



Appendix A

Submission from the Clerk of the House

Submission to the inquiry by the Standing Committee on Procedure into encouraging an interactive chamber

Summary

The department welcomes the opportunity to contribute to this inquiry. The Committee's choice of this subject for further study shows its commitment to the goal of improving the vitality of debates – in its previous inquiry members were critical of the current standards of debate¹.

Debate in a modern legislative chamber certainly differs from the pure form undertaken by debating societies, not least because the immediate outcome is determined by participants rather than neutral judges. In addition it is to be hoped that Members taking part in debates in the House will be judged more for the depth and quality of their contributions rather than for their technical skills in the art of debate.

While it is unlikely in ordinary circumstances that words spoken in the Chamber will change immediate voting decisions—which are more or less

¹ Eg H R Debates (1.12.03) 23283

determined according to agreements in the respective party rooms—debate still plays a central role in parliamentary proceedings.

This submission outlines changes that could be considered by the committee as likely to encourage more interactive debate, including:

- reduced speech time limits;
- modified speech time limits;
- the introduction of the interventions procedure in the House;
- the categorisation of bills so as to attract lower speech time limits, or even limited total times, to certain bills, and
- greater use of the Main Committee, including the possibility that on some days the House could adjourn but the Main Committee continue.

The use of audio-visual aids is also discussed.

The department will be pleased to work with the Committee in any way it might wish in the further consideration of any options.

A note on the purpose of debate

In its purest form, debate is a contest of ideas. Speakers in favour of a proposition put forward their case and defend it against the arguments of speakers who oppose it. The objective is to convince a third party—the judge, panel or assembly having the power to decide—whether the proposition should be accepted or rejected. Ideally the decision is made on the respective merits—rational, moral and emotional—of the arguments for and against.

Debate in a legislative chamber is not such a straightforward concept. The speakers, for and against, will themselves participate in deciding the immediate outcome. Moreover, they do not act merely as autonomous individuals but as representatives of constituencies and in most cases as members of political parties. Usually the decision to support or oppose a proposition will have been made before the formal debate commences and is not amenable to change. In a chamber with a strong party political presence like the House of Representatives, debate rarely has a part to play in determining immediate voting decisions.

For those who see debate only as the means for reaching a necessary decision, proceedings on the floor of the House might seem of limited value, especially when, as is often the case, very few Members are present while speeches are being made. Occasionally, as happens when members are allowed a free vote, speeches on the floor of the House can influence the outcome. There is also

some evidence that members and others find such debates both interesting and helpful in forming their own views.

Even if positions are usually taken in advance, debate on proposed laws serves a number of purposes. First, it enables proponents to place on the official record the intentions behind a legislative proposal. This can be of value to those with a particular interest in a matter and can be used to assist subsequent statutory interpretation in the courts. Second, the respective parties and individual representatives are able to explain and publicise their positions on proposals. Third, it enables Members to give voice to the impact of proposals on particular areas, groups or interests. Finally, individual Members may demonstrate expertise on a particular subject, or skill as an advocate, which enables them to advance their parliamentary careers. While these factors are particularly relevant to debates on legislation, they are at least in part also applicable to other debates.

Redlich puts parliamentary debate in the wider context:

Without speech the various forms and institutions of parliamentary machinery are destitute of importance and meaning ..By speech and reply expression and reality are given to all the individualities and political forces brought by popular election into the representative assembly ².

The following sections of this submission outline changes that we believe should have some potential to making debate more interactive. The possibilities are not all mutually exclusive, nor are they put forward as recommendations, rather they are submitted for the committee's consideration and with the offer to provide any further information or comment the committee may desire.

1 - Reductions in speech time limits

*....the length of speeches also has an impact on the extent to which debate is lively and interactive...*³

Reductions in certain of the time limits could indeed help debates to be more interactive. This could be a result of:

² Josef Redlich *The procedure of the House of Commons*, London, 1908, vol III, pp 42-3, quoted in *House of Representatives Practice*, 5th edn, p 479.

³ Procedure Committee, *Learning from other parliaments*, para 2.12

- members being forced to be more selective in the content of speeches;
- members not feeling they needed to take their full 20 minutes (on bills) when in fact all that they might wish to say could be said in 10 or 15 minutes⁴ - some members may feel they are 'letting the side down' if they do not take their full time or close to it; sometimes members have been taunted that economy of time and expression suggests a weakness in their case when it appears they may not take their full time;
- a greater sense of pace or momentum in debates;
- members possibly spending more time in the House/Main Committee or at least being present for more of the speech of the preceding speaker, because the speeches of other members would conclude earlier and they might perceive a higher risk of missing the call. Further, if debate became more interactive a member may also choose to stay to hear the speech of the following speaker.

An analysis of 24 recent debates has shown the following: averages:

- length of speeches 16.15min (including Ministers/Parl Secs);
- length of Ministerial/Parl Sec speeches – 6 mins;
- length of speeches excluding Ministers/Parl secs – 17 mins;
- length of second reading debate – 3.38 hrs;
- number of speakers – 13.46.

The Committee's report *Learning from other parliaments* records that most members of other legislatures visited found it greatly surprising that in the House Members were permitted to speak on the second reading of bills for 20 minutes without interruption- in the British House of Commons, for example, the Speaker announces at the commencement of debates what the time limits will be (8 minutes is a minimum)⁵. More significantly, the committee reported that it found that the length of speeches had an impact on the extent to which debate is lively and interactive⁶.

⁴ An analysis of 27 recent second reading debates shows an average length of speeches excluding Ministers/Parl Secs of 17 minutes

⁵ May, 23 rd edn , p 432-3

⁶ Ibid

The report also records that members of other parliaments are expected to be present in the chamber – for example for the opening of a debate and for the preceding and following speaker - if they wish to receive the call.⁷

The history of debates on private members' resolutions suggests that worthwhile and more lively debates can be held with shorter time limits. It is also notable that on condolence motions, when time limits are not set, members usually speak for shorter periods than the 15 minute 'other debates' default time, yet appear to be able to say all that they wish to.

It would be possible, for example to set the following limits:

Second reading of bill

Mover and main opposition speaker: 20 minutes, with the Minister having the right to require an extension of 10 minutes, which if exercised, gives the Leader of the Opposition or member representing the same right;

Other speakers: 15 minutes (but see also 4 below)

Debates not otherwise provided for: 15 minutes for mover, 10 minutes for others

MPI: The total time of the House is limited. The committee may wish to consider whether some debates might be restricted in total time with a view to transfer saved time to wider debates. For example, the conventional practice of the House is for the total debate to last for 50 minutes, although the standing order provides for 2 hours. On occasion, independent members seek to add to the conventional two-a side, taking time from debate on orders of the day. The committee may consider a solution to accommodate the maximum number of viewpoints on this matter by limiting the total debate to 50 minutes or an hour, and facilitating wider participation if desired by reducing certain times limits, eg: 10 minutes for first two speakers, 5 minutes for 6 others or 15 mins for first, two 5 minutes for 4 others.

A variation on general reductions in speech times would be to allow certain time limits for the first group of speakers and lesser limits for later speakers. Such arrangements apply in the House of Commons in Canada.

⁷ Ibid, p7

Presumably this would put some pressure on whips and their office, although such differentiations have been made in respect of private members' business. If this change were to be made perhaps group messaging by the Whips would be necessary.

Attachment 1 summarises time limits on the second reading or equivalent stage in 10 other houses, and notes other relevant practices.

2 - Modified speech time limits 15:5 - proposal by Speaker Andrew

Speaker Andrew suggested in 2002 that the maximum time allowed for a subsequent speech (those after the Minister and leading Opposition speaker) during second reading debate be reduced from twenty to fifteen minutes with the remaining five minutes being available for questions and answers relevant to the speech. He saw this as having the potential to enliven debate on legislation. The Procedure Committee presented its report on *Arrangements for second reading speeches* in 2003 following consideration of Speaker Andrew's request and a round-table discussion with Mr Andrew, the Deputy Speaker, the Leader of the House, the Manager of Opposition Business, the whips and other members.

It was recognised that a number of benefits would flow from the proposal, including more Members being present in the Chamber to engage in a truer debate and Members being better prepared when speaking, perhaps to the extent of minimising the reading of prepared speeches.

The Committee recommended that the procedure be available on an 'opt out' basis, with members able to indicate at the beginning of their speeches that they would not be available for a question and answer period at the end, or by listening to a question before deciding whether to answer it.

Some aspects of the proposal were recognised as having the potential to cause confusion among Members. In the committee's 2003 report it identified two risks. First, it noted that some members felt there was 'room for mischief', that is, the wrong sort of interaction⁸. Second, it was noted that the reason for low attendance levels in the chamber was the existence of many calls on members' time, but the need to sit through other members' speeches would

⁸ Arrangements for second reading speeches Standing Committee on Procedure, Dec 2003, p4.

add to the problems⁹. The Committee concluded that a trial of the procedure would enable such questions to be answered¹⁰.

The government did not support the recommendation; it considered that the existing arrangements provided the opportunity for significant debate and that they remained appropriate.

Should such a procedure be trialled, as well as certain speeches being exempted (see above) a decision would need to be made as to whether the intervention procedure were to be retained in the Main Committee (it is also noted that the procedure is available on any order of the day not just bills). Technically there would be no problem in allowing that mechanism to remain in place. In practice, however, a member with 15 minutes for his or her speech on a bill would probably be unwilling to accept interventions knowing that other members would be able to ask questions at the end of the speech¹¹. A statement by the Deputy Speaker could draw attention to this issue and practice could be developed.

3 - Allow interventions in the House

It appears that members have adjusted to the procedure allowing interventions in the Main Committee. It is possible that some are constructive and others little more than attempts to score points. Of some 144 interventions sought, 100 have been taken by the members speaking.

The procedure appears not to have caused problems for the Chair. An early statement by the Deputy Speaker provided that interventions would not be allowed on Ministers/Parliamentary Secretaries moving the second reading of bills¹².

Interventions seem to have played a role and have shown that members are listening and willing to engage with a speaker, and vice-versa. It is notable

⁹ Ibid, p4

¹⁰ Ibid, pp 4-5.

¹¹ Ibid pp 9-10.

¹² H R Debate (19.9.02),p 6471

that of the 100 interventions estimated to have been accepted, only two have come from a member of the same party/coalition as the member speaking.

The committee may see value in extending the facility to debate on orders of the day in the House. A statement by the Speaker could supplement a standing or sessional order provision and exempt selected speeches, such as lead speeches by Ministers and Shadow Ministers. This would be an alternative to the question/answer proposal discussed at 2 above.

4 - Differentiation between groups of bills - times available

The successful operation of the Main Committee processes shows that informal arrangements 'behind the scenes' about the treatment of bills can work very successfully. It is possible that such arrangements could be extended and result in some improvement in the quality of exchanges in debates.

One option would be to allow informal consultations to take place after bills were introduced with a view to agreement between the Whips as to their further consideration, in particular the second reading debate.

In the same way that agreement is sought about bills to be referred to the Main Committee agreement could, for example, be sought that bills be differentiated with a view to the times to be available for their further consideration.

Two possibilities exist. One would be for agreement to be sought as to the times to be available for individual speeches (for example category X bills would attract certain times, for example 15 minutes, and category Y bills lesser times, such as 10 minutes). It would be important that such a distinction was not taken as necessarily implying that bills to which shorter time limits were applied were of lesser importance: indeed the level of interest in certain bills could be such that in order to accommodate the numbers wishing to speak shorter time limits were agreed. This is of course a common result- or at least a common goal - of informal arrangements.

The quality of exchanges in debate could be assisted because for certain bills there would be an agreed compression of the time available for individual speeches – either desirable because of the nature of the bill or necessary because of the numbers of members wishing to speak. There could be a degree of what could be thought of as 'friendly peer pressure' on participants in debates, leading hopefully to tighter and more lively exchanges.

A second possibility would be to seek agreement that certain bills would attract a limited amount of time in toto. Again, no doubt this is a familiar topic of discussion between the whips. The possibility of having agreements endorsed by the House would be a significant development, and as another type of time limitation arrangement not a development which would sit easily with any general assumption that all members who wished to speak on a matter should be able to do so. I note the Legislation Handbook outlines an established, and public, categorization system for bills. The House may never want to commit to following categorizations determined within government during earlier stages, but it could find them useful.¹³

Safeguards would be needed. It would presumably be important to Government that it retained ultimate control over the programming of government business and that changes to the rules did not lead to delays it would regard as unacceptable. From an Opposition viewpoint presumably no reduction in total time for the consideration of legislation would be acceptable and equality between Ministers and Shadow Ministers would be important.

It would also be important that the interests of individual members, including independents, were recognised. This could be assisted by requiring that any agreements reached informally were subject to ratification in the House, in the same way that references to the Main Committee are. It is not suggested, however, that any member have the ability to effectively override agreements reached. Presumably the Opposition Whips would continue to be regarded as having some responsibilities in relation to all non-government members.

5 - Greater use of the Main Committee

It appears that debates in the Main Committee are often more interactive than those in the House itself. There may be many reasons for this, including the sort of matters dealt with there, the scale of the meeting room and the fact that members do not have fixed places. It appears that early reservations about referring bills to the Main Committee have declined. Negotiations about the referral of other matters to the committee also appear to be easy and straightforward.

Greater use of the Main Committee could lead to a higher proportion of debates characterized by good engagement and exchange. Members of the committee will be able to make judgments about the potential for more bills to be referred to the committee.

¹³ *Legislation Handbook*, para 2.3, p 7

A further possibility would be to drop the requirement that the Committee can only meet during sittings of the House. This would allow the House to adjourn earlier on some days, with the Main Committee continuing. Such a change would also allow the Main Committee to meet before the House on any day, or on a non-sitting day. This could have financial efficiency implications that might assist in paying for a reconstructed meeting location.

One of the complaints made about the House is that often very few members are present in the Chamber. This problem must be exacerbated when the House and the Main Committee meet at the same time. Some members with what might be regarded as heavy legislative workloads spend time in both chambers and lists of speakers often need to be adjusted as sitting mornings unfold. Having the Main Committee sometimes meet when the House is not meeting would relieve this problem at least temporarily.

In some ways such a change could be seen as an indictment of the House itself, however it could also be seen as a sensible and cost-effective way of making progress with the legislative workload.

It is possible that visitors could be disappointed at not being able to see the House meeting. In fact, very few visitors appear on sitting nights, and in any case, even in 2R3, visitors wishing to observe debates are accommodated. It is even possible that the presence of more visitors to the Main Committee proceedings could add to the atmosphere and influence the vitality of debates there.

6 - Illustrative material such as PowerPoint

It appears that in a small number of Parliaments members can use, or will soon be able to use, technology such as PowerPoint, to supplement their speeches. These are possibilities the House will need to consider. The use of such material in presentations adds another dimension to the ability to convey ideas and messages. In addition to the ability to improve the impact or absorption of information, the use of such technology by members would be consistent with the approach of many other persons, such as teachers and university lecturers. To younger people especially, the experience of observing parliamentary proceedings might therefore not appear to be so foreign.

The use of such technology would probably not sit easily with reductions in speech time limits, PowerPoint usually being associated with longer presentations. In addition, these technologies are typically used by a person, such as a lecturer, addressing a group of people, rather than persons engaged in a debate with each other. Accordingly, advantages in terms of observers in

the galleries could be offset by at best different, at worst less, engagement between members. Care would also need to be had in regard to the capacity of those listening to a broadcast or observing a telecast of proceedings to understand fully the message being conveyed. The committee would also need to be alert to the possibility of what might be ultimately less substantial contributions gaining greater attention because of the use of technology, possibly even the use of material or approaches prepared by experts in communications.

While it is thus not clear that such developments would improve the internal dynamics of debate as such, they have other attractions and are matters to which the committee may wish to give further consideration.

The Department will be pleased to do further research or analysis on any of the possibilities outlined in this submission, or on any other option the committee may wish to consider.

Attachment 1

TIME LIMITS FOR 'SECOND READING' SPEECHES

(this information only covers second reading debates on government legislation (excluding appropriation bills) and does not include times for private members bills)

Australian Senate

- 20 minutes (but is possible for a motion to be moved to extend time by 10 minutes)

New South Wales Legislative Assembly

- Mover – unspecified
- Leader of Opposition (or nominee) - unspecified
- Any other member - 15 minutes, but can be extended by 5 minutes on motion

Victorian Legislative Assembly

- Mover – unlimited
- Leader of Opposition (or nominee) – 30 minutes (where the minister speaks for more than 30 minutes, an additional time equivalent to the ministers time in excess of 30 minutes can be added)
- Lead speaker from any other party – 20 minutes (same provision for extension)
- Any other member – 10 minutes

Queensland Legislative Assembly

- Mover – 1 hour
- Leader of Opposition (or nominee) – 1 hour
- Other members – 20 minutes

- Mover in reply – 30 minutes

South Australian House of Assembly

- Mover – unlimited
- Leader of Opposition (or nominee) – unlimited
- Any other member – 20 minutes
- Mover in reply – 1 hour
- Note: also members can speak on third reading for 20 minutes each.

Western Australian Legislative Assembly

- Mover – 60 minutes
- Leader of Opposition (or nominee) – 60 minutes
- any other member – 20 minutes (but can be extended on request of member by a further 10 minutes)
- mover in reply – 45 minutes
- Note: on third reading, mover and any other member can speak for 30 minutes each

Tasmania House of Assembly

- Mover – 40 minutes
- Leader of Opposition (or nominee), or leader of another party – 40 minutes
- Any other member: 30 minutes max

New Zealand Parliament

- Each member 10 minutes
- But whole debate: limit of 12 speeches
- Note: Can have speeches on first and third reading of government bills as well (10 minutes each member, whole debate 12 speeches at each stage)

Canadian House of Commons

- 20 minutes if the Member is the first to speak on behalf of a recognised party in the first round of speeches*
- 20 minutes following the first round of speeches, if the Member begins to speak within the next five hours of consideration*
- 10 minutes if a Member speaks thereafter
- 20 minute speeches are generally followed by a 10 minute period during which other Members may ask questions or comment briefly and receive a reply from the member.
- Note: same time limits apply for third reading

[*SO allow the Whip of a recognised party to indicate that Members of their party will split their 20 minute speaking time in two. In such cases, Members speak for 10 minutes, followed by a question and comment period of 5 minutes.]

UK House of Commons (this relates to public bills only; not private or hybrid bills)

- No set time limits
- For Government bills, programme motions are often set in place which set out a timetable for the conclusion of proceedings on a bill (ie which set the length of time to be allocated to a particular stage). In the event of disagreement over programme motions, an 'allocation of time motion' (guillotine) is generally used when the government is unable to get the agreement of the opposition parties to a programme motion.
- Under SO 47 the Speaker can indicate the length of time for individual speeches on any motion or order of the day relating to public business (the time limit must not be less than eight minutes) and will direct a member to resume his seat at the end of the period. This does not apply to Minister, Leader of Opposition (or nominee) or Leader of second largest opposition party or nominee). Since 2002 there has also been provision for 'injury time' in respect of interventions: the Chair is required to add one minute if an intervention is accepted, plus the time taken by the intervention,

and two minutes if two or more interventions are accepted, plus the time taken by the first two interventions. (Short speech procedure)