to be undermined and business to be disrupted.²⁴ This, it could be argued further, has the potential to undermine the institution, because of its tendency to undermine the authority at the centre of the rules of the institution.

The parliamentary or political nature of the House also affects compliance with rules. Although one of the recognised motivators for compliance with

²⁰ *HRP* at pp. 190-91.

²¹ Morgan, B and K Yeung (2007), 'Regulatory enforcement and compliance', in *An Introduction to Law and Regulation*, CUP, Cambridge, (Morgan and Yeung), at pp.153-56.

²² *HRP* at pp. 188-90.

²³ *HRP* at p. 188. Whereas debate on a motion of dissent from a Speaker's ruling is somewhat technical in form, because it must be limited to the ruling itself, a motion of censure or no confidence in the Chair enables criticism of the conduct and actions of the Chair that is more broad in nature: *HRP* at pp. 191-97.

²⁴ See *HRP* at p.190 for a discussion of the disadvantages of the procedure—as perceived in the Canadian House of Commons.

rules in society is the pressure to conform and to belong,²⁵ such pressure to conform may be completely absent in the House. Often, the pressure is for members, at least on one side or another, *not* to comply. In every parliament, the number of opposition members who are subject to discipline greatly exceeds the number of government members.²⁶

Review and reform

House rules, like other rules, may become outdated or unsuited, in whole or in part, to their environment. The way in which the need for change is identified and change is implemented is critical for the acceptance of reforms. It is also important in ensuring changes are made with a consideration for the integration of the whole system of rules. Following are some examples of different approaches that have been taken—albeit regarding changes of different magnitude and for different purposes.

In 2003 the House of Representatives Standing Committee on Procedure (like all House committees, comprising government and non-government members), recommended that the standing orders be revised completely, to make them more ‘local, intelligible and readable’. There had not been a major review of the standing orders since 1963 and the need for change had been first identified in 1999.²⁷ Revised standing orders were drafted by the Department of the House of Representatives, after a process of consultation,

²⁵ Hart, p. 89.

²⁶ Demonstrated, for example, by a perusal of the statistics over the years on motions to name and suspend a member, in the House’s regular publication, *Work of the Session*.

²⁷ The Committee’s report, *It’s Your House*, first recommended change in 1999. In 2002 the Committee issued a discussion paper, ‘Proposed Revised Standing Orders’ and in 2003 the Committee presented its report, *Revised Standing Orders*.

and considered by the Procedure Committee. The Committee recommended adoption of the revised standing orders (having also made some amendments of its own) and they were subsequently adopted to come into effect at the beginning of the 41st Parliament.²⁸

That process of review, and proposed changes that were focused on the form of the rules, may be contrasted with the revisions to standing orders initiated by the government at the beginning of the 42nd Parliament. These were aimed, principally, to enable Friday sittings for Private Members' Business. Although there was not complete disagreement with the amendments by the opposition, the use made of the additional time did not reflect well on the House. Debate on the change was acrimonious, a principal complaint being that there was no negotiation with non-government parties.²⁹ By giving more time to Private Members' Business, the government could be argued to have been redressing some of the imbalance of the House's timetable. The opposition represented the change as an avoidance of accountability because there was no provision for Question Time. That process, like any process of review, may have resulted in greater acceptance if carried out in consultation with a trusted vehicle/third party such as the Procedure Committee.

When the Procedure Committee prepared a report of its history, the result was a useful survey of procedural reform in the House from 1985 to 2005, and the conclusion that: 'What emerges is a clearly visible expansion of the scope of procedural change from a preoccupation with expediting government

²⁸ *HRP* at p. 186; adopted 24 June 2004; VP 2002-04/1744.

²⁹ See H.R.Deb. (12.02.08) 1-152 for debate about the initial amendments, and H.R.Deb. (12.03.08) 1-11 and 96 for debate about their reversal.

business to an appreciation of the House's roles which extend beyond passing legislation and of its interaction with the community its Members represent.³⁰ Following are brief discussions of two examples of review by the Committee and subsequent amendment of House rules, one of which is focused internally, the other of which is focused on the House's interaction with 'outsiders'.

When the Procedure Committee was first established, in 1985, it invited all members to suggest and prioritise possible topics for inquiry. During its first inquiry, into opportunities for private members to address the House, the need became apparent for an in-depth inquiry into issues that are perennial: 'days and hours'. The second report canvassed the pattern and hours of sittings, the way that business was programmed (one of the priorities nominated by members in their responses to the questionnaire), and opportunities for private members, among other things.³¹ The Committee issued a follow-up report, *Improved opportunities*, and sessional orders were adopted subsequently, to implement the recommendations that had been accepted by government.³² While the *Days and Hours* report had a focus on practical arrangements: the sitting pattern, programming, and so on, the 'major achievement'... was to 'impose an orderly regime for the arrangement of

³⁰ House of Representatives Standing Committee on Procedure, (2005), *A History of the Procedure Committee on its 20th Anniversary*, Parliament of the Commonwealth of Australia, Canberra, p. 4. Chapter 8 includes interesting characterisations of the various styles of inquiry by the Committee and the issues that recurred: see pp. 108 and 123, especially.

³¹ House of Representatives Standing Committee on Procedure, (1986), *Days and Hours of Sitting and the Effective Use of the Time of the House*, Parliament of the Commonwealth of Australia, Canberra, pp. 1-2; 84-5. The Committee made extensive efforts to obtain evidence from a range of sources, including former members.

³² See the Procedure Committee's 1987 report, *Improved Opportunities for Private Members: Proposed Sessional Orders* and comment about its impact in *A History of the Procedure Committee on its 20th Anniversary* at pp. 108-09.

private Members' business and the presentation of, and debate about, committee and delegation reports.³³ The rules were amended to provide time and formal mechanisms for private Members to speak on matters nominated by them—in accordance with the forms of the House—rather than by circumventing or disrupting them. Such provision in the standing orders for the representative role of members and the House may also be characterised as provision for the principles of certainty and order.

In its 1999 report on community involvement with the House, the Procedure Committee identified the right of petitioning the House as one of the fundamental rights of democratic citizenship, the only direct means of communication between the people and the parliament. While procedures were already in existence, the Committee recommended adoption of simpler procedures and encouragement of the process. In 2007 the Committee returned to the subject of petitions and made recommendations aimed at simplifying the process for petitioners and enhancing the status of petitions.³⁴

The wish for greater engagement between the House and the people was given effect in revisions to standing orders in the 42nd Parliament, when the Standing Committee on Petitions was established, pursuant to standing order 220. The Petitions Committee has now been operating since 2008, assessing petitions for compliance with House rules, seeking and publishing responses from government Ministers on the issues raised, holding public hearings to air the issues raised in the petitions and responses made by Ministers, and

³³ *A History of the Procedure Committee on its 20th Anniversary* at p. 109.

³⁴ See the Procedure Committee reports, *It's Your House* (1999) at p. 1, and *Making a difference—Petitioning the House of Representatives* (2007).

reporting regularly to the House on its work. The innovation represented in these changes to the rules is the positive impact on interaction between the House and people external to it.³⁵

The future of the rules

The House has always had to contend with the pressure of the majority—executive government—to dominate its time and manner of proceeding. While every opposition complains about the dominance of proceedings by government, the fact remains that all members have an opportunity to be heard and to participate in the work of the House.³⁶ Given its long history, that discontent seems likely to change only with the ebb and flow of members between government and opposition status.

It is arguable however that the House's ability to deal with calls for change by those who may come into conflict with it, and those who observe its adherence to modern expectations of procedural fairness, will have a more significant impact on perceptions of the House and its rules. Citizens expect, and the House has encouraged, greater interaction between members of the public and the House, particularly its committees. With that increased interaction and participation comes increased risk, for example, that witnesses and members may be intimidated or influenced inappropriately, and that members may comment in proceedings in a way that affects adversely some

³⁵ The petitions and responses that have been presented in the 42nd Parliament can be seen at <http://www.aph.gov.au/house/committee/petitions/presented.htm>.

³⁶ The bi-partisan work of House Committees, the establishment and success of the Main Committee, the continuing status of daily adjournment debates, regular Members' statements, Grievance Debates and discussions of Matters of Public Importance all allow a voice to members of government and non-government parties, and independent members.

citizens who do not have a correspondingly 'free' voice. Enforcement of the privileges and immunities of the House has been questioned from time to time, as incompatible with natural justice for citizens who may be spoken of in the House in adverse terms, or subject to punishment by the House for contempt.

In 1997 the House adopted a resolution allowing persons referred to in the House a right of reply.³⁷ This provides that a person who has been referred to in debate in the House (not including committees) may make a submission to the Speaker claiming he or she has been affected adversely in reputation, or injured in occupation, or their privacy has been invaded unreasonably, and requesting their response be incorporated in the parliamentary record. The Speaker may refer the matter to the Committee of Privileges and Members' Interests which then reports back to the House, recommending either that the response be incorporated in *Hansard* or that no action be taken.³⁸ The right is granted in limited circumstances and the reply rarely receives public attention.

The original privileges powers of the Parliament were exercised most famously in 1955: Browne and Fitzpatrick were gaoled for three months when the House found them guilty of a serious breach of privilege (for publishing newspaper articles to intimidate a member in his conduct in the House). Representatives of the men sought a writ of *habeas corpus* from the High

³⁷ Recommendations for a right of reply by the Committee of Privileges (now the Committee of Privileges and Members' Interests) have been rare. See the Committee's reports at <http://www.aph.gov.au/house/committee/priv/reports.htm>.

³⁸ *HRP* pp. 751-53.

Court. The Court did not go behind the Speaker's warrant; nor did it adopt a restrictive interpretation of section 49 of the Constitution.³⁹

Although that exercise of its penal power was more than 50 years ago, and the House has shown a disinclination to repeat it,⁴⁰ the power to punish is still a matter of significance. Campbell discusses the arguments for and against the penal powers of parliaments⁴¹ and notes the increased capacity of courts to determine issues of the existence and scope of parliamentary privileges.

The *Parliamentary Privileges Act 1987* was intended to clarify the extent of the parliament's privileges and immunities and to outline the procedures associated with them. It was also intended to overcome the impact of decisions by New South Wales courts in which evidence given by witnesses to parliamentary committees was later used against them in court.⁴² In many respects the Act has been successful, for example, in its clarifying definition of the essential elements of an offence in section 4, and of 'proceedings in parliament' in subsection 16(2).

In maintaining its penal power is the parliament (and House) protecting its integrity and separation, or is it trespassing unduly on others' rights? Wright⁴³ considers that the Act and arrangements by House committees to protect

³⁹ *R v Richards; ex parte Fitzpatrick and Browne* (1955) 92 CLR 168. See *HRP* at p. 709 and *Campbell* at p. 235.

⁴⁰ *HRP* at pp. 726-43.

⁴¹ *Campbell* at pp. 189-207.

⁴² See *HRP* at p. 722. The cases of *R v Lionel Keith Murphy* (1986) 64 ALR 498 and *R v Foord* are referred to. *Campbell* at p. 91 also refers to *R v Murphy* (1986) 5 NSWLR 18.

⁴³ Wright, B, (2008), 'Patterns of Change: parliamentary privilege', *Parliamentary Studies Paper 2*, Australian National University, Canberra, accessed online on 23 March 2010 at http://www.parliamentarystudies.anu.edu.au/pdf/publications/PSP02_Wright.pdf (Wright), at p. 8.

witnesses amounted to reductions in the powers and immunities that had been available to the Houses (except for the legislative provision to impose fines). He also acknowledges that while some may have wished the power to punish for contempt to have been transferred to the courts, the Act and corresponding inquiries have shown that parliament is willing to open these matters up for discussion and to change. He considers that parliament was strengthened by changing to accommodate community expectations.

However, Professors Lindell and Carney, in the review of House procedures relating to privilege and procedural fairness (conducted at the request of the Committee of Privileges), urged a transfer of the penal jurisdiction to the courts, and remarked:

...no other institution of government has such a breadth of power over an individual or body. No other institution of government has the power to investigate an allegation as well as effectively charge those alleged to be responsible, try the charge, and impose a penal sanction.⁴⁴

Comfort may be taken from the reluctance displayed by the Committee of Privileges over many years to recommend to the House that a finding of contempt be made, much less punished, and from arguments that the House's power is akin to the inherent jurisdiction of courts to protect their own processes by punishing for contempt.

⁴⁴ Lindell, G and G Carney, (2007), 'Review of Procedures of the House of Representatives Relating to the Consideration of Privilege Matters and Procedural Fairness', *Memorandum to the House of Representatives Standing Committee of Privileges*, at p. 3. Accessed on 25 March 2010 at <http://www.aph.gov.au/house/committee/pmi/reports/Webversion%20Lindell%20Carney.pdf> (*Lindell and Carney*). Interestingly, Wright notes (p.13) that a former Clerk of the House, as far back as in 1982, had submitted to the Joint Select Committee on Parliamentary Privilege, that the retention and imposition of the penal jurisdiction was a denial of natural justice.

Also, these concerns were considered by the successor Committee. In November 2008 the House Committee of Privileges and Members' Interests⁴⁵ issued a report—as a discussion paper—on proposed procedures to 'provide natural justice and procedural fairness for those involved in the Committee's processes' and invited comment.⁴⁶ It incorporated in the report a copy of the review by Professors Lindell and Carney as well as advice from the Clerk and Deputy Clerk of the House. The Committee noted that it did not support the transfer of the penal jurisdiction of the House to the courts.⁴⁷

In 2009 the Committee presented a report outlining its review process, and recommending that the House adopt certain procedures for the protection of witnesses before the Committee. It also recommended the House adopt procedures for the House itself, in considering privilege matters.⁴⁸

Subsequently, the House resolved to adopt the procedures to protect witnesses before the Committee of Privileges and Members' Interests and for the House to follow when dealing with matters of contempt.⁴⁹ So, the House has retained stewardship of this aspect of its powers—while updating and regulating the way it uses it.

⁴⁵ House of Representatives Standing Committee of Privileges and Members' Interests, (2008) *Report on the review of procedures of the Committee*, Parliament of the Commonwealth of Australia, Canberra, accessed online on 26 March 2010 at <http://www.aph.gov.au/house/committee/pmi/reports/Final%20Review%20of%20Procedures%20Report.pdf>

⁴⁶ Committee of Privileges and Members' Interests (2008), p. 7.

⁴⁷ Committee of Privileges and Members' Interests (2008), p. 8.

⁴⁸ House of Representatives Standing Committee of Privileges and Members' Interests, (2009), *Procedures of the Committee and the House in relation to consideration of privilege matters and procedural fairness*, Parliament of the Commonwealth of Australia, Canberra, accessed online on 26 March 2010 at <http://www.aph.gov.au/house/committee/pmi/reports/Final%20Procedures%20of%20the%20Committee.pdf>

⁴⁹ H.R. Deb (25.11.09) 12888-91.

Conclusion

The standing orders may be criticised as arcane and overly complex (as is the general law criticised). In part the form of the rules may relate to a fondness for preserving customs but it may relate equally to a need to accommodate a variety of changing and complex demands⁵⁰ and still preserve its role and the integrity of its processes. 'Plain English' expression and more logical arrangements have been implemented.

The challenge remains for the rules to be relevant and fair to users inside and external to the House. As with any system of rules, future proposals for amendments would benefit from consultation and consideration and the system would benefit from a periodic review of the whole.

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⁵⁰ *Erskine May*, p. 10.

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Rules affecting the proceedings and operations of the House of Representatives⁵¹

Commonwealth of Australia Constitution Act
House of Representatives Standing and Sessional Orders, 2008
House of Representatives (Quorum) Act 1989
Parliament Act 1974 [determining the site of the 'new' Parliament House]
Parliamentary Papers Act 1908 [authorising the publication of Parliamentary Papers]
Parliamentary Precincts Act 1988 [defining the Parliamentary Precincts and the authority of the Presiding Officers in relation to their management]
Parliamentary Presiding Officers Act 1965 [relating to the statutory powers and functions of the Speaker and the President]
Parliamentary Privileges Act 1987
Parliamentary Proceedings Broadcasting Act 1946
Parliamentary Service Act 1999 [relating to Parliamentary Service employees]

Parliamentary Committees (House and Joint)—established by and/or operations bound by:⁵²

- **legislation:**

*Australian Crime Commission Act 2002*⁵³
Australian Securities and Investments Commission Act 2001
Law Enforcement Integrity Commissioner Act 2006
Intelligence Services Act 2001
Parliamentary Proceedings Broadcasting Act 1946
Public Accounts and Audit Committee Act 1951
Public Works Committee Act 1969

- **resolutions of the House of Representatives and the Senate:**

Joint Committee on the Australian Commission for Law Enforcement Integrity, Joint Committee on the Australian Crime Commission, Joint Committee on Corporations and Financial Services, Joint Standing Committee on Electoral Matters, Joint Standing Committee on Foreign Affairs, Defence and Trade, Joint Standing Committee on Migration, Joint Standing Committee on the National Capital and External Territories, Select Committee on Cyber-Safety, Joint Standing Committee on Treaties

- **House of Representatives Standing and Sessional Orders**

House Standing Committees on Aboriginal and Torres Strait Islander Affairs; Climate Change, Water, Environment and the Arts; Communications; Economics; Education and Training; Employment and Workplace Relations; Community, Housing and Youth; Health and Ageing; Industry, Science and Innovation; Infrastructure, Transport, Regional Development and Local Government; Legal and Constitutional Affairs; and Primary Industries and Resources. House domestic committees: Committee of Privileges and Members' Interests; House Committee; Publications Committee; Library Committee; Committee on Petitions; Committee on Procedure.

⁵¹ This list focuses on more formal activities of the House and its entities, and their external relationships, and does not include rules that govern, for example, the employment conditions of staff, or the entitlements of members.

⁵² Proceedings of committees may be governed by an enabling Act, and/or resolutions of the House and Senate and/or standing and sessional orders. Administrative support for House and certain joint committees is affected by commitments and standards in the Department of the House of Representatives' Committee Office publication, *Dealing with Parliamentary Committees*, 2009.

⁵³ On 18 March 2010, the Attorney-General introduced the Parliamentary Joint Committee on Law Enforcement Bill 2010 that will establish the PJC on Law Enforcement, renaming and extending the functions of the current PJC on the Australian Crime Commission.