



PARLIAMENT of AUSTRALIA
HOUSE of REPRESENTATIVES

OFFICE OF THE CLERK OF THE HOUSE

PO Box 6021, Parliament House, Canberra ACT 2600 | Phone: (02) 6277 4111 | Fax: (02) 6277 2006 | Email: clerk.reps@aph.gov.au

9 September 2015

Mr James Rees
Inquiry Secretary
House of Representatives Standing Committee on Procedure

Dear Mr Rees

INQUIRY INTO THE CONSIDERATION IN DETAIL OF THE MAIN APPROPRIATION BILL

I refer to the letter of 25 June 2015 from the Chair, on behalf of the Committee, informing me of the Committee's inquiry and inviting a submission. The following submission comprises:

- introductory remarks on the general process and history of consideration in detail of the main appropriation bill;
- discussion of the conduct of debate, including allocation of the call; and
- discussion of the adequacy of the current standing orders in facilitating debate, together with some suggestions for possible changes.

Introduction

The consideration in detail stage of the main appropriation bill—Appropriation Bill (No. 1)—each year is an important stage of the annual budget cycle during which members are able to debate the proposed expenditures of government departments and agencies. Although this stage of Appropriation Bill (No. 1) could be taken in the House, it is invariably taken in the Federation Chamber. This stage is also referred to as the consideration of the estimates—or estimates debates. The estimates are the proposed expenditures listed by portfolio in a schedule to the bill. While the consideration in detail stage of Appropriation Bill (No. 1) follows the basic format applying to the consideration in detail stage of all bills, in practice usually only the schedule is considered. Members progress through the schedule portfolio by portfolio, debating for each portfolio the question 'that the proposed expenditure be agreed to'. Following the consideration of the schedule, it is customary for the remainder of the bill to be taken as a whole and agreed to without further debate.

As with the consideration in detail stage of other bills, each member is entitled to speak an unlimited number of periods for a maximum of 5 minutes at a time. However the total time allocated to each portfolio is restricted by an unofficial timetable agreed between the whips, generally varying between 60 and 30 minutes.

Table 1

**Appropriation Bill (No.1) 2004-05 to 2015-16
Budget and Consideration in Detail Debates**

Parliament	Year	introduced	2 ^o agreed to	consideration in detail	3 ^o agreed to	2 ^o debate in House h m	2 ^o debate in FC h m	consideration in detail h m	Total time h m
40	2004	11 May	16 June	16, 17, 21 June	21 June	10.22	21.57	8.50	41.09
41	2005	10 May	15 June	15, 16, 20 June	20 June	11.15	21.31	8.58	41.44
	2006	9 May	14 June	14, 15, 19 June	20 June	8.50	24.15	11.34	44.39
	2007	8 May	12 June	12, 13, 14, 18 June	18 June	8.36	25.53	12.28	46.57
42	2008	13 May	4 June	5, 16, 17, 18 June	19 June	8.22	18.28	12.30	39.20
	2009	12 May	15 June	15, 16, 17, 18 June	22 June	10.30	22.41	13.12	46.23
	2010	11 May	15 June	15, 16, 17, 21 June	21 June	9.55	23.47	13.13	46.55
43	2011	10 May	1 June	2, 14, 15, 16, 20, 21 June 30, 31 May,	21 June	10.58	18.14	19.19	48.31
	2012	8 May	30 May	18, 19, 20 June	20 June	5.16	21.50	17.14	44.20
	2013	14 May	6 June	3, 4, 5, 6 June	6 June	2.39	17.55	16.08	36.42
44	2014	13 May	4 June	5, 16, 17, 18, 19, 23 June	23 June	3.50	25.55	18.26	48.11
	2015	12 May	3 June	4, 15, 16, 17, 18, 22 June	22 June	7.46	20.31	18.27	46.44

Unlike the situation in the second reading debate of Appropriation Bill (No. 1) —the budget debate—where the rule of relevance is considerably relaxed (standing order 76 permitting ‘public affairs’ to be debated), during the consideration in detail stage the normal relevance rule, that debate must be relevant to the subject being considered, applies. That is, debate must be relevant to the portfolio’s proposed expenditure. In practice, debate is permitted to cover departmental activity or government policy in the portfolio area, as well as financial details.

Consideration of each portfolio may start with introductory remarks by the responsible minister, but this does not happen in the majority of cases. Shadow ministers play an important role, usually taking the majority of opposition calls, and, if there are no introductory remarks by the minister, will usually speak first. Members seek the call to speak to the question ‘That the expenditure be agreed to’, and to make comments on the portfolio area or to ask the minister questions, not necessarily taking their full five minutes. How a minister responds is a matter for the individual minister. Ministers may respond to members’ speeches individually, may wait until several members have spoken before responding, or sometimes respond to all questions in their closing remarks.

Ministers may also offer, or be requested, to take some of the questions on notice (the answers to such questions do not become part of the formal proceedings of the House—the response is up to the minister concerned, usually by way of a letter to the member asking the question).

This sustained question and answer format in the consideration in detail stage of a bill is unique to the main appropriation bill. In earlier years Deputy Speakers in charge of the then Main Committee encouraged a more focussed question and answer format rather than general debate during consideration of the estimates, and the expectation continues that a member’s speech will contain a question. However, there is no recognition of this in the standing orders and no formal rules apply.

Changes over the last decade

Table 1 shows the dates of and times taken by the stages of the main appropriation bills between 2004 and 2015. This period covers the years since the Procedure Committee’s previous report *House estimates* dated October 2003.

The table shows that the time given to the consideration in detail stage has increased, in fact approximately doubled, over this period. There was a small increase in the 41st Parliament, and a more substantial increase in 43rd Parliament, following the ‘Agreement for a Better Parliament’ between the then minority government and the independents in October 2010, one of the provisions being that ‘additional time is allocated for the Consideration in Detail process in the Main Committee’. The additional time has remained in the current Parliament.

Apart from the additional time, the Hansard record shows that the process of considering the estimates has changed in other ways over this period. Since 2008 senior portfolio ministers have attended the proceedings. Previously, parliamentary secretaries, or ministers assisting, often attended rather than portfolio ministers. Also since 2008, government backbench members have participated to a significant extent.

Previously, participation by government speakers, apart from the parliamentary secretaries or ministers attending, was unusual.

The conduct of debate, including the allocation of the call

Conduct of debate

Looking at the Hansard over the years, it appears that the most productive form of debate, most highly regarded by members participating, is when it consists of a series of relatively short interchanges between the minister and members. Before the 42nd Parliament there was more often an interchange of this nature between the shadow minister and minister by way of a series of alternating brief questions and responses.

Debate of this kind is difficult to achieve when members and ministers take up their full 5 minutes, and when the flow is interrupted by the call alternating to the other side (as required by convention). Since 2008 members' speeches seem to have become longer. There are instances where questions appear as token additions at the end of a five minute speech.

The allocation of the call is discussed separately below. Other issues that the Committee might wish to consider are the issues of relevance, the length of speeches and proposals for a more formal question and answer format.

Relevance

Understandably, following the wide latitude allowed during the second reading debate, members sometimes need reminding of the tighter relevance rule applying to the consideration in detail stage. Chairs and members would be assisted if the standing orders spelled out clearly what can be referred to.

Length of speeches

I note that the Committee has recently considered the matter of shorter time limits for speeches in consideration in detail on the main appropriation bill, 2 minutes for questions and 4 minutes for a minister's answers being proposed.¹ A shorter speech limit would serve to focus the debate. However, it could be considered that the flow of debate might be better if members and minister continued to have equal time for a speech (e.g. both 2 minutes or both 3 minutes), bearing in mind that the minister will have the opportunity to speak several times during the consideration of his or her portfolio.

Question and answer format

From 2004 to 2007 a question and answer format was actively encouraged by the then Deputy Speaker (Mr Causley), whose approach could be exemplified by his statements: 'we are looking at how estimates money has been allocated to certain things. This is not an opportunity to make a speech; it is for questions on estimates';

¹ Standing Committee on Procedure, *Role of the Federation Chamber: celebrating 20 years of operation*, June 2015, paras 3.28–3.36.

‘This is not a debate; this is a matter of questions and answers’.² Other chairs since have sometimes taken a less strict approach and have tended to allow a wider debate.

The difficulty faced by successive chairs is that there are no written rules requiring a question and answer format. As a minimum change, the established practice of members being able to ask ministers questions during the consideration of the estimates should be recognised in the standing orders. Beyond that point, the Committee could consider the need for more prescriptive rules for a formal question and answer session. It may be found that the current practice, formalised in the standing orders by recognising the asking of questions, but with shorter speech time limits, may be all that is required at this stage.

Allocation of the call

Although the allocation of the call is a matter for the discretion of the chair, it is usual, as a principle, to call members from each side of the House, government and non-government, alternately. During the regular consideration in detail procedure applying to bills generally, when the call is due to a government member, the minister or parliamentary secretary in charge of the item of business usually has priority.³

If the estimates debates are intended to conform as closely as possible to the normal consideration in detail process, then it would follow that, if the minister representing the portfolio chooses to respond to each other speaker individually,⁴ the call would be expected to go:

A. Minister—non-government member—minister—non-government member, etc.

In practice, the consideration in detail of the main appropriation bill, with its emphasis on questions and answers, is not a normal consideration in detail process. Successive chairs have, perhaps intuitively, recognised this by allocating the call as in question time, where non-government and government members ask questions alternately. Under this scenario, the call goes:

B. Minister—non-government member—minister—government member—minister—non-government member—minister—government member, etc.

As noted above, few government members sought the call prior to 2008 and it is therefore difficult to make a generalisation. However, it appears that when a government member did speak in those years, the call tended to be given following, rather than in place of, a minister’s speech (that is, scenario B applied in these cases).⁵

The allocation of the call seems to have been a matter of contention only since significant numbers of government members have participated in the debates. The underlying issue is really not the allocation of the call but rather the increased number of government members participating, which has decreased opportunities for opposition members. Some of the problems of scenario B are overcome if the minister

² H.R. Deb. (15.6.2006) 128; H.R. Deb. (14.6.2007) 154.

³ *House of Representatives Practice*, 6th edn, p. 503.

⁴ If the minister responds to several or all questions together, the call would be the same under both scenarios, i.e. Non-government member—government member—non-government member—government member—non-government member, etc.—minister.

⁵ E.g. H.R. Deb. (15.6.2006) 128, 134; H.R. Deb. (13.6.2007) 167, 169, 190–91.

chooses not to respond individually to matters raised, but takes a series of questions from each side before responding.

With the allocation according to scenario A, government backbenchers can be excluded. Under scenario B, two thirds of the total time available can be taken by the government side (i.e. ministers and backbenchers together), although, as noted above, if a minister does not respond individually to matters raised then some of the issues are overcome. The Committee has to reflect on competing priorities. One approach is to be even-handed in providing equal time to non-government members and government backbenchers. The other approach might be that opportunities to question ministers should be largely left for non-government members—this was the case in the 40th and 41st Parliaments, when there was said to be a convention that this time was used essentially by opposition members to ask questions of the minister.⁶

Arguably, the flow of debate was better when fewer government members participated, because this enabled an interchange between the minister and opposition speakers that was not interrupted by the intrusion of a speech on a different topic from the other side. How could debate of this nature be encouraged without excluding government members from the process? One approach might be to give priority to questions from non-government members for a fixed part, say the first half, of the period available to each portfolio, and priority to government members for the remaining time. As this approach is not consistent with the practice of alternating the allocation of the call, it may be best if such an approach was formally expressed in the standing orders to give the Chair the necessary authority to implement it

The adequacy of the Standing Orders in facilitating the debate

The current practice for the consideration in detail of the main appropriation bills is not covered in the standing orders under the obvious place to look, that is, in Chapter 13, Financial Proposals, or is not covered at all. Standing orders 148 to 151 apply to the consideration in detail stage of bills generally, but are not very helpful in outlining the practice applying to the main appropriation bills as it has developed. The only specific provision is in standing order 149 (order in considering bill), where subparagraph 149(d)(i) covers the order in which expenditures are to be taken.

I suggest it would be helpful to chairs, ministers and members generally if the existing standing orders specifically applying to the budget and estimates debates could be co-located (that is moved, copied or at least cross-referenced) under the section of the standing orders headed Financial Procedures. I note that the Procedure Committee of the 40th Parliament made a recommendation to similar effect in 2003.⁷

With regard to the consideration in detail stage—the estimates debates—the standing orders should offer more guidance to at least reflect current practice and then to go further if that is the desire of the Committee. The current situation where the rules are not clear leads to uncertainty, and unnecessary points of order and debate on the process. The consideration in detail stage of the main appropriation bill differs so

⁶ See Procedure Committee's June 2015 report *op cit*, para 3.31.

⁷ Standing Committee on Procedure, *House Estimates*, Oct 2003, paras 3.59–3.60 and recommendation 7.

much from the normal consideration in detail process that it should have its own rules clearly set out.

Included below is a first draft of possible standing orders which could be added to Chapter 13 of the Standing Orders, Financial Proposals, currently standing orders 178 to 182 to co-locate and clarify standing orders relating to the procedures.

Procedures for Main Appropriation Bills

182A Second reading (Budget debate)

On the motion for the second reading of the Main Appropriation Bill, and Appropriation or Supply Bills for the ordinary annual services of government, public affairs may be debated, in accordance with *standing order 76(c) (exceptions to confining debate to the question)*.

182B Consideration in detail (estimates debates)

During the consideration in detail stage of the Main Appropriation Bill, and Appropriation or Supply Bills for the ordinary annual services of government, the following rules apply:

(a) The schedules of services for which an appropriation is to be made shall be considered before the clauses. Proposed expenditures in a schedule shall be considered in the order in which they appear unless the House otherwise orders, in accordance with *standing order 149 (order in considering bill)*.

(b) The question on each item of expenditure shall be—

That the proposed expenditure be agreed to.

(c) Members may ask Ministers for information about the expenditure being considered. Questions and debate must be relevant to the expenditure being considered, and may refer to departmental activity and government policy relating to the expenditure, and related expenditure in other appropriation bills.

The draft of standing orders 182A and 182B above spells out, but does not change, current practice. The proposed wording of 182B can be revised or added to should the Committee wish to consider a different regime for the consideration in detail stage, for example, if the Committee were to consider the period being for questions and answers only or to impose shorter time limits for speeches.

Please let me know if the Committee needs any further information. If the Committee would find it helpful for me to expand on these points and respond to any questions, I would of course be happy to attend a meeting.

Yours sincerely



DAVID ELDER
Clerk of the House