

**SPEAKER**

5.1 The Speaker of the Assembly presides at meetings of the Assembly, is responsible for the maintenance of order and rulings on questions of order in the Assembly, and speaks for and represents the Assembly in dealings with outside bodies and personages. In addition, the position is analogous to that of a Minister in relation to the Assembly Secretariat.<sup>1</sup>

5.2 Before the Assembly undertakes any other business after a general election, or whenever there is a vacancy in the office of Presiding Officer, the Members present must elect one of their number to be the Presiding Officer of the Assembly.<sup>2</sup> The Self-Government Act provides that neither the Presiding Officer nor the Deputy Presiding Officer is eligible to be a Minister,<sup>3</sup> which ensures that there is always a Member responsible for the conduct of the proceedings of the Assembly who is independent of the executive.

**Title**

5.3 The Self-Government Act left to the Assembly the decision on the title of the Presiding Officer.<sup>4</sup> In one of its first decisions at its first meeting on 11 May 1989, the Assembly resolved that the title of the Presiding Officer be 'Speaker'.<sup>5</sup> At the commencement of the Second Assembly, it again resolved that the title of the Presiding Officer be 'Speaker' and that the resolution continue in force unless and until amended or repealed by that Assembly or by a subsequent Assembly.<sup>6</sup>

5.4 Presiding Officers of other Australian parliamentary chambers use the title 'Honourable'. No Speaker of the Legislative Assembly has applied to the Governor-General to use the title, nor has any Speaker used the title during or following his or her period in office.<sup>7</sup> In the Table of Precedence for the Territory, the Speaker ranks fifth behind the Governor-General, the Chief Minister, the Prime Minister and State Premiers (according to the population of their respective states and then the Chief Minister of the Northern Territory).

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1 See *Financial Management Act 1996*: section 4 states that, for the purposes of those parts of the Act dealing with budget management, financial reporting and banking and investment, reference to a department is to be read to include a reference to the Assembly Secretariat; reference to a responsible Minister of a department to include the Speaker; and reference to a chief executive to include the Clerk of the Assembly, 'unless the contrary intention appears'; section 20 describes the Speaker's role in preparation of the Assembly Secretariat's budget.

2 Self-Government Act, subsections 11(1) and (3). Should the vacancy occur when the Assembly is not meeting, the election must take place at the next meeting of the Assembly. These provisions do not apply if the vacancy occurs due to a dissolution of the Assembly.

3 Self-Government Act, section 42.

4 Self-Government Act, subsection 11(2).

5 MoP 1989-91/3; Assembly Debates (11.5.1989) 5.

6 MoP 1992-94/5; Assembly Debates (27.3.1992) 15. 'Title of Presiding Officer'—resolution agreed by the Assembly, 27 March 1992.

7 See Chapter 4: Membership of the Assembly, for a discussion of this matter.

## Election

5.5 At the first meeting after a general election the Assembly must, having completed the notification of the election of Members and the Members having taken an oath or affirmation, proceed to elect one of its Members to be the Speaker. No other business may be conducted until the election of Speaker has occurred. Likewise, if there is a vacancy in the office of Speaker (unless due to a dissolution of the Assembly), the Assembly must elect one of its Members to be the Speaker before it proceeds with any other business.<sup>8</sup>

5.6 It is not obligatory that all Members are present for the election of Speaker of the Assembly, the Self-Government Act providing that 'the members present' shall elect one of their number to the position. Members who are candidates for the position must be present<sup>9</sup> and it is necessary that a quorum be formed as is the case at any meeting of the Assembly. The details of the process for the election of Speaker are set out in standing order 2.

5.7 The election of the Speaker is conducted by the Clerk of the Assembly, who for the purposes of the election chairs the Assembly. A Member proposes to the Assembly a Member who is present for Speaker. When proposed, the Member nominated must inform the Assembly whether the nomination is accepted. The proposer then moves: 'That [the Member] do take the Chair of the Assembly as Speaker.'<sup>10</sup> On one occasion, a Member proposed declined to accept the nomination.<sup>11</sup>

5.8 The Clerk then asks if there is any further proposal; if there is not, the Clerk states that the time for proposals has expired and no other name may be put forward. Where there is only one proposal for the office of Speaker, there can be no debate and the Assembly is not invited to proceed to a ballot on the matter. The Clerk declares the Member proposed to have been elected and the Member takes the Chair as Speaker.<sup>12</sup> At the commencement of each of the Second, Fifth and Sixth Assemblies, there was only one candidate for the position of Speaker.

5.9 Where more than one Member is proposed as Speaker, debate may then ensue.<sup>13</sup> It must be relevant to the election and a Member may not speak for more than five minutes.<sup>14</sup> There is no limitation on the length of the debate. There is no provision in the standing orders for a right of reply by the movers of the respective motions, or for the closure to be moved (no question having been proposed from the Chair). In fact, should a Member seek to exercise the right of reply or move a closure motion, the validity of this action would be problematic, there having been more than one motion moved.<sup>15</sup>

5.10 When there are two or more candidates proposed, standing orders provide for a decision to be by ballot. Before the ballot takes place the bells are rung, as for an ordinary vote. If it is apparent that all Members who can be present are in the Chamber this requirement

8 Self-Government Act, subsection 11(3). If the vacancy happens at a meeting, the election must proceed before the Assembly proceeds with any other business. If the vacancy occurs at any other time, at the next meeting the Members present must elect one of their number to be Speaker before proceeding to any other business.

9 They must be present when proposed and must inform the Assembly whether the nomination is accepted (standing order 2(a)) and, when elected, must follow the set procedures in taking the Chair (standing order 2(m)).

10 Standing order 2(a).

11 MoP 1998-2001/2; Assembly Debates (19.3.1998) 3-4.

12 Standing order 2(b).

13 Standing order 2(c).

14 Standing order 2(d) and standing orders 2(e) and 69(a).

15 Elections of the Speaker in the Assembly have been straightforward. However, were debate to be acrimonious and the Clerk be called upon to make a ruling or call the chamber to order, the potential exists for difficulties to arise. See *House of Representatives Practice*, pp. 168. '... the Clerk would probably have to appeal to the House to act to preserve order and its own dignity'.

may be dispensed with.<sup>16</sup> The Clerk distributes ballot papers and each Member is required to return a ballot paper in writing, giving the name of the candidate for whom that Member votes.<sup>17</sup> The votes are counted by the Clerk.

5.11 Where there are only two candidates, the candidate with the greater number of votes is chosen provided that he or she has a majority of the votes of the Members present and voting. In the event of a tie, a fresh ballot must take place.<sup>18</sup> If the matter remains unresolved, the sitting is suspended for 30 minutes. When the Assembly reassembles the votes shall be taken again unless this is unnecessary due to a candidate withdrawing from the election.<sup>19</sup>

5.12 At any time after the result of a first ballot is declared, but before the commencement of the second or subsequent ballots, a candidate may withdraw from the election, which then proceeds as if the candidate had not been proposed.<sup>20</sup>

5.13 If more than two candidates are proposed, the ballot proceeds in the same way. If no candidate has the required majorities, the name of the candidate with the smallest number of votes is excluded and a fresh ballot takes place. This process is repeated until one candidate has the required majority and is elected.<sup>21</sup> At the first meeting of the First Assembly, three candidates were proposed and two ballots took place.<sup>22</sup>

5.14 Standing orders 2(j) and (k) provide for exceptional circumstances where tied votes make it impossible to exclude a candidate for the office. A special ballot to exclude one candidate may be held and, as with a tie between two candidates, provision is made for a suspension of the sitting to allow any impasse to be resolved by negotiation.<sup>23</sup> At any stage should a withdrawal leave only one candidate remaining, that candidate is declared elected as Speaker and takes the Chair.<sup>24</sup>

## Role and duties

5.15 The Self-Government Act provides that the Speaker of the previous Assembly convenes the first meeting of the Assembly after the result of a general election is declared<sup>25</sup> and that,

<sup>16</sup> Standing orders 2(f), 158 and 159.

<sup>17</sup> Standing order 2 is quite explicit, '... each Member shall deliver to the Clerk a ballot-paper ... containing the name of the candidate for whom that Member votes'. A ballot paper that did not conform would not be a vote and therefore the Member would not be included among 'members present and voting'. To persist in submitting a ballot paper that did not conform could be considered disorderly.

<sup>18</sup> The only occasion when the votes have been equal in an election ballot has been a ballot for the position of Leader of the Opposition on 21 June 1991; see MoP 1989-91/473.

<sup>19</sup> Standing order 2(g).

<sup>20</sup> Standing order 2(i).

<sup>21</sup> Standing order 2(h).

<sup>22</sup> MoP 1989-91/2. Standing orders were not adopted by the Assembly until after the election of the Presiding Officer and Chief Minister.

<sup>23</sup> Standing order 2(j).

<sup>24</sup> Standing orders 2(l) and 2(m). Acknowledgments have been made by Speakers following their election; see MoP 1989-91/2; Assembly Debates (27.3.1992) 3, (9.3.1995) 4, (19.3.1998) 4, (12.11.2001) 3, (4.11.2004) 3. Speakers, traditionally, should feign unwillingness to accept, and unworthiness to fill, the office. They need not go quite as far as Speaker Compton of the House of Commons on being presented to King George I: 'It must be very surprizing to Your Majesty, that, from amongst so many honourable, learned, and worthy Persons, ... any Thing could induce Your Commons to present me for Your Majesty's Approbation, who have none of those Endowments necessary for the Execution of this important Charge: I have neither Memory to retain, Judgement to collect, nor Skill to guide, their Debates; nor can I boast of any Thing that could entitle me to the Favour of the Commons, but an unshaken Fidelity to the Protestant Succession.' From: 'House of Lords Journal Vol 20: 21 March 1715', Journal of the House of Lords: Vol 20: 1714-1717, pp. 23-30. URL: <http://www.british-history.ac.uk/report.asp?compid=38387>

<sup>25</sup> Self-Government Act, section 17. He or she must do so by notice published in the *Territory Gazette*. A Speaker's term ends immediately before the election of a new Speaker after a general election.

subject to the conflict of interest provisions contained in the Act<sup>26</sup> and to the standing rules and orders, the Speaker presides at all meetings of the Assembly at which he or she is present.

**5.16** The Speaker, and any other Member presiding at a meeting of the Assembly, does not have a casting vote, the Self-Government Act stipulating that the Presiding Officer has a deliberative vote only.<sup>27</sup> The Speaker is authorised by the Assembly to receive written notice of resignation of Members as set out in section 13 of the Self-Government Act and also written notice of resignation of a Chief Minister.<sup>28</sup> The Speaker must convene a meeting of the Assembly when requested to do so by an absolute majority of Members or on some occasions the Chief Minister.<sup>29</sup>

**5.17** The Self-Government Act also makes provision for the payment of remuneration and allowances to the person holding the office of Speaker<sup>30</sup> and provides that the validity of actions of the Speaker and Deputy Speaker or of a person purporting to act in those offices is not to be questioned on the ground that the appointment or election of the person was defective.<sup>31</sup> The Speaker continues to be paid his or her allowance after polling day even though the Speaker may not have stood for re-election as a Member.<sup>32</sup>

**5.18** Territory enactments give the Speaker a wide range of functions and duties. The Speaker, subject to any direction by the Assembly, is responsible for the control and management of the Assembly precincts and may take any action considered necessary for those purposes.<sup>33</sup> Pursuant to the provisions of section 6 of the *Legislative Assembly (Broadcasting) Act 2001*, the Assembly has delegated to the Speaker the power to arrange the broadcasting or recording for broadcast of the proceedings of the Assembly.<sup>34</sup>

**5.19** The Speaker must ask parliamentary counsel to notify the making of a law when it has been passed by the Assembly<sup>35</sup> or the disallowance of or amendment to a subordinate law or disallowable instrument.<sup>36</sup> A range of legislative reporting and consultation requirements is imposed on the executive requiring the executive to lodge documents with the Speaker (should the Assembly not be meeting).<sup>37</sup> Where legislation requires the executive to advise, report to or consult a committee of the Assembly, the Speaker nominates the appropriate committee.<sup>38</sup> The Auditor-General is required to lodge his or her reports with the Speaker for presentation to the Assembly. If the Assembly is not sitting, the Speaker must arrange for copies of such reports to be given to each Member (and must present them on the next sitting day) and may give directions for their printing and circulation and in relation to their publication.<sup>39</sup> The resolutions appointing standing or select committees may contain similar provisions with regard to those committees' reports.

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26 Self-Government Act, subsection 18(4). The conflict of interest provisions are contained in subsection 15(1) of the Act.

27 Self-Government Act, subsection 18(3).

28 Self-Government Act, section 45.

29 This process is subject to an order of the Assembly and is discussed at paragraph 5.20 and in Chapter 7: Sitings and adjournment of the Assembly, paragraphs 7.25 to 7.27.

30 Self-Government Act, section 73. The Act (section 37) also provides that the executive has the responsibility of governing the Territory with respect to, inter alia, remuneration, allowances and other entitlements in respect of services of the Speaker and Deputy Speaker.

31 Self-Government Act, section 70.

32 See advice to the Clerk of the Assembly from the Attorney-General's Department, dated 17 November 1991.

33 *Legislative Assembly Precincts Act 2001*, section 7.

34 MoP 2001-04/93-5.

35 *Legislation Act 2001*, subsection 28(1). In the absence of a head of state—a Governor or Administrator, this process replaces assent procedures in other jurisdictions.

36 *Legislation Act 2001*, subsections 65A(1) and 69(1).

37 For example, *Annual Reports (Government Agencies) Act 2004*, subsections 13(4) and 15(4).

38 For example, see *Government Procurement Act 2001*, subsection 39(6).

39 *Auditor-General Act 1996*, subsections 17(5) and 17(6).

**5.20** The standing orders invest the Speaker with a wide range of duties and powers. The Speaker maintains order and rules on questions of order. Members must address the Speaker during debate and the Speaker must intervene and make a ruling when words that may be considered offensive or disorderly are used. The standing orders give the Speaker other discretions. For example, the Speaker nominates Assistant Speakers,<sup>40</sup> calls on Members to speak and determines whether a motion is an abuse of the orders or forms of the Assembly or is obstructing business. The Speaker also determines whether a matter of privilege merits precedence, gives authority for clerical or typographical amendments to bills and decides whether to put the question on the closure of debate. It has been the practice, once the Assembly has determined its sitting pattern, to delegate to the Speaker the power to call the Assembly together if requested to do so by an absolute majority of Members.<sup>41</sup>

## Absence of Speaker

**5.21** The Self-Government Act provides that the Assembly may make provision for the election of a Deputy Presiding Officer (Deputy Speaker) and may confer on the deputy such powers as are specified in the rules and orders, including the powers of the Speaker.<sup>42</sup> Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, as Acting Speaker, performs the duties of the Speaker during the absence.<sup>43</sup> On occasions the Assembly is so advised prior to an impending absence.<sup>44</sup> In 2008 the Assembly amended standing order 6 to clarify when the Deputy Speaker is Acting Speaker during periods when the Assembly is not sitting.<sup>45</sup>

**5.22** Should the Assembly be informed by the Clerk of the absence of both the Speaker and the Deputy Speaker, Members present in the Chamber may at once proceed to elect a Member (as provided in standing order 2) who must, subject to any other order of the Assembly, perform the duties of Speaker during that absence. Otherwise, the Assembly is adjourned until the next sitting day.<sup>46</sup> On 22 October 1992, the Assembly having been informed that the Speaker was temporarily absent and the Deputy Speaker not being present, a motion (moved by leave) that a nominated Member take the Chair as Acting Speaker was agreed to and that Member took the Chair.<sup>47</sup>

**5.23** The Speaker or Deputy Speaker may call on one of the Assistant Speakers to take the Chair.<sup>48</sup> When the Speaker is present in the Assembly but the Deputy Speaker or an Assistant Speaker is in the Chair, the Speaker may participate in debate as an ordinary Member and always has a deliberative vote.<sup>49</sup>

## Term of office and vacancy in office

**5.24** The person holding the office of Speaker vacates the office:

- immediately before a Speaker is elected at the first meeting of an Assembly following a general election;

<sup>40</sup> Prior to 2008 they were called Temporary Deputy Speakers.

<sup>41</sup> MoP 2001-04/36-7.

<sup>42</sup> Self-Government Act, subsection 21(2). Standing orders 4 and 5 provide for the office of Deputy Speaker and that he or she shall be elected in the same manner as the Speaker.

<sup>43</sup> Standing orders 6 and 6A.

<sup>44</sup> MoP 1998-2001/108, 286, 486, 707, 993, 1371; 2002-04/307.

<sup>45</sup> MoP 2004-08/1388-9.

<sup>46</sup> Standing order 9.

<sup>47</sup> MoP 1992-94/181.

<sup>48</sup> Standing order 10.

<sup>49</sup> The Speaker of the House of Representatives has a casting vote only.

- when the person resigns office as Speaker;<sup>50</sup>
- when the person ceases to be a Member of the Assembly (though not because of a general election); or
- when an absolute majority of the Members of the Assembly vote in favour of the person's removal from office.<sup>51</sup>

5.25 The Self-Government Act provides that if there is a vacancy in the office of Speaker (other than as a consequence of a dissolution of the Assembly), the Members must, before any further business, elect a Member to be Speaker.<sup>52</sup> Standing orders provide that the Clerk must report a vacancy to the Assembly as soon as possible and the Assembly must immediately proceed to the election of a Speaker.<sup>53</sup> In 2008 the Assembly adopted a new standing order 11A which provides for the Speaker to resign in writing to the Clerk.<sup>54</sup> A person who has vacated the office of Speaker may be re-elected.<sup>55</sup>

## Rulings of the Chair

5.26 The Speaker has the responsibility of maintaining order in the Assembly,<sup>56</sup> upon any question of order being raised and being stated to the Speaker, the Speaker must make a ruling on the matter.<sup>57</sup> A ruling is a decision or determination made by the Speaker on a matter to do with the business or operation of the Assembly.<sup>58</sup> Matters upon which the Speaker is called upon to rule may not necessarily be addressed in the standing orders. Citing practice in the House of Representatives, the Chair has declined to give a decision on or interpret a question of law, including on the Self-Government Act.<sup>59</sup>

5.27 In making a ruling the Speaker takes into consideration the practices, rules and orders of the Assembly. In accordance with standing order 275, where any question relating to the procedure or the conduct of the business of the Assembly is not provided for in the standing orders or practices of the Assembly, the practice prevailing in the House of Representatives in the Commonwealth Parliament is used as a guide. This does not mean that House of Representatives' procedures can be utilised in an eclectic manner.<sup>60</sup>

5.28 A Member may at any time raise a point of order which shall, until disposed of, suspend the consideration and decision of every question.<sup>61</sup> Upon a question of order being raised, the Member speaking is obliged to resume his or her seat and the substance of the question of order is put to the Speaker by the Member raising it. The Speaker then rules on the matter.<sup>62</sup>

5.29 Not all rulings are made in the Chamber during the course of debate. Speakers often rule on the admissibility of notices of motions, notices of questions and matters of public importance outside the Chamber. The Speaker sometimes has the opportunity to consider matters before giving a ruling in the Chamber. Examples of this are when the Speaker examines

50 The Assembly has authorised the Clerk, on behalf of the Assembly, to receive the written notice of resignation of the Speaker. See resolution agreed to by the Assembly on 27 March 1992.

51 Self-Government Act, subsection 12(1). An absolute majority of Members is nine Members, see paragraphs 7.43 to 7.44.

52 Self-Government Act, subsection 11(3).

53 Standing orders 2 and 11.

54 MoP 2004-08/1388-9.

55 Self-Government Act, subsection 12(2).

56 Standing order 37.

57 Standing orders 72 and 73.

58 *House of Representatives Practice*, p. 187.

59 MoP 1989-91/338; Assembly Debates (25.10.1990) 4194, 4200. See *House of Representatives Practice*, pp. 190-1.

60 See comments by Acting Speaker Stefaniak, Assembly Debates (8.8.1990) 2566-7.

61 Standing order 72.

62 Standing order 73.

proposed amendments to bills and motions that have been circulated to Members or when a Member has given the Speaker notice of a matter. The Speaker may also decide to defer ruling on a matter and return to the Chamber with a ruling later in the proceedings or upon a later day.<sup>63</sup>

**5.30** Unlike the Australian Senate, the Assembly does not treat a ruling as a binding precedent,<sup>64</sup> the situation being more akin to that in the House of Representatives:

The question sometimes arises as to whether rulings are 'binding' and, in a literal sense, the answer is 'no', but the question is more complex than it may appear. There have been many rulings given over the years which are consistent with one another, consistent with the standing orders and conventions of the House, and which are supported, implicitly or explicitly, by the House. Such rulings form part of the body of practice which continues to govern the operations of the House and rulings with that status are, in effect, regarded as binding, although even then Speakers are able to give rulings which take account of new factors or considerations. In this way rulings and interpretations may be developed and adapted over time. From time to time rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow sufficient opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.<sup>65</sup>

**5.31** Though the Speaker has taken the view that it is not the duty of the Chair to give a decision on or interpret the law or the Self-Government Act, where there are particular legislative requirements that impact on Assembly procedures the Chair has brought these to the attention of the Assembly.<sup>66</sup> The Speaker has on one occasion withdrawn a ruling to enable him to seek further advice on the interpretation of section 65 of the Self-Government Act (as it then provided) relating to the introduction of legislation proposing the appropriation of public money.<sup>67</sup>

**5.32** There is no provision in Assembly standing orders for a Member to move a motion of dissent from a ruling of the Speaker. Early in the First Assembly the Speaker ruled that should a Member wish to move dissent from the Speaker's ruling, the Member would need to place a notice of motion on the *Notice Paper*.<sup>68</sup> Leave of the Assembly having been received, such motions have been moved forthwith and notice has been given of motions of dissent.<sup>69</sup> On one occasion, notice having been foreshadowed, the Speaker expressed the preference that the Member move the motion immediately to 'get the matter out of the way'.<sup>70</sup> Standing orders having been suspended, such a motion was moved.<sup>71</sup>

63 See, for example, the ruling given by Speaker Prowse re sub judice on 14 February 1991: Assembly Debates (14.2.1991) 329.

64 In the Australian Senate a President's ruling that has not been dissented from is considered a binding precedent; see *Odgers*, p. 116.

65 *House of Representatives Practice*, p. 187.

66 For example, at the conclusion of consideration of the Proportional Representation (Hare-Clark) Entrenchment Bill 1994, the question—that the bill, as amended, be agreed to—was put and declared in favour of the 'Ayes'. As no vote was called for, the Speaker drew the attention of the Assembly to the requirement that the bill must be passed by a special majority of Members and directed that a vote be taken. See MoP 1992-94/825.

67 See Assembly Debates (13.9.1990) 3206-27. For an extended discussion of the provisions of legislation appropriating public money, see paragraphs 11.147 to 11.220 on money bills.

68 Assembly Debates (29.6.1989) 551. This ruling has been reiterated. See, for example, Assembly Debates (7.6.1990) 2336; MoP 1995-97/205.

69 In March 2003 a Member sought leave to move a motion to remove such a motion from the Notice Paper, MoP 2001-04/637; Assembly Debates (13.3.2003) 1054-6. In this instance the notice of motion had been on the Notice Paper for three weeks without any action having ensued. See MoP 2001-04/637; Assembly Debates (13.3.2003) 1054-6.

70 Assembly Debates (8.5.2003) 1801-2. Leave was granted to the Member to move the motion.

71 MoP 1995-97/205; Assembly Debates (23.11.1995) 2505-7.

5.33 The Speaker, having made a ruling, has indicated it was up to the Assembly to decide on a matter by way of a motion of dissent. The motion was moved, by leave.<sup>72</sup>

5.34 A motion has been moved proposing that the Assembly, in the interests of the community, override a decision of the Speaker (the Speaker having confirmed an earlier ruling that certain documents were not to be tabled or their contents disclosed in the Assembly as they were sub judice).<sup>73</sup>

5.35 A motion of dissent from a ruling has been agreed to by the Assembly<sup>74</sup> and the Assembly has dissented from a decision by the Speaker to not authorise a debate as a landmark debate for broadcasting purposes.<sup>75</sup>

## Voting and participation in debate

5.36 Up until 2008 the Speaker's participation in debate is a relatively rare occurrence.<sup>76</sup> On one occasion the Speaker presented a petition.<sup>77</sup> Speakers have also presented legislation from the floor of the Chamber. On 20 November 2002 Speaker Berry, speaking from the floor of the Chamber, presented the Legislative Assembly (Broadcasting) Amendment Bill 2002 and the Legislative Assembly Precincts Amendment Bill 2002.<sup>78</sup> On occasion, Speakers, in their capacity as Members, have presented legislation in pursuit of a particular issue of concern to them. During the Fourth Assembly (1998-2001) when the governing party only had six members, the Speaker was appointed a member of a standing committee and two select committees.<sup>79</sup>

5.37 Given the importance of being seen to be politically neutral, it may be considered undesirable for the Speaker to take part in debate. However, it must be seen as one of the compromises to be made in a very small legislature where non-participation of a Member may effectively disenfranchise a significant part of the electorate. Speakers have also distanced themselves from party political activity, for example, by not attending party meetings at which political tactics are discussed. Significantly, there has never been a successful want of confidence motion in a Speaker in the Assembly.

5.38 The Speaker has a deliberative vote only<sup>80</sup> and, as with all Members present, must vote once a call of the Assembly has commenced.<sup>81</sup> The Speaker does not have a casting vote. If the votes on a question are equal, the question is resolved in the negative.<sup>82</sup>

72 MoP 1995-96/463; Assembly Debates (25.9.1996) 3344-5. The motion was negatived.

73 MoP 1989-91/205; Assembly Debates (14.2.1991) 324-5. Leave was granted to the Member to move the motion. Debate on the matter was adjourned and the matter was not again considered by the Assembly (the contents of the documents in question having been published elsewhere) until the order of the day for the consideration of the motion was discharged sometime later. MoP 1989-91/467-8.

74 MoP 1989-91/460; Assembly Debates (2.5.1991) 1901-7. The motion revolved around the meaning of the word 'furfury' and whether it was unparliamentary or not.

75 MoP 1998-2001/119; Assembly Debates (25.8.1998) 1305-9.

76 See, for example, Assembly Debates (22.11.1990) 4550-2; (23.10.1991) 4121-5; (24.10.1991) 4284-6; (10.12.1991) 5844-5, 5851-2—Speaker Prowse; (98.11.1994) 3803-5—Speaker McRae; (1.6.1995) 696; (22.11.1995) 2293—Speaker Cornwell; (16.5.2002) 1759-60; (6.6.2002) 2082; (21.8.2002) 2563-8, 2603-6, 2609, 2611, 2619; (11.12.2002) 4225-8—Speaker Berry.

77 MoP 2001-04/1151.

78 MoP 2001-04/413-4.

79 MoP 1998-2001/38, 75-6, 423.

80 Self-Government Act, subsection 18(3).

81 Standing order 161.

82 Standing order 162.

## Criticism of actions and conduct

5.39 In the House of Representatives the Speaker's actions can be criticised only by way of a substantive motion. This may be by a motion of dissent (where comment must be limited to the specifics of the ruling in question) with wider criticism usually in the form of a censure or no confidence motion.<sup>83</sup> Reflections on the character of the Speaker or accusations of partiality in the conduct of his duties in the United Kingdom House of Commons have attracted the penal powers of the Commons and the Speaker's actions cannot be criticised inadvertently in debate or upon any form of proceeding except a substantive motion.<sup>84</sup>

5.40 There has been one substantive motion considered: 'That this Assembly expresses a lack of confidence in the Speaker.'<sup>85</sup> The opposition party, in moving the motion, argued that the Speaker was biased towards the government party (of which the Speaker was a Member) and influenced by the Chief Minister in discharging his office. After extensive debate, the motion was defeated by 11 votes to five.

5.41 The Speaker has addressed comments made outside the Chamber concerning his or her rulings. In February 1993 the Speaker drew attention to comments made by a Member in relation to the Speaker's rulings and, having considered that the statement contained an accusation of partiality in the discharge of her duties as Speaker, asked that the reflection be withdrawn. The Member withdrew the reflection.<sup>86</sup>

5.42 In 1993 the Speaker made a statement concerning comments made by a Member in a radio broadcast calling into question her impartiality in the discharge of her duties as Speaker and criticising the management of question time. In her statement the Speaker expressed the view that comments of the kind broadcast publicly lowered the standing of the Assembly in the public esteem and that an apology or a withdrawal of the comments, in so far as they reflected on the Chair, would be proper. She also drew attention to procedures available to alter the rules and practices of the Assembly and expressed the belief that it would be in the best interests of the Assembly if these avenues were followed and an apology offered. Standing orders having been suspended, the Member made a detailed statement on the issues which included an apology for his comments that related to the Speaker.<sup>87</sup>

5.43 On 30 March 2000 the Speaker made a statement concerning media comment critical of his performance and conduct and, in effect, questioning his impartiality in the performance of his duties as Speaker. The Speaker advised the Assembly that the proper way to criticise his conduct of the office was by way of a substantive motion in the Assembly. He advised that he did not propose to take the matter any further, except to remind Members that such comments reflected badly on the speakership and therefore on the Assembly. He reminded Members of, and asked them to note, the comments of his predecessor that criticising in the media the actions of the Chair did nothing for the standing of the Assembly and tended to lower it in public esteem.<sup>88</sup>

5.44 There have been other occasions when criticism of the conduct of the Speaker has been raised:

- After making a statement to the Assembly concerning the appropriateness of a notice of a motion placed upon the *Notice Paper* (calling for the clarification of comments made by

83 *House of Representatives Practice*, p. 191.

84 *May*, pp. 145-220.

85 MoP 1995-97/921-2; Assembly Debates (3.12.1997) 4459-83.

86 MoP 1992-94/283; Assembly Debates (18.2.1993) 197.

87 MoP 1992-94/307; Assembly Deb (23.3.1993) 682-5.

88 MoP 1998-2001/803; Assembly Debates (30.3.2000) 1136.

Mr Prowse from the floor when participating in an earlier debate) Speaker Prowse directed that the notice be removed from the *Notice Paper*.<sup>89</sup>

- When the Assembly discussed, as a matter of public importance, 'The failure of the Government and the Speaker to maintain the dignity of the Assembly,'<sup>90</sup> The practice now would be that such matters, insofar as they related to the Speaker's performance of his or her duties, would need to be raised by way of a substantive motion which expressed a decision or opinion of the Assembly.

## DEPUTY SPEAKER

### Role and duties

5.45 Section 21 of the Self-Government Act provides that the Assembly may provide for the election of a Deputy Presiding Officer (Deputy Speaker) and confer on that deputy such powers as are specified in the rules and orders, including the powers of the Presiding Officer under the Self-Government Act. A person holding the office of Deputy Presiding Officer is not eligible to be a Minister<sup>91</sup> and the office is recognised in section 73 of the Self-Government Act for the payment of remuneration and allowances (set by the Remuneration Tribunal) in addition to the Member's ordinary salary.

5.46 A Deputy Speaker must be chosen on the first sitting day after an election or whenever the office becomes vacant. The election of Deputy Speaker is conducted by the Speaker in a similar manner to the election of Speaker.<sup>92</sup> Whenever the Assembly is informed by the Clerk of the absence of the Speaker, the Deputy Speaker, as Acting Speaker, performs the duties of Speaker.<sup>93</sup> The Deputy Speaker is also required to take the Chair whenever requested by the Speaker during a sitting of the Assembly.<sup>94</sup>

5.47 Other specific duties are set down in standing or other orders of the Assembly. For example, in the absence of the Speaker, the Deputy Speaker could be called on to name a time for the reconvening of a committee (when adjourned by the Presiding Member due to grave disorder) on the receipt of a request in writing from an absolute majority of members of the committee.<sup>95</sup> During the absence of the Speaker from the Territory or from duty, the Deputy Speaker could also receive the written notice of resignation of a Member of the Assembly.<sup>96</sup> In statutes and in resolutions establishing standing and select committees, it is common practice to assign certain duties to the Speaker or, in the absence of the Speaker, to the Deputy Speaker.

### Resignation and vacancy in office

5.48 Up until 2008 neither the Self-Government Act nor standing or any other orders of the Assembly contained any specific provisions regarding the resignation of the Deputy Speaker. This was a similar situation to that which still prevails in the House of

89 MoP 1989-91/293; Assembly Deb (12.9.1990) 3092-4. A point of order having been taken as to whether the Speaker was making the statement as the Speaker or an MLA, the Speaker vacated the Chair and made a statement, by leave, before resuming the Chair and making a statement concerning the appropriateness of notices of motion.

90 MoP 1989-91/366; Assembly Debates (11.12.1990) 4933-53.

91 Self-Government Act, section 42.

92 Standing order 5.

93 Standing order 6.

94 Standing order 7.

95 Standing order 229A.

96 Resolution of the Assembly of 27 March 1992.

Representatives and the Senate. Should the Deputy Speaker wish to resign from office in the House of Representatives, current practice is that he or she may do so by means of a personal announcement or by notifying the Speaker in writing.<sup>97</sup> In 2008 the Assembly amended the relevant standing order to provide that the Deputy Speaker could resign the office by writing to the Speaker.<sup>98</sup>

**5.49** In the Senate resignations in writing have been directed to the President. *Odgers'* notes that there is no reason for a resignation not being made orally in the Senate, but in some past cases the Senators concerned have been appointed as Ministers and it is obviously undesirable that a Deputy President should also hold ministerial office for a period until the Senate next meets.<sup>99</sup> As the Deputy Speaker of the Legislative Assembly is not eligible to be a Minister in the Territory, a person would have to vacate the office prior to accepting appointment as a Minister.

**5.50** Should a vacancy occur in the office of Deputy Speaker, the Speaker must report the vacancy to the Assembly as soon as possible and the Assembly must forthwith proceed to the election of a new replacement Deputy Speaker.<sup>100</sup>

## **ABSENCE OF SPEAKER AND DEPUTY SPEAKER**

**5.51** If the Assembly is informed by the Clerk of the absence of both the Speaker and Deputy Speaker, the Members present may proceed to elect one of their number who shall perform the duties of Speaker during the absence, subject to any other order of the Assembly. Otherwise the Assembly stands adjourned until the next day of sitting.<sup>101</sup>

**5.52** On an occasion when, at the commencement of a meeting, both the Speaker and Deputy Speaker were absent, the Assembly, on motion moved by leave, ordered that one of the Temporary Deputy Speakers take the Chair as Acting Speaker. The Member took the Chair and read the prayer.<sup>102</sup>

**5.53** In 1994, the Assembly having granted leave of absence to both the Speaker and Deputy Speaker for an overlapping period, the Speaker apprised the Assembly of the fact and it ordered that one of the Assistant Speakers (or, in her absence, another of the Assistant Speakers) perform the duties of Speaker for the period of absence of both the Speaker and the Deputy Speaker.<sup>103</sup> The Assembly took similar action in 1996 when it was expected that both the Speaker and Deputy Speaker would be absent simultaneously. Again, the motion was moved by leave.<sup>104</sup>

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97 *House of Representatives Practice*, pp. 200-1. Earlier practice was that a motion be moved 'That the resignation be accepted, and that the House proceed forthwith to appoint a Chairman of Committees'.

98 MoP 2004-08/1388-9.

99 *Odgers'*, p. 115.

100 Standing order 13.

101 Standing order 9.

102 MoP 1992-94/181. See also paragraph 5.22.

103 The motion was moved by leave on this occasion as well. See MoP 1992-94/734; Assembly Debates (23.9.1994) 3325. This course was proposed by the Speaker from the Chair.

104 MoP 1995-97/573.

## ASSISTANT SPEAKERS

5.54 At the commencement of every Assembly the Speaker nominates no more than three Members who are not Ministers to act as Assistant Speaker.<sup>105</sup> The Speaker may revoke a nomination.<sup>106</sup> An Assistant Speaker may be called upon by the Speaker or Deputy Speaker to take the place of the occupant of the Chair during Assembly proceedings.<sup>107</sup>

5.55 In 1998 the Assembly adopted a recommendation of the Standing Committee on Administration and Procedure to amend the standing order to increase the number of Assistant Speakers from two to the current three.<sup>108</sup> In making the recommendation, the committee noted that having a representative from the crossbenches<sup>109</sup> serving in the position would enhance the perception of the impartiality of the Chair. The role could then be undertaken by Members from all sections of the Chamber. Increasing the number of Assistant Speakers had another benefit. In past Assemblies, particularly during lengthy sittings, Members who were Assistant Speakers had had difficulty participating in debate while also fulfilling the responsibility of acting in the Chair.<sup>110</sup>

5.56 Appointments have been revoked. For example, in the Sixth Assembly the Speaker revoked the appointments of certain Members when they had been appointed Opposition Whip on the basis that it would be difficult to perform both roles effectively.<sup>111</sup>

## LEADER OF THE OPPOSITION

### Appointment/election

5.57 The Self-Government Act and the standing orders prepared for the first Legislative Assembly did not mention the position of Leader of the Opposition, though that office is common to the Commonwealth and Australian state parliaments. It has been suggested that there was an assumption that such a position would not be appropriate in a very small legislature as the electoral system seemed likely to produce an Assembly whose membership would comprise a number of parties, groups and individuals.<sup>112</sup>

5.58 The standing orders governing the choice of a Leader of the Opposition were adopted on the first sitting day of the First Assembly as amendments to the standing orders prepared by officials prior to the Assembly meeting. In their original form these standing orders provided for the Leader of the Opposition to be elected by all Members of the Assembly. In practice, government Members refrained from participation in a ballot for the position.<sup>113</sup>

5.59 In the First Assembly there were two non-government parties of equal size in the Assembly. Following the adoption of standing orders 5A and 5B, a ballot was conducted and the Leader of the Liberal Party in the Assembly was declared elected as Leader of the

<sup>105</sup> Prior to 2008 these were called Temporary Deputy Speakers.

<sup>106</sup> Standing order 8.

<sup>107</sup> Standing order 10.

<sup>108</sup> MoP 1998-2001/36.

<sup>109</sup> Since self-government, the positions had generally been filled from the ranks of government or opposition parties although a crossbench Member was appointed in the Fourth Assembly, see MoP 1998-2001/35.

<sup>110</sup> *Standing Order 8, Temporary Deputy Speakers*, report by the Standing Committee on Administration and Procedure, April 1998.

<sup>111</sup> See MoP 2004-08/86, 417, 718, 869.

<sup>112</sup> See, for example, Mr Collaery MLA, Assembly Debates (21.6 1991) 2259.

<sup>113</sup> See Assembly Debates (11.5.1989) 7-11, where some Members protested against the precipitate adoption of the new standing orders, particularly the possible involvement of the government party in the choice of Leader of the Opposition.

Opposition.<sup>114</sup> Concern was expressed about the legality of the Assembly's action and legal advice was sought.<sup>115</sup> The advice, from Professor J Richardson, confirmed the propriety and legality of the actions taken by the Assembly on 11 May. The opinion was that the decisions were correct in law and in accordance with parliamentary conventions.<sup>116</sup>

**5.60** Standing order 5A, as amended in June 1991, provides that the leader of the largest non-government party in the Assembly will be Leader of the Opposition.<sup>117</sup> Current practice is that, either at the first meeting of an Assembly following a general election,<sup>118</sup> or at the first opportunity following a change in leadership of the major opposition party,<sup>119</sup> the Speaker recognises that Member as Leader of the Opposition.

**5.61** In the event that the two largest non-government parties are of equal size, the Assembly elects a Leader of the Opposition and the election is conducted in a similar manner to the election of the Speaker and Chief Minister.<sup>120</sup> Since the adoption of the current provisions there has not been a ballot for the position. There is no provision in the standing orders for the election to take precedence of other business. On 21 June 1991, for example, the Speaker ascertained whether it was the wish of the Assembly to proceed and there was no objection.<sup>121</sup>

**5.62** On that day, following the resignation of the then Leader of the Opposition, who had been replaced as leader of his party,<sup>122</sup> and ballots having taken place, a Member representing a minor group in the Assembly was declared elected as Leader of the Opposition.<sup>123</sup>

**5.63** The newly elected Leader of the Opposition then advised the Assembly that he considered that the:

... concept of the office of Leader of the Opposition in this Assembly is, in my view, a foolish one. There are 12 non-government members in this Assembly, and it is clear that in those 12 there are five groups. It clearly is ludicrous for any one Member on this side of the Assembly to speak on behalf of all non-government Members as Leader of the Opposition. Accordingly, I shall eschew that title ...<sup>124</sup>

<sup>114</sup> MoP 1989-91/3-4; Assembly Debates (11.5.1989) 7-11. At the time two non-government parties had four representatives in the Assembly. Members of the governing party did not participate in the ballot. Assembly Debates (11.5.1989) 9.

<sup>115</sup> MoP 1989-91/7; Assembly Debates (23.5.1989) 19. Later that day the Assembly discussed as a matter of public importance 'The actions of the Executive in relation to the election of the Leader of the Opposition'; See Assembly Debates (23.5.1989) 34-53.

<sup>116</sup> MoP 1989-91/65; Assembly Debates (22.8.1989) 1139. The opinion also suggested that the Assembly should consider a formal amendment to the standing orders to provide that the members of the parties in government be excluded from the election of Leader of the Opposition. The Speaker later made a statement to the Assembly and presented a correction to the advice; see MoP 1989-91/79. There was an earlier advice from the ACT Government Law Office that confirmed the validity of the standing orders.

<sup>117</sup> Standing order 5A. The Member must consent to being Leader of the Opposition.

<sup>118</sup> MoP 1992-94/4; 1995-97/5; 1998-2001/4; 2001-04/3; 2004-08/3.

<sup>119</sup> MoP 1989-91/483; 1992-94/331; 1995-97/284.

<sup>120</sup> Standing order 5B (adopted 21 June 1991).

<sup>121</sup> See Assembly Debates (21.6.1991) 2255.

<sup>122</sup> MoP 1989-91/469-70, 473, 479-81; Assembly Debates (21.6.1991) 2337-76; MoP 1989-91/483; Assembly Debates (6.8.1991) 2379.

<sup>123</sup> MoP 1989-91/473. The result of the first ballot was six votes for Mr Humphries, six votes for Mr Duby. That of the second was five votes for Mr Humphries, six votes for Mr Duby. The lists of Members of the Assembly show Mr Duby's and one other Member's party affiliation as Independents Group, with five Members, including Mr Humphries, listed as members of the Liberal Party. Later that evening, in an unusual procedure, the Assembly ordered that the ballot papers for the second ballot for the election of the Leader of the Opposition earlier that day be laid on the table by the Clerk and this was done; see MoP 1989-91/476. The motion was moved by leave.

<sup>124</sup> Assembly Debates (21.6.1991) 2256-7.

5.64 Later that evening, the Assembly amended standing orders 5A and 5B, adopting the current recognition provisions.<sup>125</sup> Following the Assembly's agreement to the amendment, the new leader of the Liberal Party gave his consent to his appointment as Leader of the Opposition. The actions of the Assembly on 21 June 1991, in adopting and applying amended standing orders 5A and 5B, were also called into question and further legal advice was sought. That advice, later tabled, stated that the recognition of the position in the standing orders did not contravene the provisions of the Self-Government Act and upheld the validity of the actions of the Assembly on 21 June 1991.<sup>126</sup>

5.65 The office of Leader of the Opposition has statutory recognition and attracts a special allowance.<sup>127</sup> Other than in standing orders 5A and B, the position receives no special recognition in standing and other orders of the Assembly. It is the practice of the Assembly for the Leader of the Opposition to receive the first call from the Chair in question time. In June 1994 the Commonwealth Remuneration Tribunal determined an additional salary for the Deputy Leader of the Opposition.<sup>128</sup>

## ADMINISTRATION OF THE ASSEMBLY

5.66 The Speaker, within the bounds of any orders of or directions by the Assembly or any legislative provisions to the contrary, has control of the Assembly precincts and the provision of building services to all Members, including Ministers, and administrative support services to non-executive Members. This control is provided for in the *Legislative Assembly Precincts Act 2001*.

5.67 The Assembly has established, pursuant to standing order 16, a Standing Committee on Administration and Procedure. Its role is to consider the Assembly's annual estimates of expenditure, the practices and procedures of the legislature and changes to standing orders. The committee also has an advisory role to the Speaker on Members' entitlements, including facilities and services, the operation of the Hansard service, the availability of Assembly documents to the public and the operation of the Assembly Library.<sup>129</sup>

5.68 The Assembly Secretariat, under the direction of the statutory office of Clerk, provides procedural, policy and administrative support for the Speaker and the Assembly and, in particular, administrative support for non-executive Members and their offices.

## CLERK

5.69 The office of Clerk has a long history in Australian legislatures and in the United Kingdom.<sup>130</sup> The Clerk of the Legislative Assembly has a range of responsibilities, key ones being as principal adviser to the Speaker and Members on procedural matters and chief executive of the Legislative Assembly Secretariat. The *Public Sector Management Act 1994* confirms the independence of the Clerk by stating that 'the clerk is not subject to direction by the Executive in the discharge of the clerk's functions'.<sup>131</sup>

125 MoP 1989-91/479-81; Assembly Debates (21.6.1991) 2337-76.

126 MoP 1989-91/483; Assembly Debates (6.8.1991) 2379. There were two opinions from the Deputy Law Officer, Constitutional and Law Reform Branch, Attorney-General's Department, dated 3 and 24 July 1991.

127 For the purposes of remuneration and allowances, the office of Leader of the Opposition is declared to be an office to which section 73 of the Self-Government Act applies; see *Remuneration Tribunal Act 1995*, subsection 9(3).

128 See Remuneration Tribunal Determination No. 13 of 1994, dated 30 June 1994.

129 The committee also has the duty of arranging the order of private Members' and Assembly business.

130 See *House of Representatives Practice*, p. 203.

131 *Public Sector Management Act 1994* (ACT), section 46.

5.70 The Clerk reads the instrument convening the first meeting of an Assembly following a general election, presents the official notification of the election of each Member and, until a Speaker is elected, chairs the Assembly. After the Members have been sworn in at the first meeting of an Assembly or whenever there is a vacancy in the office, the Clerk conducts the election of a Speaker.

5.71 The Clerk has the duty of producing the *Minutes of Proceedings* of the Assembly, has the custody of the Minutes and keeps a record of all documents laid before the Assembly. The Clerk is also responsible for maintaining the Members' roll and the record of attendance of Members, for the production of the *Notice Paper*, and for the provision of the requisite documentation, advice and services necessary for the smooth running of the Chamber. A particularly important responsibility of the Clerk is the certification of bills agreed to by the Assembly.

5.72 In addition to his or her administrative duties as chief executive of the Legislative Assembly Secretariat, the Clerk has duties in relation to the Legislative Assembly Precincts Act, the Legislative Assembly (Broadcasting) Act and the Legislative Assembly (Members' Staff) Act as well as duties in relation to the receipt of reports and documents for tabling.<sup>132</sup>

5.73 During any vacancy in the office of Clerk or while the Clerk is absent from duty for any reason, all the powers, functions and duties of the Clerk are exercised by the Deputy Clerk.<sup>133</sup>

5.74 The Speaker appoints the Clerk on behalf of the Territory and does so:

- on the advice of the appropriate standing committee of the Assembly;
- in consultation with the Leader of the Opposition and the executive; and
- in accordance with the merit principles set out in section 65 of the *Public Sector Management Act 1994* that relate to the appointment.<sup>134</sup>

5.75 The Public Sector Management Act also establishes:

- that the Clerk holds office on the terms and conditions (if any) in relation to matters that are not provided for in the Act but which are prescribed;
- requirements for the lodgement of a statement of interests by the Clerk and his or her resignation;
- that the Speaker can retire a Clerk on the ground of physical or mental incapacity, suspend him or her from duty and terminate the appointment on the ground of misbehaviour or physical or mental incapacity;<sup>135</sup>
- that the Clerk's remuneration, allowances and other entitlements are determined by the Remuneration Tribunal;<sup>136</sup>
- that the Speaker may grant leave of absence to the Clerk in accordance with prescribed terms and conditions and may appoint the Deputy Clerk or, in the absence of the Deputy Clerk, any other member of the staff of the Secretariat, to act as the Clerk.<sup>137</sup>

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<sup>132</sup> Usually in the absence of the Speaker and Deputy Speaker. See for example *Auditor-General Act 1996*, section 4; *Annual Reports (Government Agencies) Act 2004*, section 13.

<sup>133</sup> Standing orders 14 and 15.

<sup>134</sup> *Public Sector Management Act 1994*, section 46.

<sup>135</sup> *Public Sector Management Act 1994*, sections 48, 50, 51 and 52.

<sup>136</sup> *Remuneration Tribunal Act 1995*, section 10.

<sup>137</sup> *Remuneration Tribunal Act 1995*, sections 47 and 53.