

Increased participation by all Members

- 3.1 A major aim of the *Agreement for a Better Parliament: Parliamentary Reform* (the Agreement) was to 'increase the authority and opportunities for participation for all MP's, regardless of their political party or their status of office'.¹
- 3.2 This chapter examines in more detail the increased opportunities for private Members and the way they have been used.

Private Members' business

- 3.3 The Agreement proposed a substantial increase in the time allocated for private Members' business. Amended standing orders altered the order of business to allow 3 and a half hours in the House and 5 hours in the Federation Chamber for private Members' business.²
- 3.4 In the 42nd Parliament private Members' business took place on Monday evenings for 1 hour in the House and 1 hour 35 minutes in the Federation Chamber.³ In the 43rd Parliament 2 hours have been allocated on Monday mornings in the House and another 1 and a half hours on Monday

1 *Agreement for a Better Parliament: Parliamentary Reform*, Preamble.

2 See standing order 34 (figure 2) and standing order 192 (figure 4), 20 October 2010.

3 Standing orders 34 and 192, 1 December 2008. Note that the Federation Chamber was then referred to as the Main Committee. The Chamber was renamed in February 2012. (See chapter 5 for further details.)

evenings. In the Federation Chamber 2 and a half hours have been allocated on Monday mornings and again on Monday evenings.⁴

Selection Committee

- 3.5 The Agreement proposed that the re-established Selection Committee would select and schedule items of non-government business, including private Members' business.⁵ The Agreement also proposed that 'the Speaker, the Leader of the House, and the Selection committee, will ensure time is allocated for votes on Private Members' Bills during Government Business time in the Main Chamber.'⁶ Standing order 222 implements these intentions: 222(a)(i) provides for the Selection Committee to arrange the timetable and order of private Members' business for each sitting Monday and standing order 222(a)(ii) provides for the Committee to recommend items of private Members' business to be voted on.
- 3.6 The Selection Committee may also select bills that it considers controversial or requiring further consultation or debate for referral to the relevant standing or joint committee.⁷ This will be considered in chapter 5.
- 3.7 In practice, the Selection Committee meets each sitting Tuesday to schedule committee and delegation and private Members' business for the next sitting Monday and meets again on Wednesday to consider bills for referral to committees. The Committee reports to the House on Wednesdays and Thursdays.⁸ As at 30 June 2012, the Selection Committee has presented 59 reports to the House.
- 3.8 In its third report, the Selection Committee endorsed a set of general principles relating to the selection of private Members' business.⁹ These principles reflect similar guidelines applied by the Selection Committee in the 41st Parliament and by the Whips in the 42nd Parliament.¹⁰ The Selection Committee recommended that the House adopt the principles, an action seconded by this Committee in its initial report on the implementation of the procedural changes.¹¹ To date, the House has not

4 Standing orders 34 and 192, 20 October 2010.

5 *Agreement for a Better Parliament: Parliamentary Reform*, Clause 1, p. 2.

6 *Agreement for a Better Parliament: Parliamentary Reform*, Clause 6.1, p. 4.

7 Standing order 222(a)(iii), 20 October 2010 and *Agreement for a Better Parliament: Parliamentary Reform*, Clause 10.5, p. 6.

8 Reports of the Selection Committee are available at the Committee's webpage: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=selc/reports.htm.

9 House of Representatives Selection Committee, *Report No. 3*, 21 October 2010, pp. 6–7.

10 Refer to chapter 2, p. 3 for more information.

11 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 25.

adopted the principles. The Government noted the Committee's recommendation in its response on 1 November 2012.

Private Members' motions

- 3.9 In the 43rd Parliament, as at 30 June 2012, 216 private Members' motions were debated (120 proposed by Government Members, 74 by Opposition Members and 22 by non-aligned Members). Of those motions, the Selection Committee selected 103 motions to be voted on (19 proposed by Government Members, 71 by Opposition Members and 13 proposed by non-aligned Members). Eighty of the selected motions were voted on (13 proposed by Government Members, 57 by Opposition Members and ten by non-aligned Members). In the 42nd Parliament, 142 private Members' motions were debated and none were voted on.
- 3.10 In the 43rd Parliament, sixty-six of the motions were agreed to following a vote (13 proposed by Government Members, 46 by Opposition Members and seven by non-aligned Members). Thus, although the majority of private Members' motions debated were proposed by Government Members, the majority of motions brought to a vote and agreed to were proposed by non-Government Members.
- 3.11 By their nature, private Members' motions provide additional opportunities for opposition leaders as they can be proposed by any Member other than the Speaker or a Minister.¹² When a motion is agreed to it is considered an order or a resolution of the House.¹³ Although the power of such orders or resolutions on those outside the House may be limited (as an expression of opinion), they may provide guidance to the Executive Government and other stakeholders on the wishes of the House.¹⁴ Shadow ministers, including the Leader of the Opposition, have proposed 30 private Members' motions related to their portfolio topics and 16 of those motions have been agreed to by the House. While the majority of private Members' motions could be considered to be generally accepted and expected to gain comprehensive support, almost 40% of the private motions agreed to could be considered to be of a more political nature.¹⁵

12 *House of Representatives Practice*, 6 ed., 2012, p. 577. Standing order 2, 20 October 2010, defines a private Member as 'a Member other than the Speaker or a Minister'.

13 *House of Representatives Practice*, 6 ed., 2012, p. 316. An order is defined as a command and a resolution as a wish.

14 *House of Representatives Practice*, 6 ed., 2012, p. 318.

15 Chamber Research Office statistics, 2012. For example, these may contain terms critical of government policies or actions.

- 3.12 With the opportunities presented by the 43rd Parliament for private Members' motions to be debated and voted on, a trend has emerged with some Members seeking to amend their motion prior to a vote. This practice, which is often based on prior negotiation, can encourage acceptance of the terms and increase the likelihood of agreement.
- 3.13 Of the 118 private Members in the House, 72 moved the 216 motions debated. Twenty-six Members proposed one motion each and the remaining 190 motions were proposed by 46 Members.

Private Members' bills

- 3.14 There were 44 non-Government bills presented in the 43rd Parliament to 30 June 2012: two were introduced by Government Members, 19 by Opposition Members and 23 by non-aligned Members. Forty-two bills originated in the House of Representatives and the remaining two in the Senate.¹⁶
- 3.15 Of the 21 private Members' bills introduced in the House by non-aligned Members, 9 were introduced by the Australian Greens Member and 12 by Independent Members.
- 3.16 Twenty-six of the 44 non-Government bills introduced to 30 June 2012 were the subject of a second reading debate. Nine of the bills were negatived at the second reading stage and six have passed the House. Of the six that have passed the House, four of the bills have passed into law¹⁷, one was discharged from the Notice Paper by the Senate, and the other is still before the Senate as at 30 June 2012.¹⁸
- 3.17 In the 42nd Parliament, 24 non-Government bills were introduced, 20 originating in the House of Representatives (two by Government Members, 18 by non-Government Members) and four originating in the Senate. Of these only five bills reached the second reading stage and none passed the House.¹⁹

Presentation of private Members' bills

- 3.18 In his submission, the Clerk of the House of Representatives proposed that the practice for presenting private Members' bills be made consistent with
-

16 Chamber Research Office statistics, 2012.

17 The four bills passed into law are: *Evidence Amendment (Journalists' Privilege) Act 2010* (Mr Wilkie); *Auditor-General Amendment Act 2011* (Mr Oakeshott); *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Act 2011* (Mr Bandt); *Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) Act 2011* (Senator Bob Brown).

18 Chamber Research Office statistics, 2012.

19 Chamber Research Office statistics, 2012.

the handling of government bills.²⁰ Currently the standing orders provide for a private Member to make a statement not exceeding 10 minutes when presenting a bill. If the bill is selected for a second reading debate by the Selection Committee, the Member can speak again.²¹

- 3.19 The Clerk suggested that the current arrangements could lead to a 'degree of duplication' between the presentation statements and the second reading speeches.²² Standing orders could be amended to allow private Members to move the second reading at presentation, as occurs for government bills, so eliminating room for duplication.²³
- 3.20 The second reading speeches for private Members' bills do indicate some duplication of material.²⁴ However, many Members' take the opportunity to update the House on changes to conditions since the original presentation of the bill or to expand on the original arguments.²⁵

Committee comment

- 3.21 The stated aim of the Agreement was to increase the authority of, and opportunities for participation by all Members. This aim would appear to have been achieved with an increase in both private Members' bills and motions introduced into the House. The number of private Members' bills introduced has increased by 54.5% compared to the 42nd Parliament and the number of private Members' motions debated has increased by 65.7%.
- 3.22 In the first interim report the Committee remarked that the evidence suggested that the time allocated for private Members' business was excessive and that it was difficult to fill the time.²⁶ The Committee also noted that the time allocated to particular private Members' motions and bills was insufficient for all Members who wished to, to participate.²⁷ Additionally, the five minutes that was often allocated was 'not enough

20 Mr Bernard Wright, Clerk of the House of Representatives, *Submission 1*, p.1.

21 Standing orders 1, 41(a)(b)(c), and 222(a)(i)(ii), 20 October 2010.

22 Mr Wright, Clerk of the House of Representatives, *Submission 1*, p. 1.

23 Mr Wright, Clerk of the House of Representatives, *Submission 1*, pp. 1 and 2.

24 See HR Deb, 18 October 2010, 386–388 and HR Deb, 25 October 2010, 1235–1237; HR Deb, 28 February 2011, 1531–1532 and HR Deb, 21 March 2011, 2369–2370; HR Deb, 21 May 2012, 4696–4699 and HR Deb, 28 May 2012, 5640–5643.

25 See HR Deb, 25 October 2010, 1232–1235 and HR Deb, 15 November 2010, 2159–2162; HR Deb, 28 February 2011, 1532–1534 and HR Deb, 21 March 2011, 2374–2375; HR Deb, 19 March 2012, 3210–3212 and HR Deb, 21 May 2012, 4825–4828.

26 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 23.

27 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 23.

time to speak to private Members' items'.²⁸ With regard to private Members' motions the Committee suggested:

There may be value in encouraging a reduction in the number of motions that are proposed, thereby enabling a greater number of speakers to debate fewer motions and possibly to speak for longer to them.²⁹

- 3.23 The Committee has not received any further evidence—formal or anecdotal—that would cause it to resile from its previous comments on the additional time allocated to private Members' items as being excessive.
- 3.24 In terms of motions, the Committee notes that there does not appear to have been a reduction in the number of motions being selected for debate. Although there have been a number of incidences in the Autumn sitting period of 2012 where two speakers have been allocated 15 minutes to speak on an item, overall the time allocation remains unchanged. This would suggest that Members may still be experiencing difficulties participating and that there is still room for improvement in this area.
- 3.25 The Committee is pleased to see the increase in the number of private Members' bills being presented and being allocated time for a second reading debate. While the number of bills that have passed the House remains relatively low, it is still a remarkable increase on previous years. In the Committee's view, the fact that these bills are able to be debated, and voted upon, reinforces the notion of backbench Members being effective representatives in their own right, regardless of their party affiliations or their office.
- 3.26 The Committee is also pleased to see the number of private Members' motions that have received the support of the whole House. It is easy to dismiss the value of this endorsement by the House by saying that the impact of a resolution by the House is limited, or that if 'both sides' are in favour of a proposition in a motion, that renders it somehow less worthy. The fact that the House gives its approval to a motion, and that Members repeatedly seek the House's approval of terms of a motion of their own choosing signifies the importance of these new opportunities.

28 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 24.

29 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 24.

Other opportunities for private Members

- 3.27 Changes proposed by the Agreement in three other areas provide additional opportunities for private Members to raise matters of their choice:
- adjournment debates;
 - Members' 90 second statements; and
 - Matters of Public Importance (MPI).

Adjournment debates

- 3.28 The time for the adjournment debate in the House has increased from 2 hours in the 42nd Parliament to 3 and a half hours in the 43rd Parliament. The adjournment debate now comprises 1 hour on Mondays, Tuesdays and Wednesdays, and a half hour on Thursdays, compared to a half-hour debate at the end of each sitting day.³⁰
- 3.29 During the calendar year 2011, there were 525 adjournment debate speeches in the House compared to 321 adjournment debate speeches during a similar period in the 42nd Parliament. This indicates an increase of over 60%.

Members' 90 second statements

- 3.30 Under the amended standing orders, 90 second statements have received greater prominence in the 43rd Parliament, moving from the Federation Chamber on Monday to the House on Monday, Wednesday and Thursday, immediately prior to Question Time.³¹
- 3.31 During the calendar year 2011, 431 statements were made, compared to only 138 statements during a similar period in the 42nd Parliament. This represents more than a 300% increase in the number of statements.
- 3.32 The majority of the 118 private Members have taken the opportunity to make a 90 second statement, with 105 Members making at least one statement, including 31 Members who have made ten or more.³²

30 Standing order 34, 20 October 2010. The time for adjournment debate in the Federation Chamber (Thursdays at 12.30pm to 1.00pm) did not change.

31 Standing orders 34 and 43, 20 October 2010. The time allocated for 90 second statements is 15 minutes.

32 Parliamentary Library statistics, 28 June 2012. Standing order 2, 20 October 2010, defines a private Member 'as a Member other than the Speaker or a Minister'.

Discussion of Matters of Public Importance (MPI)

- 3.33 Under amended standing order 1 the time allocated for discussion of the MPI was increased to 1 and a half hours, although the 'automatic' adjournment at 4.30pm on Thursdays in effect reduces the time available for discussion that day. The Agreement proposed that the MPI immediately follow Question Time, to provide greater prominence to the debate. This timing has been enabled.³³ The Agreement also proposed that a 'proportionate share' of MPIs 'be allocated to all non-Government Members'.³⁴
- 3.34 During the calendar year 2011, a total of 57 MPIs were proposed to the Speaker. Of those, 50 were submitted to the House and supported for discussion. Forty-nine MPIs were discussed.³⁵
- 3.35 Of the MPIs discussed during 2011, one was proposed by a Government Member, 47 by Opposition Members, and one by a non-aligned Member.³⁶ Speakers on those discussions have been drawn almost equally from Government and non-Government Members with the five non-aligned Members participating, including the Australian Greens Member.³⁷
- 3.36 During a similar period in the 42nd Parliament, terms of 51 MPIs were proposed to the Speaker, 49 were found to be in order and submitted to the House and 48 supported. There were 45 discussions. Of those, 39 were proposed by Opposition Members and six by non-aligned Members.³⁸
- 3.37 During the calendar year 2011, 56 hours and 17 minutes were spent on discussing MPIs, averaging one hour and nine minutes per discussion. In a similar period in the 42nd Parliament, 41 hours and nine minutes were spent on discussing MPIs, averaging 55 minutes per discussion.³⁹
- 3.38 As these figures indicate, the MPI has become a means for Opposition Members to raise issues critical of Executive Government. However, it is an important avenue for all private Members to raise current topics.⁴⁰

33 *Agreement for a Better Parliament: Parliamentary Reform*, Clause 5.2, pp. 3–4; standing order 34, 20 October 2010.

34 *Agreement for a Better Parliament: Parliamentary Reform*, Clause 5.3, p. 4.

35 Chamber Research Office statistics, 2012.

36 Chamber Research Office statistics, 2012.

37 Parliamentary Library statistics, 28 June 2012. Two of the non-aligned Members participated in four MPI debates, three non-aligned Members each participated in one MPI debate. The Australian Greens Member participated in one MPI debate.

38 Chamber Research Office statistics, 2012.

39 Chamber Research Office statistics, 2012.

40 *House of Representatives Practice*, 6 ed., 2012, p. 592.

3.39 The prominence given to the MPI discussion by the Agreement reflects its importance to private Members as reiterated by the Speaker in a statement in August 2012:

The matter of public importance debate is one of the primary avenues for private members of the House to be able to initiate immediate debate on a matter which is of current concern.⁴¹

3.40 Despite the importance of the MPI discussion, there is a view that the expanded time allocated to the discussion is excessive and often results in uncertainty in respect of when the discussion might conclude. The Committee recommends that the time allocation be reduced to a maximum of one hour with appropriate reallocation of speaking times.

Recommendation 1

3.41 **The Committee recommends that the maximum time allocated for the Matter of Public Importance discussion be reduced to one hour, with speaking times as follows:**

- **proposer and Member next speaking: 15 minutes each;**
- **next two Members speaking: 10 minutes each; and**
- **any other Members: 5 minutes each.**

The balance between private Members' business and government business and the nature of legislative debate

3.42 The main purpose of the Parliament is its legislative function and, while the increased participation of all Members is central to the Agreement, time must be maintained for the Government to pursue its legislative program.⁴² Indications are that the increased time for private Members' business has not impinged on the Government's ability to effectively manage its business.

3.43 As a result of the increased time allocated to private Members' business, the percentage of time taken up by Government business in the House and the Federation Chamber fell from approximately 60% to approximately

41 HR Deb, 23 August 2012, 56; *House of Representatives Practice*, 6 ed., 2012, p. 592.

42 *House of Representatives Practice*, 6 ed., 2012, p. 16.

50%.⁴³ Correspondingly, the time taken up by private Members' bills and motions increased from approximately 9% to approximately 17%.⁴⁴ However, the actual increase in time has largely been compensated for by the increase in sitting hours. Therefore the Government has retained approximately the same number of hours for its business.

- 3.44 As a consequence, there does not appear to have been any decrease in the amount of Government legislation that the Parliament has been able to deal with. In the calendar year 2011, 215 Government bills were introduced into the House. In a corresponding period in the 42nd Parliament, 218 Government bills were introduced into the House. For a similar period in the 41st Parliament, 166 Government bills were introduced into the House.⁴⁵

Committee comment

- 3.45 It is essential that a government maintain its ability to propose legislation that will implement its policy program and it is essential that the House has sufficient time to scrutinise and test these legislative proposals thoroughly. In this instance it appears that the increase in time allocated to private Members' business has been no hindrance to the Government in proposing to the House, and advocating, its legislative objectives.
- 3.46 Private Members have always had opportunities to participate in the work of the House. These have largely been comprised of the opportunities to speak to proposed legislation. As noted above, 215 Government bills were presented in 2011. Clearly, opportunities for Members to participate in debate and respond to legislative proposals are important and are taken up by Members, but, these particular opportunities are confined to matters proposed by government.
- 3.47 Likewise, private Members have long had opportunities to discuss matters of their own choosing: for example, in private Members' business, through motions and bills, as well as in adjournment and grievance debates. As outlined in previous sections, the time allocated for private Members' business and adjournment debates, in particular, has been increased

43 Government Business includes government sponsored legislation and motions (including motions to suspend standing orders) and ministerial statements. (*House of Representatives Practice*, 6 ed., (2012), p. 861.)

44 Private Members' Business includes legislation and motions (including motions to suspend standing orders) sponsored by private Members and statements by Members. (*House of Representatives Practice*, 6 ed., (2012), p. 861.)

45 Chamber Research Office statistics, 2012.

significantly. The opportunity for these kinds of debate to have an impact – through passage of legislation and through resolutions of the House – has also been increased significantly.

- 3.48 Mixed views continue as to whether the extent of the increase in time for private Members was necessary, as noted in the Committee's initial interim report.⁴⁶ In particular, there was a perception that the adjournment debate was unnecessarily long and that it was sometimes difficult to arrange for sufficient speakers to use the time. The Committee addresses this issue in its comments on the changes to weekly sitting hours and its recommendation in chapter 5.
- 3.49 The Committee is pleased to note that most private Members have used the opportunities available to them to debate Government bills, and to propose and participate in debate on matters chosen by them and their backbench colleagues because of their particular significance to them and to their constituents.

46 Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 23.

