

# Australian House of Representatives—the Office of Speaker

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## Introduction

The office of Speaker is regarded as the highest honour that the House of Representatives can bestow upon one of its members. Its significance in Australia's parliamentary system is reflected in the Constitution, which makes no reference to the prime minister but expressly provides for the House of Representatives to choose a member to be its Speaker prior to conducting any other business (s. 35 of the Constitution). The prominence of the office of Speaker is also reflected in the Commonwealth Table of Precedence (*Commonwealth of Australia Gazette* 1982), where the presiding officers are preceded only by the governor-general, state governors, the prime minister, and premiers and chief ministers of the states and territories (Department of Foreign Affairs and Trade n.d.). There are certain conventions which the House observes out of respect for the office, such as members acknowledging the Speaker by bowing when entering or leaving the chamber.

The Speaker's authority is derived from the House. As the House's spokesperson, the Speaker's principal duty is to uphold the dignity of the House and to protect the rights and privileges of the House and its members. The most visible aspect of the Speaker's role involves presiding over debates in the House chamber, enforcing the standing orders (rules) which have been adopted by the House and ensuring the orderly conduct of business. The Speaker seeks to protect the rights of individual members to ensure they are treated fairly within the framework established by the standing orders. As a general rule, the Speaker does not participate in legislative debates or policy discussions.

The full range of duties carried out by the Speaker extends well beyond his or her chamber role. When not in the chair, the contemporary Speaker is often occupied with matters which, although less visible, are fundamentally important. For example,

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the Speaker, jointly with the President of the Senate, is responsible for the safety and security of Parliament House and its occupants. From overseeing measures to strengthen the physical security of the parliament in times of a heightened security threat, to facilitating meetings of the House during a global pandemic, these duties can be highly demanding of a Speaker's time and attention. The Speaker also performs a range of ceremonial duties as the House's representative, some of which are derived from Westminster traditions. Other duties of the Speaker are prescribed in the Constitution or in Commonwealth legislation.

## Origins of office

The office of Speaker has its origins in the early history of the United Kingdom House of Commons. The first member of the Commons designated as 'Speaker', Sir Thomas Hungerford, was appointed in 1377, though earlier forms of the role can be traced back as far as 1258 (Laundy 1984, 11).<sup>1</sup>

The role of Speaker arose from the House of Commons' need for a spokesperson to communicate its resolutions to the King and his lords. Such a role carried significant personal risk when the resolutions being transmitted were unpalatable to the King. Indeed, early Speakers who found themselves caught up in conflict between the parliament and the Crown paid a high price for carrying out their duties. Some were expelled or imprisoned, while others were executed (House of Commons Information Office 2010). The tradition in the Australian House of Representatives in which a newly elected Speaker feigns to struggle as they are escorted to the chair by supporters derives from those medieval times when a Speaker's resistance to take the chair was well founded.

It is not clear when the role of spokesperson was extended to include presiding over the business of the Commons as its chairman. According to Roskell (1965), John Hooker's *Order and Usage*, published in 1571, provided the first detailed description of the Speaker's duties in the lower house. These duties were 'to direct and guide that house in good order and to see that ordinances, usages, and customs of the house to be firmly kept and observed'.

Hooker's treatise also made reference to the Speaker's role in a range of matters which remain relevant today, such as: determining who should be given the call if more than one member rose to speak; ensuring relevance in debate; taking action against members for disorderly conduct; putting the question on bills; protecting the privileges of the House; and refraining from voting except when exercising a casting vote in the event of a tie.

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1 Early Speakers were variously described as *parlour*, *prolocutor* and *procurator*.

Up until the seventeenth century, Speakers were generally considered to be agents of the Crown (Redlich 1903, 156–57). The Crown is reported to have concerned itself in the appointment of a number of medieval Speakers; moreover, it was in the Commons' interests to elect a Speaker who was known to enjoy the King's confidence. Like the parliament itself, the role of Speaker continued to evolve. As the Commons increasingly asserted its independence from the Crown, its Speakers began to advocate for greater parliamentary independence. During King Charles I's 1642 incursion into the Commons chamber to arrest five members for high treason, the Speaker, William Lenthall, famously refused to reveal their whereabouts (Laundy 1984, 34):

May it please your majesty, I have neither eyes to see, nor tongue to speak, in this place, but as the house is pleased to direct me, whose servant I am here; and I humbly ask pardon that I cannot give any other answer to what your majesty is pleased to demand of me.

Lenthall's actions are regarded as having established the principle that the Speaker's foremost duty is to the House and not the Crown. Since these events, no reigning monarch has entered the lower house of any Westminster-style parliament, a convention which extends to Australia's governor-general, who, as the King's representative, does not enter the House of Representatives chamber and instead delivers the address to open a new session of parliament in the Senate chamber.

In the period following the Restoration of the monarchy under King Charles II in 1660, it was not unusual for Speakers to be associated politically with governments, or even to hold government office while also presiding over the House of Commons (House of Commons Information Office 2010). Arthur Onslow, the longest-serving Speaker of the Commons (from 1728 to 1761), is recognised for setting new standards for the independence of the office, forgoing his post as navy treasurer (and the generous salary that accompanied it) and instituting a range of practices that came to define the modern Speakership (Laban 2013, ix).

It was only during the mid-nineteenth century that the Speakership evolved into its modern form and the convention whereby the Speaker in the Commons is above party became firmly established (House of Commons Information Office 2010).

## **The Speakership in the Australian House of Representatives**

Of the many traditions and conventions the Australian parliament inherited from Westminster, the Speakership is notable for having evolved to be quite different to its British counterpart. The role of the Speaker has been strongly influenced by the distinctive nature of Australia's parliament and its politics. A significant point of difference is that Australia's Speaker has never been completely divorced from politics

in the manner that the British Speaker is. The Speaker of the House of Commons severs party ties upon election to office and for subsequent elections simply stands as 'the Speaker seeking re-election' (Political Parties, Elections and Referendums Act 2000 (UK), s. 22). To support the Speaker's continuity in office, the major political parties usually refrain from nominating a candidate for election in the Speaker's constituency. In contrast, the Australian Speaker has always contested and campaigned for re-election as a member of their party.

Bolton (1962, 356) attributes this divergence in part to the fact that at the time the Australian colonies secured responsible government, the British traditions of the Speaker divesting themselves of all party ties and refraining from election campaigning had scarcely been established. Early colonial Speakers actively participated in debates and often voted in committee or exercised a casting vote along factional lines. The comparatively small numbers in the colonial legislatures meant that a single seat could potentially determine which party or coalition of parties was able to form a majority—a situation which continued after Federation, where initially the House of Representatives comprised just seventy-five members.

Although the Speakership in Australia is regarded as a political appointment, as a rule Speakers have sought to keep themselves detached from government activity to the extent that they can perform their duties with impartiality and be perceived to do so.

From time to time, arguments have been made that Australia should adopt the British convention and have the Speaker abandon all party loyalties upon election to office. Speaker Snedden, arguably the staunchest advocate, pursued the matter enthusiastically during his time in office (from 1976 to 1983). Snedden complained that the Australian system demanded impartiality from its Speaker yet maintained structures which impeded it. After vacating the Speakership, Snedden told the House that he believed the adoption of the Westminster convention was 'inevitable if the standing of the Parliament is to be further raised' (H.R. Deb. 21.4.1983, 6).

The Fraser government considered a proposal put forward by Snedden but ultimately determined that the constitutional and political hurdles were insurmountable. More recently, in 2019, constitutional lawyer George Williams AO (*Australian* 2019) advocated for the adoption of the Westminster convention of an independent Speaker in the context of discussion around possible reforms to question time.

## Election of Speaker

As previously stated, the Constitution expressly provides for the House to choose its Speaker at the beginning of a parliament prior to conducting any other business. The procedures for electing a Speaker are set out in the House's standing orders. The election is conducted by the Clerk acting as chair, and a nominee for Speaker is required to be present in the House to confirm whether they accept the nomination.

If there is more than one candidate, the House proceeds to a secret ballot. Since 2000, there has been only one occasion that the government's nominee has faced competition by means of a ballot. On that occasion in 2013, Bronwyn Bishop ultimately prevailed over the opposition's Rob Mitchell in the ensuing ballot. In the minority forty-third parliament, following the resignation of Harry Jenkins from the Speakership, the Labor government nominated a Liberal National Party member, Peter Slipper, for the role. The opposition sought to nominate, in turn, each government member present who at that time was serving on the Speaker's panel, all of whom declined to accept, and Slipper was elected unopposed. Upon taking the chair, Slipper announced that he would be resigning his party membership and serving as an independent (H.R. Deb. 24.11.2011, 13797).

The House usually chooses as its Speaker a member who possesses considerable parliamentary experience in addition to those personal qualities necessary to carry out the role with distinction. It is assumed that party considerations also play a strong hand in the selection process, and the government's nominee is typically predetermined in the party room. Reid and Forrest (1989, 38), for example, note that the government's preferred candidate has at times been perceived as having been rewarded for their party service or in consolation for being overlooked for a ministerial role.

## In the chair: The Speaker's procedural role

The most visible of the Speaker's duties are those performed in the chair, presiding over the debates of the House. The Speaker ensures that meetings of the House are conducted in an orderly manner, consistent with the standing orders, relevant provisions of the Constitution and traditional practice. The Speaker supervises rather than participates in proceedings; he or she does not normally take part in debate or vote, except in the event of numbers being equal, in which case the Speaker has a casting vote (s. 40 of the Constitution).<sup>2</sup>

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<sup>2</sup> The provision for a casting vote also extends to the Deputy Speaker or Second Deputy Speaker if they are deputising for, or acting in, the position of Speaker, but not to other members who may serve in the chair at the request of the Speaker.

The Speaker is supported in his or her role by the Clerk of the House, who is the principal adviser to the Speaker and the House on parliamentary law, practice, and procedure. The Speaker does not occupy the chair at all times during a sitting. When the Speaker is not present in the chamber, one of the Speaker's two deputies, or a member of the Speaker's panel, takes the chair. Traditionally, the Speaker has taken the chair at the commencement of each sitting, for question time—the focal point of each sitting—and for the adjournment debate, which usually rounds out each day's proceedings. The Speaker also takes the chair for important occasions, such as addresses by foreign leaders, statements by the prime minister, and the budget speech and reply. In the event of a minority government or when the government enjoys only a narrow majority on the floor of the House, it has been the practice that the Speaker has taken the chair for all divisions, so that the otherwise occupant of the chair at the time a division is counted can exercise a deliberative vote. This practice also ensures that a casting vote can be exercised if required.

It is the role of the Speaker to maintain order in the House. Disorderly conduct by members includes persistently and wilfully obstructing the House, refusing to conform to the standing orders, disregarding the authority of the chair, and using objectionable words and refusing to withdraw them. There are sanctions available to the Speaker to deal with disorderly conduct. For a minor infringement a member may be called to order or warned. A member who repeatedly infringes or commits a more serious offence may be directed to leave the chamber for one hour. In the event of more serious disorder, including persistent defiance of the chair, a member may be 'named' by the chair and a motion for the member's suspension from the service of the House is moved (usually by the leader of the House). If a member is named and suspended, the term of the suspension is twenty-four hours on the first occasion, three consecutive sittings on the second occasion during a calendar year, and seven consecutive sittings on the third occasion during a calendar year.

The naming of a member is, in effect, an appeal to the House to support the Speaker's authority in maintaining order. On only one occasion, in 1975, has the government of the day not supported the Speaker's naming of a member, leaving the opposition to move for the member's suspension. This motion was defeated, and the House's lack of support for the authority of the Speaker led Jim Cope to resign as Speaker later that day. In 2011 the minority Gillard government failed to attract sufficient numbers to support a motion for the suspension of Bob Baldwin (LIB, Paterson, NSW) following his naming by Speaker Harry Jenkins. After Jenkins indicated that he would consider his position, opposition leader Tony Abbott promptly moved a motion of confidence in the Speaker, seconded by Prime Minister Gillard, and Jenkins continued in office.

The Speaker is often called upon to rule on members' points of order on matters of procedure. Under the standing orders, a member may move a motion of dissent from a ruling by the Speaker, a practice not permitted in certain other Westminster

parliaments. While it is a serious matter to challenge the Speaker's interpretation and application of the standing orders, a dissent is not equivalent to the more serious criticisms of the Speaker in the form of a censure or want of confidence motion. Harris (2006, 3) notes that whereas a motion of dissent from a Speaker's ruling is an expression of opinion on the merits of a decision, a motion of want of confidence is an expression on the capacities of the chair. Since Federation, just six motions of dissent from a Speaker's ruling have been agreed to by the House, the last occasion being in 1955.<sup>3</sup> A recommendation by the House Procedure Committee (1986, 67) to remove the provisions which enabled members to move dissent from a ruling of the chair was not supported.

It is only through these substantive motions (dissent, want of confidence, or censure) that a Speaker's actions can be criticised by a member. It is otherwise highly disorderly for a member to reflect on the chair in or outside the chamber, including on social media. Prior to the enactment of the Parliamentary Privileges Act 1987, such reflections on the chair could attract the exercise of the penal powers of the House of Commons (Elder 2018, 201). Nevertheless, today, they are regarded as important matters of order.

The nature of the job makes it unavoidable that the Speaker's actions will from time to time attract external criticism, most commonly by observers of question time, the most politically charged period of a sitting. Such criticism tends to relate to the Speaker's party allegiances and associated perceptions of bias. The rules for questions are much more prescriptive than the rules for answers, and oppositions of all political persuasions have tended to use question time in a way that tests the standing orders as they seek to put forward their views and hold the government to account. While the standing orders are designed to give all members the right to participate, they also ensure that the important functions the House performs can be carried out efficiently; that is, they ensure that the majority (by definition, the government of the day) almost always prevails.

## The Speaker's representative role

As the title suggests, the Speaker is the House's spokesperson, formally representing the House in its dealings with other bodies including the Senate, the sovereign, the executive, and the judiciary. On formal occasions the Speaker plays a central ceremonial role. In the event of an address to parliament by a visiting head of state, the

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<sup>3</sup> Additionally, two motions of dissent from rulings by a Deputy Speaker / Chairman of Committees have been agreed to.

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Speaker takes precedence over the prime minister, and is responsible for announcing and introducing visitors. The Speaker regularly receives delegations from visiting parliaments on behalf of the House.

Official communications from the House are signed by the Speaker, and the Speaker receives and reports official communications to the House. These most commonly include messages from the Senate in respect of its consideration of bills and amendments or seeking the concurrence of the House in a resolution of the Senate, and messages from the governor-general recommending appropriations or notifying assent to bills. The Speaker also presents bills which originated in the House, and have been passed by both houses, to the governor-general for royal assent.

## **The Speaker's statutory, constitutional, and administrative roles**

The Speaker has statutory powers and functions in relation to staff of the parliamentary departments which parallel those of a minister appointed to administer a department of state. The Speaker has overall responsibility for the Department of the House of Representatives, and joint responsibility with the President of the Senate in relation to the Department of Parliamentary Services and the Parliamentary Budget Office. Staff of the parliamentary departments are employed under the Parliamentary Service Act 1999 which recognises the independence of the parliamentary administration from the executive. The Act gives the Speaker responsibility for appointing, after consultation with members, the Clerk of the House. In addition to being the principal adviser to the Speaker on matters of procedure, the Clerk advises the Speaker on matters relating to the Department of the House of Representatives. The standing orders permit members to direct questions without notice to the Speaker at the conclusion of question time on any matter of administration for which the Speaker is responsible.

The Constitution requires that the Speaker issue the writ for a by-election when a vacancy occurs in the House. Additionally, the Speaker has a variety of duties set down in statute. For example, the Commonwealth Electoral Act 1918 gives the Speaker responsibility for sending to the Court of Disputed Returns a statement of any question the House wishes to have determined by the court and any associated documents in possession of the House. The Parliamentary Precincts Act 1988 gives the Speaker (and the President of the Senate) responsibility for control and management of Parliament House and its immediate surroundings, including overall responsibility for security services. When the office of Speaker becomes vacant due to resignation, or when the House is dissolved, the Parliamentary Presiding Officers Act 1965 gives the person who was Speaker at the time of resignation or dissolution continuing authority for certain administrative actions until the House chooses a new Speaker.



## Conclusion

The office of Speaker embodies the dignity of Australia's House of Representatives. While each of the House's thirty-two Speakers since Federation has inevitably brought their own characteristics and personality to the role, the office is above the individual. Although, in Australia, the Speakership is recognised as one of the spoils of electoral success for the party or coalition of parties that forms government, generally, during their time in office Speakers have commanded the respect of all members. The role of the Speaker has continued to evolve since Federation, and while presiding over debates remains the most visible of the Speaker's duties, particularly during the highly charged atmosphere that often permeates question time, the modern Speaker performs many other important duties away from the glare of the House chamber.

Note: The following standing orders (as at 2 August 2022) relate to the duties of the Speaker—3, 4, 7, 8, 10 to 12, 15 to 19, 24, 28, 30 to 32, 38, 41, 43, 46, 51, 52, 54 to 57, 60 to 62, 65, 66a, 67, 68, 75, 77, 78, 85 to 87, 91, 92, 94 to 97, 101 to 103, 105, 109, 114, 117, 125 to 131, 133, 135, 137, 150, 152, 168, 175, 176, 182, 198, 199, 215, 222, 222a, 229, 247, 249, 255, 257, 259, 261, and 268 to 270. Sessional order 65A, as amended on 5 September 2022, also relates to the duties of the Speaker.

### Speakers of the House of Representatives

Name	Period(s) in office
HOLDER, Hon. Sir Frederick William, KCMG (knighted June 1902)	9.5.1901 to 23.11.1903; 2.3.1904 to 5.11.1906; 20.2.1907 to 23.7.1909
SALMON, Hon. Charles Carty	28.7.1909 to 19.2.1910
McDONALD, Hon. Charles	1.7.1910 to 23.4.1913
JOHNSON, William Elliot	9.7.1913 to 30.7.1914
*McDONALD, Hon. Charles	8.10.1914 to 26.3.1917
*JOHNSON, Sir William Elliot, KCMG (knighted June 1920)	14.6.1917 to 3.11.1919; 26.2.1920 to 6.11.1922
WATT, Rt Hon. William Alexander	28.2.1923 to 3.10.1925
GROOM, Hon. Sir Littleton Ernest, KCMG, KC, (knighted Jan. 1924)	13.1.1926 to 9.10.1928; 6.2.1929 to 16.9.1929
MAKIN, Hon. Norman John Oswald	20.11.1929 to 27.11.1931
MACKAY, George Hugh	17.2.1932 to 7.8.1934
BELL, Hon. George John, CMG, DSO, VD	23.10.1934 to 21.9.1937; 30.11.1937 to 27.8.1940
NAIRN, Walter Maxwell	20.11.1940 to 21.6.1943
ROSEVEAR, Hon. John Solomon	22.6.1943 to 7.7.1943; 23.9.1943 to 16.8.1946; 6.11.1946 to 31.10.1949
CAMERON, Hon. Archie Galbraith	22.2.1950 to 19.3.1951; 12.6.1951 to 21.4.1954; 4.8.1954 to 4.11.1955; 15.2.1956 to 9.8.1956
McLEAY, Hon. Sir John, KCMG, MM, (knighted Jan. 1962)	29.8.1956 to 14.10.1958; 17.2.1959 to 2.11.1961; 20.2.1962 to 1.11.1963; 25.2.1964 to 31.10.1966

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Name	Period(s) in office
ASTON, Hon. Sir William John, KCMG, (knighted Jan. 1970)	21.2.1967 to 29.9.1969; 25.11.1969 to 2.11.1972
COPE, Hon. James Francis	27.2.1973 to 11.4.1974; 9.7.1974 to 27.2.1975
SCHOLLES, Hon. Gordon Glen Denton	27.2.1975 to 11.11.1975
SNEDDEN, Rt Hon. Sir Billy Mackie, KCMG, QC (knighted Jan. 1978)	17.2.1976 to 10.11.1977; 21.2.1978 to 19.9.1980; 25.11.1980 to 4.2.1983
JENKINS, Hon. Dr Henry Alfred	21.4.1983 to 26.10.1984; 21.2.1985 to 20.12.1985
CHILD, Hon. Joan	11.2.1986 to 5.6.1987; 14.9.1987 to 28.8.1989
McLEAY, Hon. Leo Boyce	29.8.1989 to 22.12.1989; 8.5.1990 to 8.2.1993
MARTIN, Hon. Stephen Paul	4.5.1993 to 29.1.1996
HALVERSON, Hon. Robert George, OBE	30.4.1996 to 3.3.1998
SINCLAIR, Rt Hon. Ian McCahon	4.3.1998 to 31.8.1998
ANDREW, Hon. John Neil	10.11.1998 to 8.10.2001; 12.2.2002 to 31.8.2004
HAWKER, Hon. David Peter Maxwell	16.11.2004 to 17.10.2007
JENKINS, Harry Alfred	12.2.2008 to 19.7.2010; 28.9.2010 to 24.11.2011
SLIPPER, Hon. Peter Neil	24.11.2011 to 9.10.2012
BURKE, Anna Elizabeth	9.10.2012 to 5.8.2013
BISHOP, Hon. Bronwyn Kathleen	12.11.2013 to 2.8.2015
SMITH, Hon. Anthony David Hawthorn	10.8.2015 to 9.5.2016; 30.8.2016 to 11.4.2019; 2.7.2019 to 23.11.2021
WALLACE, Andrew Bruce	23.11.2021 to 11.4.2022
DICK, Hon. Dugald Milton	26.7.2022 –

Source: Based on Elder 2018, Appendix 3.

\*Second period in office.

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