

7.1 The constitutional framework that determines the calendar of meetings of the Assembly, the commencement and termination of Members' terms of office and the provisions for a dissolution of the Assembly is set down in the Self-Government Act. The actual timing of elections, and hence the term of each Assembly, is in the hands of the Assembly, being set by section 100 of the *Electoral Act 1992* (ACT).

7.2 The provisions of the standing orders complement those of the Self-Government Act to ensure that the Assembly meets on a regular basis and a quorum of Members is available to conduct the business of the Assembly.

### **TERM OF THE ASSEMBLY**

7.3 The Self-Government Act does not specifically set down the term of an Assembly. What it does is specify that:

- there shall be a Legislative Assembly for the Australian Capital Territory which shall consist of 17 Members;<sup>1</sup> and
- the term of office of a Member duly elected begins at the end of the day on which the election of the Member is declared and, unless sooner ended by resignation or disqualification, or by dissolution of the Assembly, ends on the polling day for the next general election.<sup>2</sup>

7.4 In fact, to date the Assembly has never been dissolved<sup>3</sup> and there is no provision for its prorogation and hence no provision for sessions of the Assembly. It could therefore be argued that the Assembly is a continuing institution, albeit with its seventh complement of Members.<sup>4</sup> An alternative view is that, as there are no Members of the Assembly between polling day for a general election and the end of the day on which the election of the newly elected Members is declared, there is no Assembly during that period.<sup>5</sup>

7.5 The practice has been to regard an Assembly as commencing with its first meeting after a general election as convened by notice pursuant to section 17 of the Self-Government Act. Unless the Assembly is dissolved earlier by the Governor-General, the term of an Assembly continues until the Assembly expires on polling day for the subsequent general election, currently a period of slightly less than four years.

7.6 The key to determining the actual term or duration of an Assembly is, therefore, the actual date of the next general election for Members of the Assembly. In the *Electoral Act 1992*

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1 Self-Government Act, section 8. Subsection 8(3) makes provision for varying the number of Members. (See also Chapter 1: The Legislative Assembly, its establishment, role and membership, paragraphs 1.38 to 1.39)

2 Self-Government Act, section 10.

3 Section 16 of the Self-Government Act makes provision for the Assembly to be dissolved by the Governor-General if it is incapable of effectively performing its functions or is conducting its affairs in a grossly improper manner. On the last sitting day prior to a general election the Assembly adjourns '... to a day and hour to be fixed by the Speaker ...'.

4 See concluding comments in advice of the Government Solicitor of 15 January 1998 to the Clerk.

5 Advice of the Acting Director, Constitutional and Machinery of Government, Government Law Office, to the Acting Assistant Secretary, Cabinet and Policy Co-ordination Branch, Chief Minister's Department, 29 April 1991.

as amended, a general election was required to be held in February of the third year after the preceding ordinary election. However, after debate over a number of years<sup>6</sup> the Act was amended again to require general elections to be held in the fourth year after the year when the last ordinary election was held in October.<sup>7</sup>

7.7 The *Legislation Act 2001* refers to the expiry of the Assembly,<sup>8</sup> the dictionary to the Act (Meaning of commonly-used terms) providing: 'expire includes lapse or otherwise cease to have effect'.

## DISSOLUTION PROVISIONS

7.8 The Governor-General may, by proclamation,<sup>9</sup> dissolve the Assembly in certain extreme circumstances. Section 16 of the Self-Government Act gives the Governor-General this power if he or she considers that the Assembly is 'incapable of effectively performing its functions' or is 'conducting its affairs in a grossly improper manner'.<sup>10</sup>

7.9 In the event of a dissolution of the Assembly:

- the term of office of each Member ends<sup>11</sup> (though those who are candidates at the subsequent general election are entitled to be paid ongoing remuneration and allowances);<sup>12</sup>
- the Speaker vacates the office of Speaker;<sup>13</sup>
- the Chief Minister vacates the office of Chief Minister;<sup>14</sup> and
- Ministers vacate their offices as Ministers.<sup>15</sup>

6 See, for example, *Review of Governance of the Australian Capital Territory* (April 1998); Legislative Assembly Standing Committee on Legal Affairs, *Changing the Term of Assembly Members from three years to four years*, (October 2003). The arguments for and against a longer term set claims that a longer term would provide for better medium term decision making, less influenced by partisan electoral imperatives against the view that a shorter term meant that the Assembly was more regularly accountable to the electorate for the discharge of its responsibilities.

7 Section 100 of the *Electoral Act 1992* provides that a general election must be held on the third Saturday in October in the fourth year after the year when the last ordinary election was held. There are provisions for alternative dates in the event of an election for Senators or Members of the House of Representatives being held on that day and for extraordinary general elections occurring (see Part 8 of the *Electoral Act 1992* and paragraph 1.219) Though it was originally proposed that Members would be elected for a fixed term of four years and hence the term of each Assembly would be approximately four years, the term of office of Members for the first three Assemblies was approximately three years (with the exception of the First Assembly), that for the Fourth Assembly was three years and eight months and it has been four years since the commencement of the application of amendments made by the *Electoral Amendment Act 2003*. See paragraph 1.219. The amendments apply to each ordinary election after the general election held on 16 October 2004.

8 *Legislation Act 2001*, section 71—Effect of dissolution or expiry of Assembly on notice of motion.

9 The proclamation would be one made pursuant to a Commonwealth Act, not the Constitution. Paragraph 17(j) of the *Acts Interpretation Act 1901* (Cwth) provides that 'Proclamation' shall mean Proclamation by the Governor-General that is published in the *Gazette* or entered on the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003* (Cwth).

10 Section 16A of the *Acts Interpretation Act 1901* (Cwth) provides, inter alia, that where, in a Commonwealth Act, the Governor-General is referred to, the reference shall, unless the contrary intention appears, be read as referring to the Governor-General, or a person so deemed to be included in the reference, acting with the advice of the Federal Executive Council.

11 Self-Government Act, section 10.

12 Self-Government Act, subsection 73(5). For the purposes of section 73 of the Self-Government Act (Remuneration and Allowances), if the person is a candidate at the next general election the person shall be taken to have continued in the office of Member until the polling day for the next general election of Members for the Assembly or, if the person is re-elected, until the day on which the election of the person is declared. It would be expected that the remuneration and allowances received would be restricted to those the person received as a Member.

13 Self-Government Act, paragraph 12(1)(c).

14 Self-Government Act, paragraph 46(1)(b).

15 Self-Government Act, paragraph 46(1A)(b).

7.10 In addition, as there are no Members and therefore there is no Assembly, all proceedings pending come to an end—all business on the *Notice Paper* lapses, any temporary or other non-ongoing orders or resolutions cease to have effect and all committees cease to exist.

7.11 In relation to the notification of enactments, the making of all laws passed by the Assembly should be notified on the ACT Legislation Register or in the Territory Gazette before the date and time specified in the dissolution proclamation.<sup>16</sup> Even if a bill had been passed by the Assembly and had been so certified by the Clerk in accordance with standing order 193, if the Speaker had not asked parliamentary counsel to notify the making of the proposed law<sup>17</sup> when the Assembly was dissolved, the proposed law could not be regarded as having taken effect and its future would be problematical.<sup>18</sup>

7.12 In the event of a dissolution, the powers of the executive are vested temporarily in a Commissioner appointed by the Governor-General and a general election of Members of the Assembly must be held on a day specified by the Commonwealth Minister by notice published in the Commonwealth Gazette. The day specified cannot be earlier than 36 days nor later than 90 days after the dissolution of the Assembly.<sup>19</sup>

7.13 The Commonwealth Minister administering the Self-Government Act is required to cause a statement of reasons for the dissolution to be:

- (a) published in the *Commonwealth Gazette* as soon as practicable after the day of the dissolution; and
- (b) laid before each House of the Commonwealth Parliament within 15 sitting days of that House after the day of the dissolution.<sup>20</sup>

## FIRST MEETING

7.14 Paragraph 17(1)(a) of the Self-Government Act requires the Assembly to meet within seven days (or, in certain exceptional circumstances, 14 days)<sup>21</sup> of the declaration of the result of a general election.<sup>22</sup> For the First Assembly, the time was set by the Minister for the Arts and Territories. Since the Second Assembly, the Speaker has, by a notice published in the *Territory Gazette*, set the time, date and place for the first meeting of a new Assembly. Should there not be a Speaker, or the Speaker fails to convene the first meeting, the Commonwealth Minister with responsibility for the Territory is required to do so.<sup>23</sup>

7.15 It should be remembered that a Speaker vacates office not on polling day, but immediately before the new Speaker is elected at the first meeting of the Assembly after a general election.<sup>24</sup>

16 With the possible exception of a bill for an entrenching law or an enactment to which an entrenching law requiring a referendum applied. These bills could not become law until they had been passed at a referendum.

17 In accordance with standing order 193 and section 28 of the *Legislation Act 2001*.

18 And see *House of Representatives Practice*, p. 221.

19 Self-Government Act, paragraph 16(2)(b) and subsection 16(3).

20 Self-Government Act, subsection 16(8). The statement of reasons is not subject to disallowance.

21 Subject to subsection 17(3) of the Self-Government Act where, if the office of Speaker is vacant or the Speaker is unable or refuses or fails to convene a meeting within a prescribed period, the Commonwealth Minister is obliged to convene the meeting.

22 Self-Government Act, section 17.

23 Self-Government Act, subsection 17(3).

24 Self-Government Act, section 12.

## Proceedings at the first meeting

7.16 The Self-Government Act and the standing orders set out the procedures to be followed at the first meeting of an Assembly after an election.

7.17 The Clerk chairs the Assembly until a Speaker is elected.<sup>25</sup> Standing order 1(b) requires that the Clerk read the notice convening the meeting and, after the Chief Justice of the ACT has entered the Chamber, that the new Members make the oath or affirmation.<sup>26</sup> The Clerk also tables the notification of candidates elected to the Assembly.<sup>27</sup>

7.18 The Self-Government Act provides that, before taking his or her seat, a Member must make and subscribe an oath or affirmation before the Chief Justice of the Supreme Court of the Australian Capital Territory (or a justice of the court authorised by the Chief Justice for the purpose).<sup>28</sup> The *Oaths and Affirmations Act 1984* sets out the form of the oath or affirmation to be taken by Members.<sup>29</sup>

7.19 At the first meeting of the First Assembly, the authority to conduct the swearing in of Members was delegated to Mr Justice Kelly, a Judge of the Supreme Court of the Australian Capital Territory. After Mr Justice Kelly was conducted to his seat, the authority was handed to the Acting Clerk, who read it to the Assembly.<sup>30</sup>

7.20 The practice in the Territory is that Members make and subscribe their oaths or affirmations of allegiance in the Chamber. The Members also sign the Members' Roll, maintained by the Clerk in accordance with standing order 20.<sup>31</sup>

7.21 The Chief Justice having left the Chamber, the Assembly proceeds immediately to elect a Speaker<sup>32</sup> and, the Speaker having taken the Chair, the Chief Minister<sup>33</sup> and the Deputy Speaker.<sup>34</sup> The leader of the largest non-Government party then gives his or her consent to being Leader of the Opposition or, in the event of the two largest non-Government parties being of equal size, the Assembly may proceed to choose a Leader of the Opposition.<sup>35</sup>

7.22 Following the election of the Chief Minister and the announcement of the leadership of the opposition respectively, those officeholders usually seek the leave of the Assembly to make statements. It is customary for Members who occupy the crossbenches to seek the leave of the Assembly to make statements informing the Assembly of their party or independent status.

7.23 The Assembly is not precluded from proceeding with other business in the ordinary routine of business although, as there is no *Notice Paper* on the first day of meeting after a general election, there are no notices nor orders of the day to be considered; and since the initiation of business generally requires that notice be given, little ordinary business is undertaken. It is not the practice for petitions to be presented on the first day.

25 Standing order 1(f).

26 Standing order 1(c).

27 Standing order 1(d).

28 Self-Government Act, section 9.

29 *Oaths and Affirmations Act 1984*, sections 6A and 10A, and see Chapter 4: Membership of the Assembly, paragraphs 4.12 to 4.17.

30 MoP 1989-91/1-2, Assembly Debates (11 May 1989) 2.

31 Standing order 20 stipulates that the Clerk must maintain a Members' Roll showing the names of the Members elected, the dates of election, the date the Member made an oath or affirmation, and the date of ceasing to be a Member and the cause of their ceasing to be a Member.

32 Self-Government Act, section 11; standing order 1(e).

33 Self-Government Act, section 40; standing order 1(g).

34 Standing order 4. At that stage of the first meeting, it would not be expected that the Chief Minister had appointed Ministers; it would be expected that a Member likely to be appointed a Minister would not be nominated.

35 Standing orders 5A and 5B.

7.24 Papers have been presented by the Speaker<sup>36</sup> and by the Chief Minister.<sup>37</sup> It is usual for a motion to be moved by the Chief Minister, of which notice is not required, to set the next day of meeting.<sup>38</sup> Standing orders have been adopted, amendments moved;<sup>39</sup> motions have been moved authorising broadcasting of proceedings;<sup>40</sup> ministerial arrangements have been announced;<sup>41</sup> and ministerial statements have been made.<sup>42</sup> It is usual for subordinate legislation to be tabled.<sup>43</sup> Committees have been established<sup>44</sup> and committee members appointed.<sup>45</sup>

## DAYS AND HOURS OF MEETING

### Fixing of meetings of the Assembly

7.25 The Self-Government Act provides that the Assembly must meet:

- within a period of seven days after the result of a general election is declared; or
- within seven days of a written request for a meeting signed by such number of Members as is fixed by enactment is delivered to the Speaker<sup>46</sup> (the Assembly having yet to make any such provision by enactment, this provision is currently dormant); or
- as soon as practicable after a vacancy in the office of Chief Minister occurring whilst the Assembly is not meeting.<sup>47</sup>

7.26 Standing order 27 provides that, unless otherwise ordered, the Assembly shall meet at 10 am. The Assembly usually resolves to meet on certain days (normally Tuesdays, Wednesdays and Thursdays) for between 12 and 15 weeks per year.<sup>48</sup>

7.27 It is usual practice that these orders of the Assembly contain a provision that:

- the Speaker (or in his or her absence, the Deputy Speaker) can fix an alternative day or hour of meeting on receipt of a request in writing from an absolute majority of Members;<sup>49</sup> or
- the Assembly can otherwise order different sitting dates.

7.28 On 12 December 2002 a further provision was included in the order fixing the sitting days for 2003. It provided for an alternative day or hour to be fixed by the Speaker 'having consulted with Members following receipt of advice from the Chief Minister that a place

36 MoP 1989-91/3; 2001-04/4; 2004-08/3.

37 MoP 2004-08/4.

38 Standing order 36.

39 MoP 1989-91/3-4.

40 MoP 1989-91/3; 1992-94/4; 1995-97/3-4; 1998-2001/4.

41 MoP 1989-91/4. The amount of business conducted on the first sitting day of the First Assembly reflected the number of 'housekeeping' decisions that had to be taken.

42 MoP 1989-91/5.

43 MoP 1992-94/3-5; 1995-97/4-7; 1998-2001/4-6; 2001-04/4-9; 2004-08/4-9.

44 MoP 1992-94/7-11; 1995-97/7-10;

45 MoP 1992-94/11-3; 1995-97/10-12;

46 Self-Government Act, paragraph 17(1)(b).

47 Self-Government Act, paragraph 40(2)(b). The Speaker is required to convene the meeting by notice published in the *Territory Gazette* as soon as practicable. Prior to 1994 the Self-Government Act also provided that the Assembly meet at least once every two months. The provision was omitted in amendments contained in the *Arts, Environment and Territories Legislation Amendment Act 1993* (No. 6 of 1994) (Cwlth). Thus there is no statutory requirement for the Assembly to meet for any number of days in a year or in any specified period.

48 MoP 2004-08/523.

49 Thus almost replicating the dormant provision in paragraph 17(1)(b) of the Self-Government Act.

of a Senator for the Australian Capital Territory had become vacant before the expiration of his or her term of service'.<sup>50</sup>

7.29 Standing order 36 provides that a motion for the purpose of fixing the next meeting of the Assembly may be moved by a Minister at any time without notice. It is not uncommon for the Assembly to amend the sitting pattern by way of order. Also, in the past, following the election of Chief Ministers, the practice has been for the Assembly to agree to adjourn to a date to be fixed by the Speaker either at the request of the Chief Minister or on receipt of a request in writing of an absolute majority of Members (and requiring the Speaker to notify Members in writing of the date and time of meeting).<sup>51</sup>

## WHAT CONSTITUTES A SITTING OF THE ASSEMBLY?

7.30 A sitting of the Assembly commences when the Assembly meets, the bells having been rung for five minutes, usually when the Speaker takes the Chair pursuant to standing order 27 or other order of the Assembly<sup>52</sup> and it concludes when the Assembly adjourns, either by resolution or pursuant to standing order.

7.31 Even if a quorum of Members is not present at the time fixed for the meeting of the Assembly and the Speaker is obliged to adjourn the Assembly until the next sitting day pursuant to the provisions of standing order 28, the implication of the wording of standing order 28 is that a sitting has occurred.<sup>53</sup>

7.32 The term 'sitting day' is not defined in the standing orders although it is referred to on a number of occasions.<sup>54</sup> The practice of the House of Representatives is that a sitting day is a day on which the House commences a sitting following an adjournment, and continues until a motion for its adjournment is carried. It is defined 'in other words' as taken to mean a day on which the house meets to begin a sitting and not any day on which the House sits. Thus, a sitting day may continue for one or more days.<sup>55</sup>

7.33 The term 'sitting day' has special legal significance as there are certain statutory requirements for the notification of the making of laws,<sup>56</sup> the presentation of regulatory impact statements,<sup>57</sup> and the timing of motions to amend or disallow subordinate laws and disallowable instruments.<sup>58</sup> The dictionary to the *Legislation Act 2001* provides that a 'sitting day' of the Legislative Assembly 'means a day when the Assembly meets'.<sup>59</sup>

50 MoP 2001-04/496. In the following year the Assembly did meet earlier than scheduled following receipt by the Speaker of a request in writing from an absolute majority of Members to discuss the bushfire emergency in the Territory.

51 MoP 1989-91/470; 1992-94/8 (the date and time the Assembly next met was in accordance with the request of the Chief Minister); 1995-97/12; 1998-2001/6.

52 Or when it meets for the first time following a general election pursuant to the provisions of paragraph 17(1)(a) of the Self-Government Act or when it meets pursuant to the provisions of paragraph 40(2)(b) of the Self-Government Act (there being a vacancy in the office of Chief Minister). A meeting may proceed should the Speaker be absent (see standing order 6).

53 See also the provisions of standing order 9 (Absence of Speaker and Deputy Speaker) and *House of Representatives Practice*, p. 237.

54 Standing orders 9, 28, 31, 32, 125, 151.

55 *House of Representatives Practice*, p. 237. No new *Notice Paper* would be issued in such circumstances, the plenum would continue working through the business as listed on the original *Notice Paper*. However, the unusual circumstances may mean that issues concerning the precedence to be allocated to various categories of business (as listed) at various times may, on occasion, need an order of the Assembly should the sitting continue over a number of days. See, for example, MoP 1998-2001/1157 where, the Speaker having left the Chair the preceding evening (there having been a power failure), the Chair was resumed the following morning (Wednesday) and the Speaker advised the Assembly that, as the sitting of the preceding day had not been adjourned, Tuesday's program was still before the Assembly. Having then ascertained that it was the wish of the Assembly to do so, the Speaker directed that the Assembly follow the routine of business that would normally apply on a Wednesday.

56 *Legislation Act 2001*, subsection 28(9).

57 *Legislation Act 2001*, subsection 34(6).

58 *Legislation Act 2001*, subsection 65(1).

59 *Legislation Act 2001*, dictionary.

7.34 The shortest sitting of the Assembly was on 10 October 2000 when the sitting lasted three minutes<sup>60</sup> (a notice of motion of no confidence in the Chief Minister having been delivered to the Acting Clerk and reported to the Assembly) and the longest on 24 and 25 August 2006 (18 hours and 30 minutes).<sup>61</sup>

## SUSPENSION OF SITTING

7.35 Suspension of a sitting, as distinct from an adjournment, allows for a temporary break in the proceedings. This allows business to be restarted where it left off prior to the suspension.<sup>62</sup> A sitting is suspended by the Speaker leaving the Chair, usually having ascertained that it was the will of the Assembly that the sitting be suspended.<sup>63</sup> The most common occurrence of a suspension is for a meal break to be taken.

7.36 Standing orders provide for a sitting to be suspended in the case of special circumstances arising in the event of an equality of votes in the ballot for the election of Speaker and Chief Minister.<sup>64</sup> It is also provided in the standing orders that, if it has been established that a quorum of Members is not present but the Speaker is satisfied that there is likely to be a quorum within a reasonable time, the Speaker shall announce that the Chair will be taken at a stated time.<sup>65</sup> The sitting is then suspended until the Speaker resumes the Chair.

7.37 Should grave disorder arise in the Assembly, the Speaker may also suspend the sitting until a time to be named by him or her.<sup>66</sup> This has occurred on occasions for short periods following grave disorder in the gallery<sup>67</sup> and on two occasions due to disorderly conduct in the Assembly.<sup>68</sup> Sittings have often been suspended pursuant to order of the Assembly when the agreement of all Members on an issue could not be reached.<sup>69</sup>

7.38 Sittings have been suspended for a variety of reasons on other occasions including:

- power failures in the Assembly;<sup>70</sup>
- fire alarms sounding;<sup>71</sup>
- to enable Members to consider proposed amendments to bills;<sup>72</sup>
- to enable Members to consult on proceedings;<sup>73</sup>
- the running of the Melbourne Cup;<sup>74</sup>
- as a mark of respect following a motion of condolence;<sup>75</sup>

60 MoP 1998-2001/1011.

61 MoP 1995-97/197-208.

62 An adjournment requires the Assembly to follow the routine of business set out in standing order 74 at its next meeting.

63 A dissenting voice would mean that the sitting continued.

64 Standing orders 2(g) and (k), 3(g) and (k). Suspension is for a period of 30 minutes. The provision would also apply to the election of Deputy Speaker and Leader of the Opposition (should there be a ballot).

65 Standing orders 28, 31 and 32.

66 Standing order 207.

67 See, for example, MoP 1995-97/258 (2), 267-8 (2).

68 MoP 1989-91/264 (10 minutes) and MoP 1992-94/120 (53 minutes).

69 See, for example, MoP 1989-91/50; MoP 1992-94/475; MoP 1995-97/784; MoP 1998-2001/870.

70 See, for example MoP 1998-2001/1157 (Speaker resumed the Chair the following day); MoP 2001-04/37; MoP 2004-08/467.

71 MoP 1998-2001/835.

72 See, for example, MoP 1992-94/490, Assembly Debates (25.11.1993) 4178-9; MoP 1998-2001/1586, Assembly Debates (9.8.2001) 2799.

73 See, for example, MoP 1989-91/30, 150; Assembly Debates (22.11.89) 2847; MoP 1992-94/566; Assembly Debates (19.4.1994) 994.

74 MoP 1995-97/830.

75 MoP 2004-08/1221.

- to enable cameras to be brought into the Chamber and while photographs were taken;<sup>76</sup> and
- on special ceremonial occasions (for example, following the swearing in of a new Member).<sup>77</sup>

7.39 Suspensions of sittings have been used in other parliaments to enable them to expedite consideration of particularly complex or contentious government legislation. In Australia perhaps the best known recent example is the Senate's consideration of native title legislation in 1993. The Senate sat on 16, 17, 18, 20 and 21 December of that year to consider the legislation. There were regular suspensions but no adjournments.<sup>78</sup>

## SPECIAL RE-CONVENING OF THE ASSEMBLY

7.40 The Speaker has fixed an alternative day or hour of meeting on the request of an absolute majority of Members for the presentation and consideration of the Supervised Injecting Place Trial Amendment Bill 2000 and the reconsideration of the schedule to the Appropriation Bill 2000-2001;<sup>79</sup> for the purpose of the tabling of the reports of the Auditor-General on matters concerning the Bruce Stadium;<sup>80</sup> to discuss the bushfire emergency in the Territory;<sup>81</sup> and to facilitate the progress of the Gungahlin Drive extension.<sup>82</sup>

7.41 The Speaker has also fixed the day and hour of meeting pursuant to the provisions of paragraph 40(2)(b) of the Self-Government Act, there being a vacancy in the office of Chief Minister whilst the Assembly was not meeting.<sup>83</sup>

## QUORUMS

### Forming a quorum

7.42 A quorum of the Assembly is formed by an absolute majority of Members,<sup>84</sup> not merely a majority of those present in the Chamber and voting on any given occasion.<sup>85</sup> An absolute majority of the Assembly (nine Members) is not only the number of Members necessary to constitute a quorum. It is also the majority required to carry a motion of no confidence in a Chief Minister;<sup>86</sup> to carry a vote in favour of a Speaker's removal from office<sup>87</sup> and to carry a motion moved without notice to suspend a standing order or standing orders.<sup>88</sup>

76 MoP 1992-94/547.

77 See, for example, MoP 1995-97/576.

78 *Odgers*, pp. 152-3. *Odgers*' comments that 'If used excessively ... the procedure could be severely restrictive of the rights of individual senators', but notes that '... the Senate was not originally scheduled to sit on the extra days, so that no scheduled sitting days were lost as far as other business was concerned'.

79 MoP 1998-2001/935-940 (the request specified a date). At the preceding sitting the government had lost the vote on the question that the appropriation bill, as amended, be agreed to. MoP 1998-2001/934.

80 MoP 1998-2001/1009-10 (the request specified a date).

81 MoP 2001-04/523-5 (the requests specified a date).

82 MoP 2001-04/1393, 1394-7 (the request specified a date).

83 MoP 1998-2001/1013. The day and hour was not in fact an alternative day and hour.

84 Self-Government Act, subsection 18(1); standing order 28. Clause 17 of the Australian Capital Territory (Self-Government) Bill 1988, as introduced, provided that at a meeting of the Assembly, nine Members were a quorum and that the regulations (made pursuant to the parent Act but in accordance with a resolution of the Assembly) may fix a different number. The provision was omitted from the bill in the Senate and the current provision was inserted. See *Sen. Deb.* (24.11.1988) 2730. This is a high proportion of the membership. By comparison one-fifth of the membership of the House of Representatives constitutes a quorum.

85 Usually it is taken to mean more than one half of the total votes eligible. If the total is an uneven one, 'it is perhaps better expressed as a total vote which could not be exceeded if every other eligible vote were adverse'. See advice of the Attorney-General quoted at *House of Representatives Practice*, p. 333.

86 Self-Government Act, section 19; standing order 81.

87 Self-Government Act, paragraph 12(1)(d).

88 Standing order 272.



7.43 The question may arise as to what would constitute an absolute majority should there be more than one concurrent vacancy in the membership of the Assembly (thus there being only 15 actual Members at any one time). It has not arisen so far,<sup>89</sup> though the prudent course would be to insist on an absolute majority of at least nine Members for the purpose of establishing and maintaining a quorum and for the purposes of standing order 81 to ensure that the proceedings were, and were seen to be, in accordance with the rules.<sup>90</sup>

### Quorum at time of meeting

7.44 Prior to a scheduled meeting of the Assembly the bells are rung and the Speaker takes the Chair at the appointed time. If a quorum is not present the bells are rung for a further five minutes or until a quorum is formed. If, after five minutes, a quorum is still not present, the Speaker must adjourn the Assembly. However, a significant proviso contained in the standing orders is that, where the Speaker believes that a quorum will be formed, he or she can announce that the Chair shall be taken at a stated (later) time. If, at that time, there is not a quorum, the Speaker must adjourn the Assembly until the next sitting day.<sup>91</sup>

7.45 Members are not permitted to withdraw from the Chamber within five minutes after the time appointed for the meeting of the Assembly unless a quorum is obtained.<sup>92</sup>

7.46 It is not unusual for the Speaker to order the bells to be rung at the commencement of a meeting of the Assembly because a quorum is not present, and for a quorum to be formed within five minutes.<sup>93</sup> The Speaker has not yet declared the Assembly adjourned because a quorum could not be formed at the commencement of a sitting. However, on 20 February 2002 (in unusual circumstances), a quorum of Members not being present, the Speaker, having earlier advised Members of his intentions, directed that the bells not be rung for the full five minutes and announced that the Chair would be resumed at the ringing of the bells. The sitting having been resumed later in the day, a quorum being present, the Speaker made a statement to the Assembly outlining the reasons for the actions he had taken in relation to the meeting of the Assembly earlier in the day.<sup>94</sup>

### Vote indicating lack of quorum

7.47 The Speaker must adjourn the Assembly when the counting of a vote in the Assembly indicates that a quorum is not present. In these circumstances no decision is considered to have been arrived at by the vote. The same proviso that applies to the lack of a quorum at the scheduled commencement of a sitting applies here; if the Speaker is satisfied there is likely to be a quorum within a reasonable time, he or she must state a time at which the Chair will be taken. If there is not a quorum at that time, the Assembly is adjourned to the next sitting day.<sup>95</sup>

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89 This was almost the case for a short period in January 1997, two vacancies occurring during the summer adjournment (though not concurrently). When the Assembly met on 18 February 1997 the vacancies had been filled pursuant to the provisions of the Electoral Act (the terms of office of the new Members had therefore commenced), though the new Members had not taken their seats as Members. See MoP 1995-97/575. The question would not arise in the event of there being one vacancy as an absolute majority would still clearly be nine Members.

90 The quorum of the House of Representatives is not reduced by any vacancy in the membership of the House, though the *House of Representatives (Quorum) Act 1989* (Cwth) provides for the quorum of that House to be a set fraction of the 'whole number of the members of the House'. See *House of Representatives Practice*, p. 266.

91 Standing order 28.

92 Standing order 29.

93 MoP 2004-08/595.

94 MoP 2001-04/55. Members of the Assembly were meeting with the ATSI Board. See the comments by Speaker Berry at Assembly Debates (20.2.2002) 379.

95 Standing order 31.

## Quorum during sitting

7.48 Though it is necessary for a quorum to be present when the Assembly meets and to record a vote of the Assembly, it is not necessary to maintain a quorum continuously whilst the Assembly meets. However, if any Member takes notice that a quorum is not present the Speaker is obliged to count the Assembly; and, the bells having been rung, if a quorum is not present within four minutes, the Assembly must be adjourned. Again, there is a proviso: if the Speaker is satisfied there is likely to be a quorum within a reasonable time, he or she must announce that the Chair will be taken at a stated time; if there is not a quorum at that time the Assembly must adjourn.<sup>96</sup>

7.49 When the attention of the Speaker has been called to the fact that there is not a quorum present, no Member may leave the area within the seats allotted to Members until a quorum is present or four minutes have elapsed.<sup>97</sup>

7.50 On 7 June 1990, during debate on the question 'That the Assembly do now adjourn,' the Speaker's attention was drawn to the fact that a quorum of Members was not present. The bells having been rung and a quorum not having been obtained within the required time, the Speaker adjourned the Assembly.<sup>98</sup>

7.51 Where proceedings are interrupted for lack of a quorum and the Assembly adjourns to a later hour on the same day, standing order 68 states the Speaker shall fix the time for the resumption of the debate or any business under discussion and not disposed of at the time of interruption.

## ADJOURNMENT OF THE ASSEMBLY

7.52 The termination of a sitting of the Assembly is known as an adjournment. An adjournment usually occurs when:

- the Assembly agrees to the motion 'That the Assembly do now adjourn'; or
- there is an 'automatic' adjournment at 6 pm on sitting days.

7.53 There are other provisions in the standing orders whereby the Assembly may be adjourned. In the absence of both the Speaker and Deputy Speaker, should the Assembly fail to elect a Member to perform the duties of Speaker, the Assembly stands adjourned until the next sitting day.<sup>99</sup> The Speaker is required to adjourn the Assembly in the absence of a quorum.<sup>100</sup> The Speaker may adjourn the Assembly without putting the question in the case of grave disorder.<sup>101</sup>

## Adjournment motion moved by a Minister

7.54 A motion for the adjournment of the Assembly, other than the 'automatic' adjournment (see paragraphs 7.55 to 7.61), can only be moved by a Minister and no amendment may be moved to the motion.<sup>102</sup> Such a motion can be moved at any time, though the practice is that the motion cannot be moved whilst another question is before the Chair.<sup>103</sup>

<sup>96</sup> Standing order 32.

<sup>97</sup> Standing order 33. The 'floor' of the Assembly is that area contained within the 'horseshoe' of Members' seats and excludes the Public Gallery. A Member sitting in the gallery would not be counted towards a quorum.

<sup>98</sup> MoP 1989-91/266.

<sup>99</sup> Standing order 9.

<sup>100</sup> Standing orders 28, 31, and 32. See paragraphs 7.44 to 7.51.

<sup>101</sup> Standing order 207.

<sup>102</sup> Standing order 35.

<sup>103</sup> See *House of Representatives Practice*, p. 262.

## Automatic adjournment

7.55 Standing order 34 requires that, at 6 pm on each sitting day, the Speaker must propose the question 'That the Assembly do now adjourn.' There may be debate on the question but no amendment may be moved. The standing order provides that:

- (a) if a vote is in progress at the set time, that vote, and any consequential votes, will be taken and the results announced;
- (b) if, on the question being proposed, a Minister requires the question to be put without debate, it must be put;
- (c) any business under discussion that is not disposed of before the adjournment is included in the *Notice Paper* for the next sitting; and
- (d) if the question is negatived, Assembly proceedings are resumed at the point at which they had been interrupted.<sup>104</sup>

The Assembly rarely agrees to the question on the automatic adjournment when the Speaker first proposes it.<sup>105</sup>

7.56 Questions may arise as to whether leave of the Assembly overrides the provisions of standing order 34 and what constitutes 'any business under discussion and not disposed of at the time of the adjournment' for setting down on the *Notice Paper* for the next sitting.

7.57 Leave of the Assembly would not normally transcend the provisions of standing order 34. Should a Member be making a statement by leave, the Speaker would interrupt the proceedings in accordance with the standing order. The same may not necessarily apply if standing orders have been suspended—for example, to enable a Member to make a statement or move a motion. It would depend on the terms of the order of the Assembly suspending the standing orders.<sup>106</sup>

7.58 Generally speaking, the application of the suspension of standing orders is taken to be limited to what is necessary to enable the Member to proceed at that time, notwithstanding the order of business set down for that day. Thus, for example, a Member making a statement by leave is still subject to Chapter 6 of the standing orders setting out the rules of debate. It would be expected therefore that the Chair would propose the question on the adjournment at the time specified in standing order 34, unless the Assembly had specifically and clearly ordered or agreed otherwise.

7.59 Should the question on the automatic adjournment be negatived (as is often the case), then, even if there had been no question before the Assembly, as set down in standing order 34 the proceedings would resume at the point at which they were interrupted. For example, discussion of a matter of public importance would resume, a Member would resume making his or her statement by leave or a Member would resume addressing his or her point of order (if given the call by the Chair).

7.60 If debate were interrupted pursuant to standing order 34 whilst the Assembly was discussing a matter of public importance or a Member was making a statement by leave or speaking to a point of order, and the Assembly agreed to the motion to adjourn, the issue that arises is the status of that interrupted business in the context of the next day's proceedings.

<sup>104</sup> Standing order 34.

<sup>105</sup> It has occurred: see MoP 1992-94/325.

<sup>106</sup> See the practice of the House of Representatives (where it is regarded that the terms of such an order would need to specifically suspend House of Representatives' (standing order 48A))—*House of Representatives Practice*, p. 263.

**7.61** The key to the matter is whether there is a question before the Assembly (see Chapter 9: Motions). If the Chair has proposed a question (eg 'That the motion be agreed to') the motion is in possession of the Assembly; if not, the matter would be dropped and would not appear on the *Notice Paper*. The making of a statement by leave, discussion of a matter of public importance or a Member addressing a point of order is not 'business' in the terms of the standing orders as it is not in the possession of the Assembly and could not be set down on the *Notice Paper* for the next sitting.

## Adjournment debate

**7.62** Each Member speaking to the question 'That the Assembly do now adjourn' has a time limit of five minutes and there is an overall time limit on the debate of no more than 30 minutes.<sup>107</sup> The practice of the Assembly is that Members may speak only once to the question. The standing order has been suspended to enable the debate to continue until completion<sup>108</sup> and to continue beyond the time set for its completion.<sup>109</sup>

**7.63** The relevancy rule is relaxed for debate on a motion to adjourn the Assembly, standing order 58(a) providing that irrelevant matters may be debated.

**7.64** The reply of the mover of the motion closes the debate, though Members have addressed the Assembly, by leave, after the Minister who moved the motion had replied.<sup>110</sup> The practice is that the Chair will give the call to another Member rising in preference to the Minister who moved the motion.

**7.65** When the Assembly agrees to the motion 'That the Assembly do now adjourn' or when the time fixed for the debate by standing order 69(b) has expired, the sitting concludes and the Speaker adjourns the Assembly until the time fixed for its next meeting, either pursuant to standing order 27 or as fixed by order of the Assembly.

## Adjournment for special reasons

**7.66** The Legislative Assembly may adjourn for special reasons, for example, to mark a significant event in the life of the Territory or the nation at large or to mark the death of an important citizen. It has not yet done so. The House of Representatives has adjourned to mark the death of a Prime Minister and former Prime Minister, a reigning Monarch, a Queen, a Governor-General and others.<sup>111</sup> It has also adjourned 'one minute after it met to enable Members to attend functions in honour of the eminent aviator, Captain Hinkler'.<sup>112</sup>

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<sup>107</sup> Standing order 69(b).

<sup>108</sup> MoP 1992-94/351.

<sup>109</sup> MoP 2001-04/255.

<sup>110</sup> MoP 1992-94/112.

<sup>111</sup> *House of Representatives Practice*, p. 264.

<sup>112</sup> *House of Representatives Practice*, p. 238.