Constitutional and Parliamentary Information

ASGP

The parliamentary system of Australia

Procedures for reform of the Standing Orders/ Rules of Procedure

INTER-PARLIAMENTARY UNION

Aims

The Inter-Parliamentary Union whose international Statute is outlined in a Headquarters Agreement drawn up with the Swiss federal authorities, is the only world-wide organization of Parliaments.

The aim of the Inter-Parliamentary Union is to promote personal contacts between members of all Parliaments and to unite them in common action to secure and maintain the full participation of their respective States in the firm establishment and development of representative institutions and in the advancement of the work of international peace and co-operation, particularly by supporting the objectives of the United Nations.

In pursuance of this objective, the Union makes known its views on all international problems suitable for settlement by parliamentary action and puts forward suggestions for the development of parliamentary assemblies so as to improve the working of those institutions and increase their prestige.

Membership of the Union (October 1994)

Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Cape Verde, Central African Republic, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, Former Yugoslav Republic of Macedonia, France, Gabon, Germany, Greece, Guatemala, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Korea (Dem. P. R. of), Korea (Rep of), Kuwait, Laos, Latvia, Lebanon, Liberia, Libya, Lithuania, Luxembourg, Malawi, Malaysia, Mali, Malta, Marshall Islands, Mauritania, Mexico, Moldova, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, San Marino, Senegal, Singapore, Slovak Republik, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Surinam, Sweden, Switzerland, Syrian Arab Republic, Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

Associated members: Andean Parliament, Latin American Parliament, Parliamentary Assembly of the Council of Europe.

Structure

The organs of the Union are:

1. *The Inter-Parliamentary Conference* which meets twice a year.

2. *The Inter-Parliamentary Council,* composed of two members from each affiliated Group. *President:* Mr. A. F. Sorour (Egypt).

3. *The Executive Committee,* composed of twelve members elected by the Conference, as well as of the Council President acting as *ex officio* President. At present, it has the following composition:

President: Mr. A. F. Sorour (Egypt).

Members: Mrs. H. Castillo de Lopez-Acosta (Venezuela); T. S. Darsoyo (Indonesia); S. Ericson (Sweden); L. Fischer (Germany); G. Haarde (Iceland); M. Jalal Essaid (Morocco); Mrs. F. Kéfi (Tunisia); J. Komiyama (Japan); S. Paez Verdugo (Chile); M. C. Sata (Zambia); M. Szurqs (Hungary); Z. Thaler (Slovenia).

4. *Secretariat of the Union,* which is the international secretariat of the Organization, the headquarters being located at: Place du Petit-Saconnex, CP 438, 1211 Geneva, Switzerland.

Secretary general: Mr. Pierre Comillon.

Official publication

The Union's official organ is the *Inter-Parliamentary Bulletin,* which appears quarterly in both English and French. This publication is indispensable in keeping posted on the activities of the Organization. Subscription can be placed with the Union's Secretariat in Geneva.

Constitutional and Parliamentary Information

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I. The Parliamentary system of Australia

Presentation on the Australian Parliamentary System by Mr Harry Evans, Clerk of the Senate, Mr Lyn Barlin, Clerk of the House of Representatives, and Professor Brian Galligan, Australian National University: extracts from the Minutes of the Canberra session, September 1993.

Professor Brian GALLIGAN of the Australian National University explained that the constitutional provisions governing Parliament were set out in the five parts of Chapter I of the Constitution and that this was easily the longest part of the Constitution. The first part set out the general provisions covering the federal system. Although Parliament had three parts, namely the Queen, the Upper House (Senate), and the Lower House (House of Representatives), the system should not be thought of as a "Westminster model" system since it was based on a written Constitution and not on the idea of the supremacy of parliament; also, the Australian system differed in being a federal one.

The second part of Chapter I of the Constitution described the Senate. Each State was represented equally in the Senate via direct elections. Because the elections were direct and because the rules for elections were set by the Parliament, the Upper House was not a "States" House. It did not have a particular duty to represent the States as such: it merely represented the people of the States in a different way from the way in which they were represented in the Lower House.

The third part of Chapter I of the Constitution laid down the provisions for the House of Representatives. In size the House was required to be twice that of the Senate and the seats allocated for each State were, broadly speaking, proportionate to the State's population.

The fourth part described general provisions relating to the two Houses, including eligibility and disqualification for membership of parliament, and gave to each House control over their own privileges and immunities and their overall business.

The powers of parliament itself were set out in the fifth section of Chapter I of the Constitution, in Sections 51 and 52. Section 52 listed 39 issues on which the Parliament may make laws in areas in which the States also had powers - the so-called concurrent powers. Section 51 was a shorter list comprising the matters in which the Federal Parliament had exclusive jurisdiction. Where there was a conflict of laws then federal laws would prevail, although the States had residual powers in areas not specified by the Constitution. He noted that the Supreme Court tended to interpret the federal powers widely in a way which over the years had led to the proposition that the Court was whittling down the States' powers.

The powers of the two Houses relative to each other were basically co-equal but the Senate could not originate or amend taxation or money Bills. It could however reject them and had full rights with respect to all other Bills. The Government of the day was, of course, drawn from the majority party in the lower House. Procedures were set out for resolution of conflicts between the two Houses, though the principal mechanism was a cumbersome one involving a double dissolution of the two Houses.

Mr. Harry EVANS, Clerk of the Senate, explained that the position of the Senate was of particular importance in the Australian Constitution and current Australian politics because the government party could rarely command an overall majority in that House. So while party discipline was very tight, and the Government of the day could therefore be pretty certain of passing its legislation through the House of Representatives, it would, nevertheless, still have to negotiate its programme and its legislation through the Upper House. The lack of a Government majority in the Upper House resulted principally from the differing electoral arrangements for the Upper House in that it used a different form of proportional representation and it had longer terms. The Senate's powers to amend or reject Government Bills or to pass Private Members' Bills against the Government's wishes were regularly used. Relatively little use had hitherto been made of Committees in either House to consider legislation, partly because the use of Committee of the Whole House procedure tended to make it easier for the Government to control the voting, but the Senate had recently begun to develop its use of Committees further.

The Senate had for several recent years begun to impose deadlines on the receipt of legislation coming from the House of Representatives which it would agree to consider in a given year. This had become the cause of some friction between the two Houses. Much of the House's business was conducted on the basis of unanimous consent, i.e. in ways which involved the waiving of the rules which technically governed a particular procedure. The Senate was, overall, one of three elements which placed a significant restriction on the power of the

government of the day: the first was the States themselves, the second was the High Court (in respect of its powers of interpretation of the Constitution) and the third was the Senate.

Mr. Lyn BARLIN, Clerk of the House of Representatives, described the main features of the operation of the Lower House. There were 147 Members representing single Member constituencies, elected using the preferential (or alternative) vote system.

There were two main sitting periods, the first being from the end of February to the end of June and the second being from August to Christmas, the latter period covering the period of the budget. Typically the House sat for two week periods at a time and then adjourned for the remaining two weeks of each month: this reflected the need to enable Members to visit their constituencies in a country as large as Australia. The House met into the evening but there was a cut-off at 11.00 pm. A standard day began at 2.00 pm with one hour of Question Time followed by presentation of Papers, Statements by Ministers and urgent matters, then moving on to Government Business and concluding with a half-hour adjournment debate. Thursday mornings were reserved principally for Private Members' Business. Time limits were imposed on nearly all speeches. In the preceding year 283 Bills had been introduced into Parliament of which 240 had been introduced into the House of Representatives; 255 Bills had been passed. There was provision for Bills to be referred to Committees but this was not the normal practice; there were, however, a number of Committees in existence set up under the Standing Orders or by specific Resolution including Committees concerned with the administration of the House.

Mr. BAHADUR (Nepal) asked about the mechanism for resolving conflicts between the Houses and about the rationale behind the power given to the Senate to reject Money Bills given that they could only originate in the lower House. Mr. EVANS replied that there was provision for conferences between the two Houses to resolve legislation but this mechanism had not been used for fifty years. In practice conflicts were resolved by informal co-ordination between the two Houses involving Government discussions with the individual Parties in the Senate. The reasons for the power given to the Senate in respect of rejecting Money Bills must be sought in the way in which the original Constitution was drafted, which specifically gave the Senate this power.

Dr. KABEL (Germany) asked about the way in which the compulsory voting system worked for elections, noting that in some such systems the number of people voting had actually gone down. Mr. BARLIN replied that between 80 and 90 per cent of the electorate did vote and that anybody not voting had to present a valid explanation to the Electoral Commission, failure to do which led to the imposition of a not insignificant fine. Professor GALLI-

GAN noted that failures to vote were seriously pursued by the Commission. Mr. EVANS noted that there was a certain amount of criticism of the system, with some people suggesting that it led to people who were basically uninterested having to vote, which led them to vote principally for the established Parties.

Mr. LANZ (Switzerland) asked about the control function exercised by Parliament on Government and about restrictions on Members to receive other paid employment during their term of office. Mr. EVANS, on the first point, after noting that the Swiss Constitution had been one of the models used by the writers of the Australian Constitution, replied that while the Senate could reject legislation on a purely political basis, many of its amendments might in practice be better described as quality control rather than political control in that they sought to improve rather than to change Government policy. In respect of members' interests, in the Senate Members were free to do other jobs and there was no Register of interests although Members were required to declare relevant interests in speeches. Mr. BARLIN, in respect of the House of Representatives, indicated that there was a Register of Members' Interests. Interests, such as shareholdings, directorships, partnerships, or substantial land interests, were required to be declared within 28 days of their acquisition, although the relevant amounts were not required to be declared. The Register was open to public inspection.

Mr. MLAWA (Tanzania) asked about party discipline, noting that his own country had recently moved from a one party to a multi party system. He observed that strong discipline was beneficial in that it enabled people to observe that a party's declared programme was being pursued by the Members that it had elected but, at the same time, it meant that party leaders were controlling the votes of their individual Members. Mr. EVANS agreed that there were strengths and weaknesses to a system which involved strong party discipline. On the one hand electors could vote clearly for a particular programme, while on the other hand the Government Party could introduce policies which might not have been in the original programme and put them through Parliament using party discipline. It was sometimes felt that party discipline in Australia was too tight.

Mrs. RAMA DEVI (India) asked whether there were any controls on a Member defecting to another Party and whether the Speaker could be summoned to the High Court in respect of his actions as Speaker. Professor GALLIGAN, on the first point, said that this was not an issue which would arise very frequently in Australian politics but that certainly a Member could change Parties without restriction if he or she wished although, of course, a Minister would have to resign from the Government if he or she wished to criticise Government policy. In respect of the second matter, again this would be

unlikely to occur in Australian politics and Mr. EVANS added that in general the High Court had indicated that it would not enquire into internal matters of Parliament.

Mr. JARRAL (Pakistan) asked whether there were any Joint Committees, how conflicts were resolved if different committees came to different conclusions, whether committees met in public or private and how Chairmen of Committees were elected. Mr. EVANS indicated that the two Houses had their own Committees, though there were one or two Joint Committees. Parallel consideration by two different committees of the same matter was avoided on the whole through informal consultation. He noted in passing that although the Government did not have a majority in the Senate the practice was for the Government to have a majority on Committees of the Senate. Mr. BARLIN noted that there were Joint Committees on Public Accounts, Public Works and the National Crime Authority and that Joint Committees could be established by Resolution of each House. Committees tended to meet in public for the taking of evidence and in private for deliberation amongst themselves. In respect of the election of Chairmen the Resolution establishing the Committee would normally provide for this and the practice was for Chairmen to be chosen usually from amongst the Government Party.

Mr. SABIO (Philippines) observed that the Philippine system also involved two Houses with similar powers except in respect of initiation of money legislation. He asked whether, given that if the political majority in the two Houses was different there could be deadlock, there had been any discussion in Australia of moving towards uni-cameralism. Mr. EVANS replied that such a proposal for a long time had been the policy of the Australian Labour Party but that this was now recognised as an unrealistic objective and he noted that in a parliamentary system the Executive would be extremely powerful if there was only one Chamber. Professor GALLIGAN noted that uni-cameralism had been an issue discussed amongst the States at various times and that the Upper House had been abolished in Queensland, though this move had not been universally regarded as successful. The prospects in practice for introducing uni-cameralism would be very slim. Mr. BARLIN added that, as Clerk of the House of Representatives, he had no doubt that any proposal to reduce the powers of the Senate would be overwhelmingly rejected by the Australian people.

Dr. GALAL (Sudan) asked about the relationship between State Parliaments and the National Parliament with respect to legislation and about the administrative machinery of the two Chambers. Professor GALLIGAN in respect of the first matter, indicated that in practice in very many areas of legislation the detailed legislation was agreed between National Government and State Governments via inter-ministerial councils. In respect of the second

matter Mr. EVANS indicated that each House had its own budget though, of course, in the case of the Senate only the House could introduce the Bill governing its budget, and that the Government's assent was also required to any such expenditure. The Senate's budget was therefore vulnerable in theory but no overt attempt had yet been made to control it. Mr. BARLIN indicated that the overall budget was some twenty-four million Australian dollars and that three departments existed which served both Houses: the Parliamentary Reporting Service, the Parliamentary Library, and the Joint House Department (which covered matters such as building, catering, cleaning etc).

Dr. RISSE (Germany) noting that it had been explained that there was a residual legislative power for the States with a specific list of areas reserved exclusively for the Federal power, observed that the position in theory was similar in Germany but that, in practice, the Federal Government was very much the stronger partner and that there had been much centralisation. Professor GALLIGAN said that this was a very good question, noting that one major difference between Australia and Germany was that the Australian States had no institutional input via the Upper House. The High Court in Australia had interpreted the Constitution overall in a way which rather favoured the central Government, for example noting that international treaties, which were a matter for central Government, could indirectly give the central Government wide powers in detailed areas of domestic activity.

Mr. BENVENUTO (Italy) asked whether, since the Government did not have full control over its legislative programme, it could bring a motion of confidence in respect of a particular Bill. Mr. EVANS indicated that there was no such specific procedure, adding in particular that the Government was not in danger of losing a Bill in the House of Representatives so there was no need for such a procedure there and as for the Senate it did not matter, constitutionally, whether the Government had the confidence of the Senate or not. Mr. BARLIN noted that in practice if an important piece of legislation was held up in the Senate the Government would engage in very heavy and close negotiation with the smaller Parties in the Senate to enable it to be passed.

Mr. ALBA (Spain) observed that it was in some ways strange that the majorities in the two Houses were so different while the functions of the Senate were not very different from those of the House. Mr. EVANS replied that the answer lay in the electoral systems: first there was the principle of equal representation for States in the Senate, secondly there was the proportional representation system used by the Senate and, thirdly, there was the factor of the different electoral periods for Senators, with Senators having a six year term and Members of the Lower House having a three year term. It was, in addition, thought that some voters voted differently for the two Houses. Professor

GALLIGAN added that the system would be under even more strain if the Opposition in the Lower House was actually a majority in the Senate: in practice the balance of power was usually held minor Parties, some of which would be prepared to cooperate with the Government.

Mr. WHEELER-BOOTH (United Kingdom) asked, first, about the relationship between Senators and their staff, given that so few Senators achieved so much work; secondly, about the process through which such a very large quantity of legislation could be passed; thirdly, whether Parties had any public funding; fourthly, what was the proportion of Ministers between the two Houses; and fifthly about the extent to which the Governor General acted "on advice" in 1975 on his dismissal of the then Government. Mr. EVANS replied in respect of the first point that it was certainly correct to observe that Senators had a difficult time with their work being very thinly spread but it would not be true to say that they were run by their staff. On the second point it was true that a very large volume of legislation was passed relatively quickly though, to some extent, this was because the legislation included very much material which in other countries was done by the Executive power directly. It was very closely drafted to try to cover all possibilities. It could pass through the Senate because most of it was not seriously opposed and much was in fact agreed. In respect of the third point, public funding was available but it was not an exclusive source of finance and Parties also raised their own money. As for Ministers, there were twenty full Ministers in the House of Representatives and ten in the Senate plus seven so-called Parliamentary Secretaries in the House and one in the Senate. On the fifth point, the Governor-General had taken the advice of the Chief Justice and then used his power to instal a new Prime Minister who then advised him to call a dissolution. Professor GALLIGAN added that he did not act on advice in the normal sense; rather he consulted himself and the Chief Justice and came up with his own conclusions.

Mr. CHARPIN (France) observed that while an Upper House would have no validity if it was merely a copy of the Lower House, there were nevertheless several different *raisons d'etre* that it might possess: it need not necessarily be part of a federal system, it could for example represent the localities. He sought further clarification on the division of powers between the National Parliament and the States and on how differences were resolved and wondered what the effect would be of the installation of a Republic. Mr. EVANS concurred with Mr. Charpin's observations on the role of an Upper House noting in the present circumstances that the Upper House introduced into the Parliament some minor Parties such as the Greens which had no representation in the Lower House. In respect of Mr. Charpin's first question he indicated that the Government's powers had indeed been extended via the processes described by Professor

Galligan earlier but that, nevertheless, difficulties could arise in many areas. Resolution of deadlock tended to be by a whole series of negotiations and there had been a growth of so-called uniform legislation in which Federal and State Governments passed identical texts. On the second point he observed that much of the constitutional structure was in fact drawn from republican models and would probably work very well in a republic. The introduction of a Republic would require a referendum involving various kinds of majorities. On the first question again Professor GALLIGAN noted that legislative programmes between State and Federal Governments tended to be negotiated on an on-going basis using extra constitutional mechanisms. Matters occasionally did go to the High Court for resolution.

ANNEX: On Tuesday 14 September, Members of the Association were taken on a tour of parts of the building, including the Senate Chamber, the Parliamentary Library and the Parliamentary Reporting Service.

Mr. Robert ALISON, Usher of the Black Rod, briefly described the history of the new parliamentary building. The original decision to build a new Parliament House had been taken in 1965 when the then current provisional Parliament House was declared to be too small. A full report on the need for the new building was agreed in 1970 and an Architect's brief was then drawn up. It had been suggested that it was at this point that parliamentary input into the new building ceased and that thereafter the Architects and Engineers became the lead players in the project. The original estimated cost in 1978 was $Aus 151m. and the final cost in 1988 was $Aus 1048m.: two-thirds of the increase was due to inflation and part of the rest was due to an increase in the numbers of Members and Senators, which had to be accommodated during the building stage.

Three thousand five hundred people could work in the building or visit it at one time and the building also included ministerial offices. Whereas in the former building each Member had about fifteen square metres of office space, in the new building they had at least eighty-one square metres. There were facilities for each of the five broadcasting networks as well as car parks etc. The building received one million visitors a year.

Mr. MARLEAU (Canada) and Mr. SENEVIRATNE (Sri Lanka) sought further details on the size of the building and the way it was used. Mr. ALISON explained that the whole building was fifty-eight thousand square metres and that by comparison with the figure he had given for Members' office space, the Clerks' offices were about sixty-five square metres.

Mr. NDIAYE (Senegal) asked what was the total number of staff working in the building. Mr. ALISON indicated that there were an estimated one thousand eight hundred staff on a sitting day, which included Members' staff.

Dr. ALZU'BI (Jordan) asked whether sleeping facilities were provided in the building and whether there was any historical significance or symbolism in the design of the building. Mr. ALISON, in respect of the first point, indicated that no provision was made for this, except that a Member's sofa in his office was long enough to sleep on. There was no deep historical symbolism in the building, though elements of western parliamentary tradition could be seen and the symmetry of the city of Canberra was used in the design. It was also part of the design that the public were able to walk over the top of the parliamentary building.

II* Electronic Voting Systems

Topical discussion introduced by Mr. Lyn Barlin, Cleric off the House off Representatives of Australia

Mr. BARLIN said that although electronic voting was not used in the House of Representatives, it had been considered when the new building was being built and some provision had been made in the desks in the Chamber in case a decision was ever taken to move to electronic voting. The House had considered the matter some years earlier and the new Speaker wanted to consider the matter again. In addition to the questionnaire he had sent to some parliaments he was, therefore, seeking any other information that members of the Association might be able to provide.

Mr. CHARPIN (France) asked about the existing methods of voting. Mr. BARLIN indicated that for a recorded vote the bells were rung for four minutes at which time the Chamber was locked. The Speaker then called for those in favour (Ayes) to go to one side and those against the motion (Noes) to go to the other.

Dr. KABEL (Germany) indicated that there was interest in this matter in his country as well. They had introduced an electronic voting system twenty years earlier but it had proved problematic: there was no display board for individual voting, it was actually no quicker than some other methods of voting, and it was open to abuse with Members voting on behalf of others who were absent.

Mr. ALBA (Spain) indicated that electronic voting had been in place in his Chamber for ten years and was now the norm. Problems could arise where the Party groups used the electronic record to discipline those of their Members who had not voted, which could lead to some Members claiming that they *were* there but that the machinery had not worked.

Mr. BOSTEELS (Belgium) indicated that Belgium had been one of the first to introduce electronic voting. This was partly because the Constitution required all laws to be passed by a roll call vote and that other procedural requirements made roll call votes relatively easy to call. The system was also valuable in that, on a number of issues, special majorities were required together with majorities for each language group: the electronic voting system enabled all the relevant calculations to be done very easily as well as providing a detailed list of each person's vote.

Dr. RISSE (Germany) indicated that this subject was of interest also to the Bundesrat. However, it was recently decided not to move to electronic voting, with the Council of Elders citing in particular the psychological objections held by Members in that they did not want to become part of a voting machine.

Dr. TRAVERSA (Italy) indicated that his Chamber had had electronic voting for twenty-five years. The initial system had worked for about twenty years since when a number of changes had taken place, in part arising from the need to devise systems which prevented Members voting for absent Members.

Mr. LANZ (Switzerland) said that the National Council was currently introducing electronic voting. The reasons for the introduction were to save time (relative to the system of reading out each Member's name in a roll call vote), and to generate the printed voting list easily. It was hoped that the ready availability of a list of how each Member voted might lead to better participation. Drawbacks for some Members included the fact that the electronic system made it more difficult for backbench Members to see which way their Party leadership intended them to vote and some Members did not like roll call votes anyway.

Mr. TIITINEN (Finland) said that they had introduced a new electronic system under which a vote took thirty seconds and displayed the voting results on a computer display on paper and in a database system. Their experience so far had been very good and the costs had not been high.

Dr. PHIPATANAKUL (Thailand) indicated that they had an electronic voting system but did not use it because Members were frequently not seated at their own seats at the time of the vote and used their neighbours' voting buttons.

Mr. PENERANDA (Spain) indicated that in the Spanish Upper House also electronic voting was used, though there were three problems associated with it: some Members voted on behalf of others, Members had problems when they were sitting in somebody else's seat, and Members did not like the idea of letting the machine appear to decide what the result had been.

Mr. COUGHLAN (Ireland) asked whether the information gathered by the Australian House of Representatives might be circulated to other members of the Association. In Ireland the problem of providing security in the system had hitherto been regarded as the major obstacle.