

Non-government business

As a means of analysing how the time of the House is occupied the following categorisation may be used:

Government business—government sponsored legislation and motions, and ministerial statements.

Business of the House—petitions, Question Time, presentation of documents, privilege matters, personal explanations, motions to refer business to the Main Committee and the presentation of reports from the Committee, messages from the Governor-General and the Senate, dissent motions, announcements of ministerial arrangements, motions to appoint committees, statements and debate on committee and parliamentary delegation reports, motions for addresses, motions of condolence, motions for leave of absence and special adjournment motions.

Private Members' business—bills and motions sponsored by private Members.

Other opportunities for private Members—adjournment and grievance debates, Members' statements, discussion of matters of public importance, and debate on the Address in Reply.

Most of the time of the House is occupied in the consideration of government business,¹ a situation which is common to most Westminster-style Parliaments. At the time of Federation a Government's right to reserve a significant part of the time of the House for its own purposes had, from necessity, already become established. The increasing need for Governments to control House time, assisted by the growth of strong party loyalty, led to a steady curtailment of opportunities for private Members to initiate bills and motions, and procedures to expedite the consideration of government business.² Private Members frequently objected to the limits placed on opportunities to raise matters in the House, and to encroachments on their relatively few opportunities to have issues of their own choosing debated.³ The current procedures for private Members' business, in effect since 1988, have ameliorated this situation.

The private Member has the opportunity, provided by the standing orders, to participate in all House activity, including government business and business of the House. The rights of the private Member have long been preserved in respect of lodging a petition, the giving of a notice and the asking of questions. Other procedures which permit private Members to raise and draw attention to issues which they consider to be important are the adjournment debate, grievance debate, Members' statements, discussion of matters of public importance and debate on the Address in Reply. Members also have an opportunity to raise matters of their own choosing during debate on the second reading of the main appropriation and supply bills and, subject to the relevancy rule, in the consideration of the proposed

1 Appendixes 22 and 23 show the proportion of House time spent on various categories of business in recent years.

2 A feature of changes to the standing orders since Federation has been the adoption of the closure of the question, closure of a Member, the guillotine and time limits for Members' speeches which have been shortened.

3 See H.R. Deb. (23.2.78) 194, 218; H.R. Deb. (24.5.78) 2444; H.R. Deb. (7.6.78) 3172; H.R. Deb. (23.8.78) 632; H.R. Deb. (19.9.78) 1162; H.R. Deb. (23.8.79) 601, 607; H.R. Deb. (24.10.79) 2435; H.R. Deb. (25.10.79) 2530, 2557; H.R. Deb. (4.10.80) 402.

expenditures of government departments. While these opportunities are important to private Members, none of them enables a Member to initiate debate on a topic of his or her own choice in a form which could enable a distinct vote of the House on it, or to initiate legislative proposals. The private Members' business procedures provide such opportunities.

PRIVATE MEMBERS' MONDAYS

Order of business on Mondays

Most of the time available on each sitting Monday is reserved for non-government business. Standing order 34 provides for the following order of business:

- Committee and delegation reports (at 12.30 p.m.)
- Private Members' business (no specified starting time)
- Members' 90 second statements (at 1.45 p.m.)
- Question Time (at 2 p.m.)
- Presentation of petitions (at approximately 3.30 p.m.)
- Private Members' business (at approximately 3.35 p.m.)
- Grievance debate (at approximately 4.35 p.m.).
- Government business (at approximately 5.55 p.m.)

To enable Members to be assured of a significant period free of interruptions, any division called for in the House during the consideration of private Members' business, on a question other than a motion moved by a Minister, is deferred until the grievance debate has ended.⁴

Since the introduction of the modern form of private Members' business in 1988, only in the most unusual circumstances has other business been given priority at the time for private Members' business—and this has always been by agreement, not merely by government decision.⁵ Sometimes, when the House has not met on a Monday of a sitting week, special arrangements have been made to enable some or all of the items normally dealt with on a Monday to be considered later in the week.⁶

Selection Committee

The timetable and order of business for committee and delegation reports and private Members' business is the responsibility of the Selection Committee, appointed at the commencement of each Parliament.⁷ The committee has 11 members, including the Deputy Speaker, the Chief Government Whip, the Chief Opposition Whip, the Third Party Whip, four government Members, and three opposition or other non-government Members. The quorum is five.

4 S.O. 133(a).

5 VP 1993–95/25–6; VP 1996–98/43; VP 1998–2001/55, 59 (priority to Address in Reply, Selection Committee not having met to select private Members' business). VP 1993–95/2181–2 (motion on French nuclear testing). VP 1996–98/239 (motion on helicopter crash, part of private Members' time only). An order of the Court of Disputed Returns has been presented before presentation of committee and delegation reports—this action was taken because of the importance to the House of the subject matter and only took a very short time, VP 1998–2001/ 717. VP 1998–2001/1531 (death of sitting Member). VP 1998–2001/2595–6 (terrorist attacks in the USA). VP 2002–04/191 (Death of former Prime Minister). Any attempt to take unilateral action to displace the usual order of business has been opposed, e.g. VP 1998–2001/2547.

6 E.g. VP 1993–95/1769, 1777; 1996–98/375, 563.

7 S.O. 222.

Private Members' business to be accorded priority on private Members' Mondays, the order of consideration and the times allotted for debate⁸ on each item are determined by the Selection Committee in accordance with general principles adopted by the House. The committee reports its determinations to the House in time for its decisions to be published on the Notice Paper of the sitting Thursday before the Monday being considered. Such reports of the committee are treated as adopted when presented, and they are printed in Hansard.⁹

The Selection Committee must give notices by private Members of their intention to present bills priority over other notices and orders of the day.¹⁰

In its selection and programming of private Members' business the Selection Committee is guided by general principles adopted by the House (after report by the committee).¹¹

These provide that:

1. In formulating the priority to be given to items of private Members' business the Selection Committee shall have regard to:
 - (a) the importance of the subject;
 - (b) the current level of interest in the subject;
 - (c) the extent of the current discussion on the subject both in the Parliament and elsewhere;
 - (d) the extent to which the subject comes within the responsibility of the Commonwealth Parliament;
 - (e) the probability of the subject being brought before the House by other means within a reasonable time; and
 - (f) whether the subject is the same, or substantially the same, as another item of business which has been debated or on which the House has already made a decision in the same period of sittings and, if so, whether new circumstances exist.
2. The Committee shall accord priority to private Members' business:
 - (a) with regard to the numbers of Members affiliated with each party in the House;
 - (b) in a way which ensures that a particular Member or the Members who comprise the Opposition Executive do not predominate as the movers of the items selected; and
 - (c) in a way which seeks to ensure balance is achieved over each period of sittings.
3. When a private Member has the responsibility for the carriage of a bill transmitted from the Senate for concurrence, the bill shall be accorded priority following the question for the second reading being put to the House in the same way as a private Member's bill originating in the House is accorded priority by standing order 41.
4. Priority shall not be accorded to any item of private Members' business if the matter should be dealt with by the House in another, more appropriate, form of proceeding.
5. The general principles set out above shall be observed by the Selection Committee but nothing in the general principles shall be taken to prevent the Selection Committee departing from those general principles in order to meet circumstances, which, in its opinion, are unusual or special.
6. These general principles shall continue in effect until altered by the House following a report from this or a future Selection Committee.¹²

On the first sitting Monday in a Parliament if the Selection Committee has not been formed special arrangements may be made.¹³

⁸ The actual number of speakers on each item is not set by the committee. Members may agree to vary the number of speakers anticipated by the committee but must remain within the total time allocated.

⁹ S.O. 222.

¹⁰ S.O. 41(c).

¹¹ S.O. 222(c).

¹² VP 2004-05/50-51.

¹³ E.g. VP 2002-04/26-27; VP 2004-05/31.

CONSIDERATION OF COMMITTEE AND DELEGATION REPORTS

The first period following Prayers (at 12.30 p.m.) on Monday is reserved for the presentation of parliamentary committee and delegation reports and for the resumption of debate on orders of the day relating to reports previously presented, the presentation of reports taking priority. Subject to any determination by the Selection Committee, the Member presenting a report and other Members may each speak for a maximum of 10 minutes. The Member presenting the report may then move without notice a specific motion in relation to the report, and debate on the question is adjourned to a future day¹⁴ to be determined by the Selection Committee. Despite determinations by the Selection Committee, Members have been permitted to speak again by leave¹⁵ and Members have been given an extension of time.¹⁶ When reports scheduled for presentation are not available the House is informed and the next business is proceeded with.¹⁷

Following presentation of reports, orders of the day are debated according to the order of priority and times allotted for debate determined by the Selection Committee. Each Member may speak for a maximum of 10 minutes or for any lesser period determined by the Selection Committee.¹⁸ If the consideration of any question has not concluded by the time appointed by the Selection Committee, the debate is interrupted and the resumption of debate made an order of the day for a future day. If debate concludes before the time allocated for the item has expired, and the Selection Committee has determined that consideration is to continue on a future day (the usual practice), the Chair informs the House that the resumption of debate will be made an order of the day for the next sitting Monday. Standing orders have been suspended to enable debate to be resumed on the same day.¹⁹

After presentation of a report in the House and the moving of a motion to take note of the report, the order of the day for the resumption of debate on the motion may be referred to the Main Committee.²⁰ Main Committee consideration is not subject to Selection Committee determination.

For presentation of committee reports at other times *see* 'Presentation of reports' in the Chapter on 'Parliamentary Committees'.

PRIVATE MEMBERS' BUSINESS

There is no longer a fixed time for the start of the private Members' business period. This depends on the amount of preceding committee business.²¹

A private Member is defined by the standing orders as a Member other than the Speaker or a Minister.²² This definition, indirectly, provides additional opportunities to opposition leaders.²³

14 S.O. 39, e.g. VP 1993–95/1343; VP 1998–2001/717–8.

15 E.g. VP 1990–92/884.

16 E.g. VP 1990–92/566.

17 E.g. VP 2002–4/1311.

18 S.O. 40, e.g. VP 1993–95/1343.

19 VP 2002–04/1311–2.

20 S.O. 183(b), e.g. VP 1993–95/1532, 1588; VP 1998–2001/744. Private Members' business has started immediately after Prayers at 12.30 p.m., e.g. VP 1998–2001/275.

21 Prior to 1999 the period started at 1.15 p.m. (former S.O. 102C amended by sessional order 3.12.98).

22 S.O. 2. The term 'Minister' here includes a person designated as Parliamentary Secretary.

23 The definition places a restriction on who may sponsor business, not who may speak (note that time limits for private Members' bills make specific provision for the Prime Minister and the Leader of the Opposition). However, participation of Ministers in private Members' business debates is unusual. For further discussion of the definition of private Member *see* Ch. on 'Members'.

During the private Members' business period notices and orders of the day relating to private Members' business are called on by the Clerk in the order in which they appear on the Notice Paper—that is, as previously determined by the Selection Committee. Standing orders have been suspended to change the order of business.²⁴ Standing and sessional orders have been suspended to allow other Members to move motions in the absence of the Members who had given notices accorded priority by the Selection Committee.²⁵ Priority must be given to notices of intention to present private Members' bills.²⁶ Subject to this requirement, the Selection Committee must provide for the consideration of private Members' notices to alternate between those of government and non-government Members.²⁷

A Member may withdraw a notice of motion or of intention to present a bill even though it has been accorded priority by the Selection Committee,²⁸ and may alter the date in respect of which a notice has been given after it has been given priority by the Selection Committee.²⁹

When the time allotted by the Selection Committee for an item has expired, at the end of the private Members' business period, or when debate concludes, debate is interrupted by the Chair. The question before the Chair may be put. However, the general practice of the committee is to determine that private Members' business should be the subject of further consideration and, therefore, not determined by the House after the initial debate. When the Selection Committee has determined that consideration of a matter should continue on a future day, debate having concluded, or been interrupted by the Chair at the time fixed for interruption, the Chair informs the House that the resumption of debate will be made an order of the day for the next sitting.

An item of private Members' business which has not been called on, or any private Members' business which has been interrupted and not re-accorded priority by the Selection Committee, for eight consecutive sitting Mondays, is removed from the Notice Paper³⁰ (if a matter has been referred to the Main Committee, this provision does not apply unless the matter is referred back to the House).

Consideration at other times

From time to time, standing orders are suspended to permit specified items of private Members' business to be called on and considered during government business time.³¹ This course has been taken to permit immediate consideration of a matter of which notice has just been given, such as a censure or no confidence motion,³² to initiate debate on a matter of particular significance to the Parliament³³ or to the community³⁴ or to bring on a matter when the time factor is significant, such as a motion for the disallowance of delegated legislation (regulations, ordinances' and so on).³⁵ Such action may also be taken when the

24 E.g. VP 2002–04/427–8.

25 E.g. VP 1990–92/1013; VP 1996–98/588; VP 1998–2001/1856; VP 2002–04/747.

26 S.O. 41(c).

27 S.O. 41(f).

28 NP 171 (8.3.2001) 9793; NP 172 (26.3.2001) 9835.

29 NP 172 (26.3.2001) 9835; VP 1998–2001/2176.

30 S.O. 42. Private Members' business removed from the Notice Paper in this way has been reinstated by means of a new notice.

31 Such action was more frequent under arrangements for private Members' business operating prior to 1998 (*see* 1st edition).

32 E.g. VP 1978–80/269.

33 E.g. the reference of a matter to the Court of Disputed Returns, VP 1977/108–11.

34 E.g. VP 1978–80/683; VP 1980–81/139.

35 E.g. VP 1998–2001/382; *see also* 'Delegated legislation' in Ch. on 'Legislation'.

Government has decided to support a private Member's bill, to provide time for further debate and facilitate speedy passage.³⁶ A suspension of standing orders for any of these purposes is usually a government initiative and attempts by private Members alone to obtain precedence to a particular item of business without government support have invariably been unsuccessful. Standing orders have also been suspended to refer items of private Members' business to the Main Committee.³⁷ Selection Committee determinations do not apply in the Main Committee or to items being taken in government time.

Private Members' motions

The procedures applying to the moving of motions are described in the Chapter on 'Motions'. The procedures for private Members' motions are the same as for motions moved by a Minister except that motions are required to be seconded. Theoretically, under standing order 1 the speech of the mover of a motion is limited to 20 minutes and of other Members to 15 minutes, but in practice the Selection Committee normally allots shorter times—for example the mover of a motion and the Member next speaking may be allotted 10 minutes each, and other Members five minutes each.³⁸ Amendments are sometimes moved to private Members' motions.³⁹

By decision of the Selection Committee, the usual practice is that motions considered during the time available under the private Members' business provisions are not voted on at that time, the debate being adjourned and made an order of the day for the next sitting (in practice, usually a subsequent private Members' day). Action has been taken in order to secure a vote on some private Members' motions or bills by having them called on outside of the times reserved for private Members' business.⁴⁰ When the Selection Committee has determined that debate on a motion should continue on a future day, the motion cannot be voted on (unless standing orders are suspended⁴¹), and for that reason the debate cannot be closed.⁴² Debate on a private Member's motion may be referred to the Main Committee.⁴³

Some private Members' motions brought before the House involve issues of social and/or moral significance, often referred to as matters of conscience, such as euthanasia, abortion or homosexuality,⁴⁴ or issues concerning the parliamentary institution. By arrangement within the parties, when such motions have been voted on these have generally been decided by a free vote or conscience vote.⁴⁵ Outright government support for a private Member's motion, in its original form, is less common when the motion is put forward by an opposition Member.⁴⁶

36 E.g. VP 1998–2001/675–7.

37 E.g. VP 2002–04/436.

38 S.O. 222(d). E.g. H.R. Deb (31.1.95) 81–2; H.R. Deb. (23.11.99) 12393.

39 E.g. VP 1996–98/112.

40 E.g. VP 1990–93/918; 1490; VP 1993–95/715, 718, 871; *see also* VP 1996–98/494.

41 VP 1996–98/495.

42 H.R. Deb. (9.3.98) 780–81.

43 E.g. VP 2002–04/436.

44 VP 1978–80/683–4; VP 1973–74/458; VP 1996–98/399–400.

45 E.g., a motion to determine the proposed site for the new and permanent Parliament House, VP 1973–74/289–90, 476; and *see* 'Free votes' in Ch. on 'Order of business and the sitting day' for other examples.

46 E.g., a motion for the establishment of the Select Committee on Specific Learning Difficulties initiated by the Leader of the Opposition was agreed to, VP 1976–77/286–7.

If a private Member's motion is agreed to, the Government does not necessarily consider itself bound by its terms. For example, in 1965 the House agreed to the following motion:

That as the Canberra Advisory Council is but part elected and believing that the citizens of Canberra have a right to say whether or not they want fluoridation of their water supply this House is of opinion that a referendum on the question should be held.⁴⁷

No action was taken by the Government in the terms of the resolution.

Private Members' bills

The procedures which apply to the processing of private Members' bills are substantially the same as those for government bills described in the Chapter on 'Legislation'. Upon the respective notice being called on by the Clerk, the Member in whose name the notice stands⁴⁸ presents the bill and may speak to it for no longer than five minutes.⁴⁹ The Member may present an explanatory memorandum on the bill and leave is not required for this.⁵⁰ The bill is then read a first time and the motion for the second reading set down on the Notice Paper for the next sitting.⁵¹

The occasion for the moving and consideration of the bill's second reading is a matter for the Selection Committee to determine.⁵² Although there is no exemption from the requirement in the standing orders concerning the seconding of motions for a motion for the second or third reading of a bill moved by a private Member, in practice a seconder is called for only on the second reading when the principles of the bill are under consideration. If a private Member's bill passes the second reading stage, a seconder is not called for when motions such as that for the third reading are moved, the House having already affirmed its support for the bill.⁵³ Under standing order 1, in theory, the mover of a motion for the second reading of a private Member's bill may speak for 30 minutes, and other Members 'leading' for the Government or the Opposition may also speak for 30 minutes, with any other Member able to speak for 20 minutes. In practice, the Selection Committee would be expected to determine the times available to Members, and has done so.⁵⁴ If the further consideration of a bill were to be referred to the Main Committee, in the absence of any other arrangement the provisions of standing order 1 would apply.⁵⁵

If the motion for the second reading of any private Member's bill is agreed to by the House, further consideration is accorded priority over other private Members' business and the Selection Committee may set times for consideration of the remaining stages of the bill.⁵⁶

47 VP 1964-66/251.

48 The standing orders make provision for notices from individual Members only. In a situation where two Members have jointly sponsored a private Members' bill, the notice was given by one of the Members concerned, that Member presented the bill, and the other Member was seconder. However, the bill was printed with the names of both Members as sponsors—Protection of Australian Flags (Desecration of the Flag) Bill 2003, H.R. Deb. (18.8.2003) 18671-3, VP 2003-2004/1085. (Senate S.O. 76(4) provides for joint notices.)

49 S.O. 41(d). 15 minutes permitted in the 39th Parliament (sessional order).

50 E.g. VP 2002-04/391; VP 2004-05/175. However, an explanatory memorandum for a private Member's bill is not common.

51 S.O. 41(d). E.g. VP 1987-89/300; VP 1998-2001/815. For variation of timing scheduled by Selection Committee *see* VP 2002-04/427-8.

52 H.R. Deb. (17.3.88) 1055.

53 VP 1974-75/790; VP 1996-98/1003.

54 E.g. H.R. Deb. (9.5.91) 3433 (bill considered in the House).

55 The motion referring the Euthanasia Laws Bill 1996 to the Main Committee for the remainder of the second reading debate allotted 10 minutes for each speaker, VP 1996-98/551.

56 S.O. 41(e).

As with private Members' motions, private Members' bills have sometimes related to matters of social and/or moral significance, such as euthanasia⁵⁷ and superannuation entitlements of same-sex couples.⁵⁸ The extent of government support in respect of successful private Members' bills has varied. In the case of the Matrimonial Causes Bill 1955, the Member who initiated the bill remained in charge of it through all stages in the House.⁵⁹ In the case of the National Measurement (Standard Time) Amendment Bill 1991, the Member who initiated the bill having moved the second reading, a Parliamentary Secretary moved the third reading.⁶⁰ In the case of the Parliament Bill 1974, the Member who initiated the bill having moved the second reading, another Member moved the third reading. The bill was amended at the committee (consideration in detail) stage on the motion of a Minister.⁶¹ On the bill being returned from the Senate with amendments, it was taken over by the Government and was listed on the Notice Paper under government business.⁶²

When a private Member's bill has passed the House and been transmitted to the Senate, its sponsorship in the Senate may be by either a private Senator⁶³ or a Minister in the Senate.⁶⁴ Similarly, private Members⁶⁵ and Ministers⁶⁶ have taken responsibility for private Senators' bills when they have been received in the House. The principles adopted by the House to guide the Selection Committee in respect of private Members' business include a provision that when a private Member has responsibility for the carriage of a bill transmitted from the Senate, the bill is to be accorded priority (following the question for the second reading being put to the House) in the same way as a private Member's bill is accorded priority by standing order 41(c).⁶⁷

The term 'private Member's bill' should not be confused with the term 'private bill'. Private bills, as known in the United Kingdom, conferring powers or benefits on individuals or bodies of persons, do not feature in the Commonwealth Parliament.

Drafting

House staff are the principal source of assistance to private Members in drafting matters. The assistance of a consultant drafter may be obtained in cases of particular difficulty or technical complexity. Private Members have traditionally also had some access to the Office of Parliamentary Counsel for help in such matters, although the primary and overriding priority of that office is to serve the Government. Any dealings between a Member and a parliamentary drafter are confidential. In 1975 private Members' access to assistance from Office of Parliamentary Counsel drafters was an issue on which the House and the Senate could not agree. The Senate amended the Parliamentary Counsel Bill 1975 to provide that a section of not less than two professional staff from the Office of

57 VP 1996–98/399–400.

58 VP 1998–2001/563.

59 VP 1954–55/190, 254.

60 VP 1990–93/919

61 VP 1974–75/198–200, 246–8.

62 NP 30 (30.10.74) 2840; VP 1974–75/426–8.

63 Parliament Bill 1974.

64 Life Assurance Companies Bill 1904 (passed Senate in 1905); National Measurement (Standard Time) Amendment Bill 1991 (discharged in Senate in 1992).

65 Superannuation Guarantee (Administration) (Exemption of Council Allowances) Amendment Bill 1993.

66 Parliamentary Presiding Offices Amendment Bill 1992. *See also* VP 1998–2001/1300 (Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999); VP 2002–04/1582, NP 166 (11.5.2004) 6849 (Kyoto Protocol Ratification Bill 2003 [No. 2])—government responsibility does not necessarily mean that the bill will proceed with alacrity (or at all).

67 VP 1998–2001/70–71.

Parliamentary Counsel be seconded to draft proposed laws, amendments and instruments at the request of private Members of Parliament in priority to services for Ministers.⁶⁸ The House disagreed to the amendment in view of the fact that the existing arrangements were considered to be more satisfactory to Members and the Government than the arrangements proposed.⁶⁹ Each House stood its ground and the bill was finally laid aside.⁷⁰

In 1905 the Life Assurance Companies Bill, a private Member's bill which had been passed by the House in 1904, was passed by the Senate and sent to the Governor-General for assent. The Governor-General returned the bill recommending amendments. Commenting on the proposed amendments the Minister indicated that they were 'purely verbal' and did not affect the purpose of the bill. He pointed out that the initiator of the bill had not had the Parliamentary Draftsman's assistance in drafting it and had not understood the full significance of certain words he had used in the bill.⁷¹

While every effort is made to meet Members' requests for the drafting of bills, such requests cannot always be met. The constraints imposed by the Constitution—in respect of proposals with financial implications (*see below*), the limits on the law-making powers of the Commonwealth Parliament, and the implications of section 109—and the rules and practices of the House combine to limit the range of subjects on which private Members may introduce bills. Although the freedom apparently available to members of some other legislatures is therefore not enjoyed by Members of the House, another consequence is that legislative proposals which are introduced in the House all have a certain status.⁷² Members often give notice of private Members' motions to advance proposals not suitable for inclusion in a bill, and this course has the advantage of allowing Members greater freedom to express their intentions.

Financial initiative

A private Member may not initiate a bill imposing or varying a tax or requiring the appropriation of revenue or moneys. This would be contrary to the constitutional and parliamentary principle of the financial initiative of the Executive—that is, that no public charge can be incurred except on the initiative of the Government.⁷³

The financial initiative in regard to appropriation is expressed in section 56 of the Constitution, and is extended in standing order 180 as follows:

- (a) All proposals for the appropriation of revenue or moneys require a message to the House from the Governor-General recommending the purpose of the appropriation in accordance with section 56 of the Constitution.
- (b) For an Appropriation or Supply Bill, the message must be announced before the bill is introduced.
- (c) For other bills appropriating revenue or moneys, a Minister may introduce the bill and the bill may be proceeded with before the message is announced and *standing order 147 (message recommending appropriation)* applies.
- (d) A further message must be received before any amendment can be moved which would increase, or extend the objects and purposes or alter the destination of, a recommended appropriation.

68 J 1974-75/730.

69 VP 1974-75/774.

70 VP 1974-75/827-8.

71 H.R. Deb. (25.10.05) 4048.

72 That is, as potential legally effective Acts of Parliament.

73 This principle and its significance is discussed in the Ch. on 'Financial legislation'.

It would not be possible for a private Member to obtain the Governor-General's recommendation for an appropriation. Furthermore, of those bills requiring a Governor-General's message, only those brought in by a Minister may be introduced and proceeded with before the message is announced. Therefore, only a Minister may bring in a bill which appropriates public moneys.

The financial initiative in regard to taxation, which restricts private Members from initiating taxing bills, is expressed in, and given effect by, standing order 179:

- (a) Only a Minister may initiate a proposal to impose, increase, or decrease a tax or duty, or change the scope of any charge.
- (b) Only a Minister may move an amendment to the proposal which increases or extends the scope of the charge proposed beyond the total already existing under any Acts of Parliament.
- (c) A Member who is not a Minister may move an amendment to the proposal which does not increase or extend the scope of the charge proposed beyond the total already existing under any Acts of Parliament.

In 1988, following presentation of an Income Tax Assessment Amendment Bill initiated by a private Member, the Chair noted that the bill sought to restore an earlier interpretation of a provision of the Act. The Chair understood that the bill did not seek to increase or alleviate tax, although it could be argued that a reduction would occur in the sum a person might pay because of the restored interpretation. The Chair stated that it was felt appropriate to permit the Member to initiate the proposal, although its validity in procedural terms was not clear.⁷⁴ Private Members' bills have sought to amend the Customs and Excise Tariff Acts to introduce mechanisms by which a decrease in duty could be effected by subsequent parliamentary action.⁷⁵ In 2002 a private Member's bill made provision for the Taxation Commissioner to assess certain amounts, which were stated in the objects clause of the bill as intended to be used in the calculation of a tax to be imposed and administered by another Act; and in the calculation of increased expenditure to be appropriated by another Act.⁷⁶ In the same year, having introduced a bill providing for the assessment and collection of a levy, a Member presented as a document a copy of a proposed companion bill providing for the imposition of the levy.⁷⁷

Impact

Bills initiated by private Members are a small proportion of the legislation dealt with by the House, although the introduction of new procedures for private Members' business in 1988 has seen a significant increase in their number. Private Members introduced 59 bills between 1901 and 1987. This figure had doubled within the next 5 years. Since 1988 about 12 private Members' bills per year, on average, have been introduced.

Table 16.1 lists all private Members' bills which have passed into law since Federation. Twenty non-government bills have passed into law—seven initiated by private Members, eight by private Senators and five by the Speaker and the President. In addition, the provisions of other private Member's bills have become law by being incorporated into government legislation.

⁷⁴ H.R. Deb. (10.11.88) 2790–1; VP 1987–89/875.

⁷⁵ H.R. Deb. (5.3.2001) 24900, 24904.

⁷⁶ Tobacco Excise Windfall Recovery (Assessment) Bill 2002, H.R. Deb. (16.9.2002) 6224–6. As noted in the explanatory memorandum, the introduction of the other two bills of the proposed package was dependent on government action.

⁷⁷ Plastic Bag Levy (Assessment and Collection) Bill 2002. The document presented was the Plastic Bag Levy Imposition Bill 2002. H.R. Deb. (21.10.2002) 8121–3; VP 2002–2004/510–11.

Some notable examples of legislation passed by the Parliament have resulted from the actions of private Members or Senators, for example:

- In 1924 the Electoral (Compulsory Voting) Bill, which introduced compulsory voting at Federal elections, was initiated in the Senate by a private Senator, and when transmitted to the House was sponsored by a private Member.
- In 1957 a private Member initiated in the House the Matrimonial Bill to provide for uniform divorce laws. The bill passed the second reading but then lapsed. The objects of the measure were incorporated in the Government's Matrimonial Causes Bill which was passed in 1959.⁷⁸
- In 1974 a private Member introduced the Parliament Bill which was similar to a bill previously introduced by a private Senator which had lapsed after the first reading stage in the Senate. The bill's primary purpose was to determine the site of the new Parliament House, an issue which had defied final resolution for many years. The 1974 bill ultimately passed both Houses, in an amended form, and became law.
- The Government's Industrial Relations Legislation Amendment Bill (No. 2) of 1992 included provisions to amend the *Conciliation and Arbitration Act 1904* in respect of a matter addressed in a private Members' bill introduced three times between 1990 and 1992.⁷⁹
- In 1995 the Parliament passed the *Anzac Day Bill 1994*. This bill was initiated by the Government, but the Government's actions followed the actions of one private Member in moving a motion on the subject⁸⁰ and of another in preparing and giving notice of his intention to introduce a private Member's bill.⁸¹
- In 1995 the Parliament passed the Government's Sydney Airport Curfew Bill 1995, which took up in amended form the objects of a private Member's bill, the Sydney Airport Curfew (Air Navigation Amendment) Bill 1995,⁸² after a report on that bill by the Standing Committee on Transport, Communications and Infrastructure.
- In 2002 the government-sponsored Superannuation Guarantee Charge Amendment Bill was enacted. This made compulsory superannuation contributions payable quarterly, a matter originally proposed by a private Member's bill.⁸³

One of the most significant non-government bills ever passed from a parliamentary point of view was the Parliamentary Privileges Bill which was assented to in 1987, having been sponsored by President McClelland and Speaker Child.⁸⁴ Other bills introduced by the Presiding Officers have related to the administration of the Parliament. In 1999 the Parliamentary Service Bill, which had been presented by Speaker Andrew, was assented to. It provided a new legislative framework for the parliamentary departments and paralleled changes sponsored by the Government in respect of the public service generally.

⁷⁸ Act No. 104 of 1959; and see H.R. Deb. (14.5.59) 2223.

⁷⁹ Act No. 215 of 1992; H.R. Deb. (17.12.92) 4180.

⁸⁰ VP 1993–95/1058.

⁸¹ H.R. Deb (12.5.94) 876. The notice was later withdrawn.

⁸² Introduced by the Leader of the Opposition, VP 1993–95/2228–9. The second reading debate and referral to the committee occurred during government business time, VP 1993–95/2286–87.

⁸³ Superannuation Guarantee (Administration) Amendment Bill 2000. VP 1998–2001/1598.

⁸⁴ See Ch. on 'Parliamentary privilege'.

TABLE 16.1 PRIVATE MEMBERS' BILLS PASSED INTO LAW

<i>Bill</i>	<i>Initiator</i>
Life Assurance Companies 1904 (Lapsed in Senate at second reading stage; proceedings resumed in Senate in 1905—Act No. 12 of 1905)	Mr L. E. Groom
Conciliation and Arbitration 1908 (Lapsed in Senate at committee stage; proceedings resumed in Senate in 1909—Act No. 28 of 1909)	Senator Needham*
Electoral (Compulsory Voting) 1924 (Act No. 10 of 1924)	Senator Payne
Defence (No.2) 1939 (Act No. 38 of 1939)	Mr Curtin
Supply and Development (No. 2) 1939 (Act No.40 of 1939)	Mr Curtin
Matrimonial Causes 1955 (Act No. 29 of 1955)	Mr Joske
Australian Capital Territory Evidence (Temporary Provisions) 1971 (Act No. 66 of 1971)	Senator Murphy*
Parliament 1974 (Act No. 165 of 1974)	Mr L. K. Johnson
Wireless Telegraphy Amendment 1980 (Act No. 91 of 1980)	Senator Rae
Senate Elections (Queensland) 1982 (Act No. 31 of 1982)	Senator Colston
Income Tax Assessment Amendment 1984 [No. 2] (Act No. 115 of 1984—assented to as Income Tax Assessment Amendment (No. 5) 1984)	Senator Evans*
Smoking and Tobacco Products Advertisements (Prohibition) 1989 (Act No. 181 of 1989)	Senator Powell*
Parliamentary Presiding Officers Amendment 1992 (Act No. 163 of 1992)	Senator Colston*
Euthanasia Laws 1997 (Act No. 17 of 1997)	Mr K. J. Andrews
Adelaide Airport Curfew 1999 (Act No. 29 of 2000)	Mrs Gallus

* sponsored by the Government in the House of Representatives.

**TABLE 16.2
BILLS SPONSORED BY THE SPEAKER AND PASSED BY HOUSE**

<i>Bill</i>	<i>Initiator in House</i>
Parliamentary Privileges 1987 Passed into law (Act No. 21 of 1987).	Speaker Child
Public Service (Parliamentary Departments) Amendment 1988 Passed House only.	Speaker Child
Public Service (Parliamentary Departments) Amendment 1993 Passed House only.	Speaker Martin
Parliamentary Service 1997 Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside.	Speaker Halverson
Parliamentary Service (Consequential Amendments) 1997 Passed into law (Act No. 189 of 1997).	Speaker Halverson
Parliamentary Service 1997 [No. 2] Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside.	Speaker Sinclair
Parliamentary Service 1999 Passed into law (Act No. 145 of 1999).	Speaker Andrew
Parliamentary Service Amendment 2001 Passed into law (Act No. 125 of 2001)	Speaker Andrew
Parliamentary Service Amendment 2005 Passed into law (Act No. 39 of 2005)	Speaker Hawker

GRIEVANCE DEBATE

Origins

The grievance debate is derived from the centuries old financial procedures of the House of Commons. The traditional insistence of the Commons on considering grievances before granting supply to the Crown found expression in the practice of prefacing consideration in Committee of Supply by the motion ‘That Mr Speaker do now leave the Chair’. The question now proposed in the House of Representatives is ‘That grievances be noted’. It is because of the procedural origins of the grievance debate that it is listed on the Notice Paper as an order of the day under government business, rather than private Members’ business.

Programming and scope of the debate

The first order of the day, government business on each sitting Monday is grievance debate. It is called on following private Members’ business. The question proposed by the Chair is ‘That grievances be noted’, to which question any Member may address the Chair. If consideration of the question has not concluded after one hour and twenty minutes, the debate is interrupted and the question put by the Chair.⁸⁵ The House may postpone the order of the day, or agree to the question without debate,⁸⁶ if it desires to progress to other business. When the House has not met on a Monday, sometimes arrangements have been made to enable a grievance debate to take place on another day.⁸⁷

Any Member may address the House on, or move an amendment to,⁸⁸ the question ‘That grievances be noted’ but, in practice, Ministers rarely participate in order to give more private Members the opportunity to speak.⁸⁹ A Member’s speech is limited to 10 minutes⁹⁰ and it is the traditional practice for the first speaker to be called from the Opposition.⁹¹ The grievance debate is regarded by private Members as a most useful opportunity to raise matters in which they have a particular interest or to ventilate complaints of constituents. A wide-ranging debate, similar in scope to that which may occur on the motion for the adjournment of the House, may take place. A matter which has been the subject of a debate earlier in the session may be referred to, but the earlier debate itself may not be revived unless the allusion is relevant to a new aspect or matter which the Member is raising. This restriction does not prevent reference to previous grievance or adjournment debates.

The scope of an amendment is practically unlimited and debate may then cover both the main question and the amendment. Amendments were frequently moved until about 1924—primarily to seek a resolution of the House or to focus attention on a particular subject—but are now rare.⁹² Only three amendments have been agreed to, two of them involving amendments to proposed amendments.⁹³

85 S.O. 44.

86 VP 1996–98/289.

87 E.g. VP 1993–95/1769, 1777; VP 1996–98/375, 1312.

88 VP 1974–75/452.

89 In recent years the participation of Parliamentary Secretaries has become more common.

90 S.O. 1.

91 H.R. Deb. (20.9.73) 1333.

92 VP 1974–75/452; H.R. Deb. (13.2.75) 276–9.

93 VP 1920–21/163, 271–2; VP 1907–08/284–5.

MEMBERS' 90 SECOND STATEMENTS

During this 15 minute period (from 1.45 until 2 p.m. on Mondays), any Member other than a Minister (or Parliamentary Secretary) may be called by the Chair to make a statement on any topic of concern for no longer than 90 seconds.⁹⁴ The call is alternated between government and non-government Members, subject to the proviso that Members who have not received the call are given priority over Members who have already spoken. Independent Members have been given the call with the frequency appropriate to their representation in the House. Opposition frontbench Members do not receive precedence. If no other Member rises to make a statement, a Member who has already spoken may speak again. The Speaker has given the call preferentially to Members who have been in the Chamber for the full period,⁹⁵ and to Members who were not regular participants.⁹⁶ The calling of quorums, the raising of spurious points of order and other disruptive tactics are not in accord with the spirit of the procedure and have not been tolerated.⁹⁷ The normal speech timing clocks are not used—the time taken by each Member is monitored with a stopwatch or digital timer.

When called, as well as being able to make a statement to the House, a Member may give notice of intention to move a motion or present a bill by stating its terms to the House and delivering it in writing to the Clerk at the Table.⁹⁸ However, the giving of notices openly in this way is very rare.

A Member may present a petition during this period, provided he or she has written his or her name and electoral division and the number of signatories at the beginning of the petition and obtained certification by the Clerk or Deputy Clerk that the petition complies with the standing orders.⁹⁹

When the House has not met on a Monday (for example, at the commencement of a period of sittings) arrangements have sometimes been made to allow Members' statements to be made on another day.¹⁰⁰

MEMBERS' STATEMENTS IN THE MAIN COMMITTEE

Periods are reserved for statements by Members at the start of Main Committee proceedings on Wednesdays and Thursdays when the usual time for the committee to meet is 9.40 a.m. This opportunity only occurs if the Committee meets before 10 a.m. and lasts for 18 minutes or until 10 a.m., whichever is the earlier. Any Member other than a Minister, but including Parliamentary Secretaries, may speak for no longer than three minutes.¹⁰¹ If no other Member rises, a Member who has already spoken may speak a second time. The procedure has operated since 1998, initially on Thursdays only but was extended to Wednesdays from May 1999. Provision for Parliamentary Secretaries to speak was also introduced at that time.¹⁰²

94 S.O. 43.

95 H.R. Deb. (1.12.2003) 23291.

96 H.R. Deb. (22.03.2004) 26755.

97 H. R. Deb. (17.3.88) 983; H.R. Deb. (6.5.93) 289.

98 S.O. 106(a). H.R. Deb. (7.9.89) 1155.

99 S.O.s 209(b), 208.

100 E.g. VP 1993–95/1769, 1777; 1996–98/375, 1312.

101 S.O. 193

102 H.R. Deb. (31.3.1999) 4898.

A Member may present a petition during this period subject to the same requirements as apply to presentation during 90 second statements in the House.¹⁰³ A Member is not able to give a notice during a Member's statement in the Main Committee, but may state the terms of the notice during a statement, and lodge the notice in writing in the House itself in the ordinary way.

ADJOURNMENT DEBATE

Debate on the question 'That the House do now adjourn' is specifically exempted from the normal rules of relevance applying to other debates,¹⁰⁴ and by this means the adjournment debate provides Members with an opportunity to speak on any matter they wish to raise. The opportunities provided in adjournment debates in terms of the total time available to private Members are not inconsiderable. Because of this, and because an adjournment debate takes place on a majority of sitting days, the adjournment debate is particularly valued by Members.

Although, technically, Ministers are not excluded from participation in the adjournment debate, in practice the period is regarded as an opportunity for private Members. Objection has been raised when Parliamentary Secretaries have participated.¹⁰⁵ The Speaker has stated that he would give preference for the call to backbenchers over front benchers from the same side of the House,¹⁰⁶ and that it would be improper for the Chair to recognise a member of the Executive in the adjournment debate, except at times when no other Members have risen to speak.¹⁰⁷

The standing orders provide for a half hour adjournment debate to take place at the end of every sitting day. The detailed arrangements for the moving of the motion or the proposing of the question for the adjournment of the House are described in the Chapter on 'Order of business and the sitting day'. In brief, when the motion for the adjournment is not moved by a Minister, the automatic adjournment provisions apply as follows:¹⁰⁸

- the Speaker interrupts proceedings to propose the question 'That the House do now adjourn' at 9 p.m. on Mondays and Tuesdays, at 7.30 p.m. on Wednesdays and at 4.30 p.m. on Thursdays;
- a Minister may require the question to be put immediately without debate. If the question is then negatived, the House resumes its proceedings at the point at which they were interrupted;
- if the question is not put immediately, it may be debated. No amendment can be moved to the question.

In all cases, whether the adjournment debate has been initiated by a Minister or by the Chair, if debate is still continuing at 9.30 p.m. on Mondays and Tuesdays, at 8 p.m. on Wednesdays, or at 5 p.m. on Thursdays, it is automatically interrupted by the Chair. At this point a Minister may require that the debate be extended for 10 minutes to enable Ministers to speak in reply to matters raised in the debate. A Minister may start his or her reply

103 S.O.s 209(b), 208.

104 S.O. 76(a).

105 H.R. Deb. (30.9.97) 8832–3—point of order objecting to Parliamentary Secretary's participation disallowed.

106 H.R. Deb. (11.3.98) 1040, 1042.

107 H.R. Deb. (16.10.2003) 21678. Example of a Minister speaking as the last participant in the debate when no other Member sought the call, H.R. Deb. (25.11.2003) 22808–9.

108 S.O. 31.

before the Speaker interrupts the debate, providing no other Member seeks the call. In this case the debate is still interrupted at the due time and the Minister may then require the debate to be extended.¹⁰⁹ If no such extension is sought, or after the extension or on the earlier cessation of the debate, the Speaker automatically adjourns the House until the time of its next meeting.¹¹⁰ Standing and sessional orders have been suspended, by leave, to enable the debate to extend beyond the normal time.¹¹¹

Time limits

Except for the limitation imposed by the automatic interruption by the Chair at the specified time, or such other times in special circumstances as may be specified, each Member receiving the call on the adjournment motion may speak for five minutes.¹¹² No extension of time may be granted. If no other Member from any part of the House rises, a Member who has already spoken to the motion may speak a second time for a period not exceeding five minutes.¹¹³ Similar time limits apply to Ministers, with the exception that when a Minister's speech commences just prior to the interruption the Minister may conclude his or her five minutes after the interruption by requiring the debate to be extended. The Minister may then speak for a second period of five minutes, if no other Minister rises.

Debate

Subject to the general rules of debate,¹¹⁴ matters irrelevant to the motion may be debated.¹¹⁵ This means that the scope of debate is practically unlimited and provides the private Member with an opportunity to raise matters of his or her choosing.

Through the application of the general rules of debate a Member may not anticipate discussion of a subject which appears on the Notice Paper, but the Speaker has regard to the probability of the anticipated matter being brought before the House within a reasonable time.¹¹⁶ Debates of the current session may not be revived unless the allusion is relevant to a new aspect or matter which the Member is raising. A passing reference may be made to a previous debate.¹¹⁷ A Member may reply to matters raised in a previous debate to correct a misrepresentation by way of a personal explanation.¹¹⁸ Remarks cannot be based on a question asked earlier in the day, but the facts may be stated without dealing with the question.¹¹⁹ Provided that no other rules of debate are contravened, matters before State Parliaments may be discussed,¹²⁰ as may be activities of another Member of the Parliament.¹²¹ Members have customarily advised other Members if they proposed to make

109 H.R. Deb. (23.8.79) 613.

110 S.O. 31(c).

111 E.g. VP 1993–95/2567–8; VP 1998–2001/712, 1063.

112 Standing orders have been suspended to enable Members speaking in the debate to speak for one period of 10 minutes, VP 1993–5/1723; VP 1996–98/1054.

113 S.O. 1. Leave is required for a Member to speak a third time.

114 See Ch. on 'Control and conduct of debate'.

115 S.O. 76(a).

116 S.O. 77. See also Ch. on 'Control and conduct of debate'.

117 H.R. Deb. (23.3.72) 1196.

118 H.R. Deb. (26.5.55) 1201.

119 H.R. Deb. (21.2.52) 256.

120 H.R. Deb. (25.11.53) 529–30.

121 H.R. Deb. (25.10.50) 1395.

remarks concerning them in the adjournment debate, although there is no formal requirement for them to do so.

Call of the Chair

The practice of the House is that an opposition Member receives the first call on the motion to adjourn the House.¹²² Subsequently, if Members are rising on both sides, the Chair alternates the call in the normal way,¹²³ calling the Member who, in the Chair's opinion, first rose. The call is not alternated if it would lead to a Member who has already spoken being called again in preference to a Member who has not spoken.

On one occasion in 1952, the Speaker gave preference to Members desiring to speak on a particular subject and on a later occasion stated that, although Members were at liberty to debate their chosen subjects, as he had been warned of two subjects he would hear them first.¹²⁴ On a later occasion the Speaker required assurances from Members that they proposed to debate certain matters already raised before he gave them the call.¹²⁵ These practices were not continued.

Adjournment debate in the Main Committee

The Main Committee stands adjourned on the completion of all matters referred to it, or may be adjourned on motion moved without notice by any Member 'That the Committee do now adjourn',¹²⁶ which may be debated.¹²⁷ In practice the timing of the motion is agreed between the whips.

It is now well-established practice that a regular 30 minute adjournment debate takes place on Thursdays in the Main Committee. However, the timing and duration of the debate are not fixed by the standing orders,¹²⁸ and the debate may be extended or occur on a day other than Thursday by agreement between the whips. Unless advised of an agreement for extended debate, after 30 minutes the Chair ceases to recognise Members seeking the call and puts the question.¹²⁹

The rules applying to the adjournment debate in the House apply, as appropriate. However, any Member (rather than only a Minister) may require the question 'That the Committee do now adjourn' to be put immediately without debate.¹³⁰

MATTERS OF PUBLIC IMPORTANCE

The order of business provides for discussion of a matter of public importance (MPI) on every sitting day, except Mondays.¹³¹ The MPI takes place following the presentation of documents and ministerial statements, shortly after Question Time.

Although a maximum of two hours is provided for the discussion,¹³² the accepted practice is that by arrangement between the parties, two Members from each side are listed

122 H.R. Deb. (10.5.73) 2041.

123 See Ch. on 'Control and conduct of debate'.

124 H.R. Deb. (14.5.52) 342.

125 H.R. Deb. (11.3.53) 871–5.

126 S.O. 190(e), e.g. VP 1998–2001/274, 892.

127 S.O. 191(a).

128 S.O. 191. Prior to September 2002 former S.O. 274 fixed the time of the debate as 12.30 p.m. on Thursdays.

129 See statement by Deputy Speaker, H.R. Deb. (17.9.2002) 6471.

130 S.O. 191(b), e.g. VP 1998–2001/273, 892.

131 S.O. 34.

132 S.O. 1.

to speak and the discussion lasts for about 50 minutes. On occasions there have been more than four speakers, but this is rare. The subject matter of the discussion does not attract a vote of the House as there is no motion before the Chair.

The MPI is one of the principal avenues available to private Members to initiate immediate debate on a matter which is of current concern. However, although Members on both sides of the House are entitled to propose a matter for discussion, it now appears to be taken for granted that the opportunity is, on the whole, a vehicle for the Opposition. In practice the great majority of matters discussed are proposed by members of the opposition executive and are usually critical of government policy or administration (or such criticism is made in the discussion itself).

The matter of public importance procedure developed from a provision in the standing orders adopted in 1901 which permitted a Member to move formally the adjournment of the House for the purpose of discussing a definite matter of urgent public importance. The historical development of the modern procedure provided by present standing order 46 is outlined in earlier editions.

While, technically, any Member may initiate a matter for discussion, in practice Ministers would not be expected to use the procedure (and have not done so), as there are other avenues available to them to initiate debate on a particular subject. For a Minister to use the procedure would be regarded as an intrusion into an area recognised as the preserve of shadow ministers and backbench Members.

Proposal of matter to Speaker

Matters are usually proposed to the Speaker by letter in the following form:

[date]

Dear Mr/Madam Speaker,

In accordance with standing order 46, I desire to propose that [today] [tomorrow] [on Tuesday, . . .] the following definite matter of public importance be put to the House for discussion, namely:

[terms of matter]

Yours sincerely,

[signature of Member]

The proposed matter must be received by 12 noon of the day of the discussion. On occasions when a matter proposed for discussion has not been presented to the Speaker by the time specified, standing and sessional orders have been suspended to allow the matter to be called on.¹³³

The terms of a matter of public importance to be proposed to the House are made known to the Leader of the House or the Manager of Opposition Business, as the case may be, some time after 12 noon on the sitting day in question.

Discretionary responsibility of the Speaker

Whether matter in order

Standing order 46 invests the Speaker with the power to decide whether a matter of public importance is in order. A Member must present to the Speaker a written statement of the matter proposed to be discussed. In the absence of the Speaker, the practice of the

133 E.g. VP 1985–87/1713.

House is that the Deputy Speaker decides whether matters are in order and determines priority, if necessary, before the House meets. The Deputy Speaker performs this function even though, on a particular day, he or she is not empowered to perform the duties of Speaker until the House, pursuant to standing order 18(a), is informed by the Clerk of the Speaker's absence. In the event of the absence of both the Speaker and Deputy Speaker the Second Deputy Speaker could perform the function.¹³⁴

On two occasions following the resignation of a Speaker, when the House was not due to elect a new Speaker until after the 12 noon deadline, proposed matters of public importance were processed and included on the Daily Program in anticipation of the new Speaker's approval (the approval of the Member expected to be elected Speaker having been first ascertained).¹³⁵

A matter is put before the House only if the Speaker has decided that it is in order¹³⁶ and the Speaker is not obliged to inform the House of matters determined to be out of order.¹³⁷ Members cannot read to the House (or present) matters determined to be out of order or not selected for discussion.¹³⁸

The decision of the Speaker is regarded as a decision that cannot be challenged by a motion of dissent, as the Speaker does not make a ruling but exercises the authority vested in the Speaker by the standing order.¹³⁹ However, on one occasion when two matters were proposed and the Speaker made a choice, a point of order was taken that the matter selected by the Speaker did not contain an element of ministerial responsibility and did not comply with then standing order 107 (current S.O. 46). In response to the point of order the Speaker ruled that he had exercised his responsibility of selecting a matter which he had determined to be in order. A motion of dissent from the Speaker's determination that the matter selected was in order was then moved.¹⁴⁰

Members are sometimes requested by the Speaker to amend the wording of their proposed matter in order to make it accord with the standing orders, and Members often consult with the Clerk on the terms of proposed matters. For example, the Speaker has approved a matter after the terms were altered to refer to 'the Government' rather than 'the Howard Government'. A proposed matter determined to be in order and granted priority appears on the Daily Program if it has not already been issued. If the Daily Program has been issued, a separate notification of the proposed matter is distributed in the Chamber.

More than one matter proposed

In the event of more than one matter being proposed for discussion on the same day (up to five have been so proposed¹⁴¹), the Speaker selects the matter to be read to the House that day.¹⁴² There is a precedent for a motion to suspend standing orders to enable a Member to bring on 'for discussion a matter of public importance in the following terms: . . .', the terms being those of a matter submitted but not given priority.¹⁴³ A matter

134 VP 1978–80/985, 989.

135 VP 1985–87/675; VP 1989/1419.

136 VP 1964–66/547.

137 H.R. Deb. (30.9.54) 1767.

138 H.R. Deb. (30.9.54) 1773; VP 1954–55/255–6.

139 VP 1954–55/85–6; H.R. Deb. (30.9.54) 1767–73; VP 1951–53/283–4 (in respect of according priority); H.R. Deb. (17.3.82) 1042.

140 VP 1985–87/548.

141 VP 1977/396–7.

142 S.O. 46(d).

143 VP 1985–87/545–6.

determined to be in order but not selected for discussion has been accepted and selected for discussion on a later occasion.¹⁴⁴

The Speaker, in selecting a matter for submission to the House, does so against the background that a principal function of the modern House is to monitor and publicise the actions and administration of the Executive Government. The Speaker cannot be required to give reasons for choosing one matter ahead of another.¹⁴⁵ There can be no challenge or dissent to the Speaker's selection, as the Speaker is exercising a discretionary power given by the standing order, not making a ruling.¹⁴⁶

Criteria for determining a matter in order

In deciding whether a matter is in order the following aspects of the proposed matter must be considered:

Matter must be definite

The requirements of the House are that a proposed matter must be definite—that is, single, specific and precise in its wording. Prior to 1952 formal adjournment motions had been ruled out of order on the grounds that they were not definite.¹⁴⁷ Nowadays a Member would be asked to amend a proposed matter seen as too general or indefinite, before acceptance by the Speaker. The modern view is that the intent and spirit of the standing order is contravened by including diverse topics in the matter, the underlying reasons being:

- that notice of the discussion is limited and, therefore, it is impracticable to prepare for a wide-ranging debate; and
- the time limit for discussion is strictly limited and does not thereby allow for an adequate discussion of several disparate matters.

Public importance

In 1967 the Speaker directed that a matter be amended before presentation to the House partly because it dealt with procedure and proceedings of the House which were of domestic concern and could not be considered as appropriate for discussion as 'a definite matter of public importance'.¹⁴⁸ However, more recent interpretation would allow any matter relating to or concerning any subject in respect of which the House has an authority to act or a right to discuss.

Ministerial responsibility

The Speaker of the House of Commons, in determining whether a matter of urgency is proper to be discussed, is expected to have regard to the extent to which the matter concerns the administrative responsibilities of Ministers or could come within the scope of ministerial action.¹⁴⁹ The Speaker of the House of Representatives will pay regard to these factors in determining whether a matter of public importance is in order. As a reflection of this, the standing order setting time limits for speeches, prior to 1972, presupposed that a matter would fall within areas of ministerial responsibility by providing that a Minister was

144 Matter not accorded priority on 22 May 1979 was accorded priority the next day, VP 1978–80/792, 806.

145 H.R. Deb. (19.9.96) 4458.

146 VP 1954–55/221, 265–6.

147 VP 1932–34/938 (the motion also anticipated an order of the day); VP 1943–44/101; H.R. Deb. (17.3.44) 1562.

148 *But see* VP 1970–72/172; VP 1974–75/571–2, 1044, 1066, 1086, 1096 for discussions of matters relating to the procedure and practice of the House.

149 *May*, 23rd edn, p. 362.

given the same speaking time as the proposer in order to reply to the proposer's speech. The standing order was subsequently amended to take account of those cases where a matter is proposed by a government Member, and now provides for equal speaking time to the Member next speaking after the proposer, whether it be a Minister or a Member of the Opposition.¹⁵⁰

Anticipation

The rule relating to anticipation provides that no Member may anticipate the discussion of any subject which appears on the Notice Paper, although the Speaker must have regard to the probability of the anticipated matter being brought before the House within a reasonable time.¹⁵¹ A notice of motion has been withdrawn prior to discussion of a matter of public importance on the same subject.¹⁵²

This rule has somewhat of a qualified application in judging whether a matter proposed is in order. After a long period of sittings the Notice Paper may contain notices and orders of the day on many aspects of government responsibility, so that strict application of the rule could rule out a large proportion of matters proposed. In a statement in May 1986 Speaker Child who had, at the previous sitting, accepted a matter which dealt with a subject covered in legislation listed for debate as an order of the day, indicated that, in her view, the discretion available to the Speaker should be used in a very wide sense.¹⁵³ Where the topic of an MPI has been very similar to the subject matter of a bill due for imminent debate, the discussion has been permitted, subject to the proviso that the debate on the bill should not be canvassed¹⁵⁴ or that the bill not be referred to in detail.¹⁵⁵

An MPI relating to the content of the Budget has been discussed at the next sitting after the presentation of the Budget and prior to the Leader of the Opposition's reply to the Budget speech.¹⁵⁶

Current committee inquiries

A matter of public importance encompassing a subject under consideration by a committee of the Parliament has been permitted.¹⁵⁷

Sub judice

There is no specific difference between the application of the sub judice convention to matters of public importance and that which applies to debate generally.¹⁵⁸ The Chair has ruled that part of a proposed matter was sub judice but allowed discussion to take place on the remainder of the subject.¹⁵⁹ The Speaker has also upheld a point of order that the latter part of a matter was sub judice. Dissent from the ruling was negated and the House then

150 VP 1970-72/1018-20, 1375.

151 S.O. 77; and see 'Anticipation' in Ch. on 'Control and conduct of debate'.

152 VP 1962-63/483; NP 85 (16.5.63) 1467.

153 VP 1985-87/975, 977; H.R. Deb. (26.5.86) 3919.

154 H.R. Deb. (5.5.92) 2358. The MPI was on the control of entry for permanent settlement and the bill, the first order of the day on the Notice Paper, was the Migration Amendment Bill 1992.

155 H.R. Deb. (10.3.98) 845. The MPI was on aged care and the bill was the Aged Care Amendment Bill 1998—debate on bill did not resume until 2 weeks later.

156 H.R. Deb. (14.5.97) 3545.

157 The subject under inquiry was wastage and the defence force (N.P. (26.4.88) 2171) and this subject was canvassed during discussion on a matter drafted in wider terms (H.R. Deb. (26.4.88) 2056-64); see also VP 1993-95/753 (community cultural, recreation and sporting facilities—an issue subject to an inquiry by the Standing Committee on Environment, Recreation and the Arts).

158 See 'Sub judice convention' in Ch. on 'Control and conduct of debate'.

159 VP 1974-75/169-70; H.R. Deb. (18.9.74) 1460.

proceeded to discuss the matter with the latter part omitted.¹⁶⁰ In 1969 discussion of a matter before the Commonwealth Conciliation and Arbitration Commission was ruled to be in order on the ground that it was not before the Commonwealth Industrial Court.¹⁶¹

Matter discussed previously

Under the same motion rule the Speaker has the discretion to disallow any motion or amendment which he or she considers is the same in substance as any question already resolved during the same session.¹⁶² The same principle may be applied to a proposed matter of public importance which has substantially the same wording as a motion previously agreed to. When a matter of public importance is proposed which is substantially the same as a matter of public importance discussed earlier in the session, the case is less clear. However, even if the same subject has been discussed, it can hardly be said to have been resolved, and indeed, the whole intention of the MPI procedure is to allow discussion on an issue without purporting to resolve it.

Nevertheless, Speakers have attempted to avoid matters with identical wording. The Speaker has privately disallowed a matter that was substantially the same as one discussed earlier in the session.¹⁶³ However, more recent thinking has been that a subject can continue to be one of public importance and that the Opposition should not be restricted in bringing it forward again with different wording. Thus matters are submitted and discussed on the same subject as ones previously discussed, the Chair having ruled privately that new, different or extenuating circumstances existed.¹⁶⁴ It has also been ruled that the scope of a matter was wider than the previous one, debate thus being permitted provided it did not traverse ground covered in the previous matter,¹⁶⁵ although this would be almost impossible to enforce.

It is normal practice that matters on which no effective discussion has taken place may be resubmitted and allowed during the same session.¹⁶⁶

Matters involving legislation

It has been the practice of the House to allow matters involving legislation to be discussed, provided that no other criterion is transgressed. In 1967, however, the Speaker privately ruled that certain words in a proposed matter were out of order. The matter proposed was:

The Government's failure to maintain the purchasing power of repatriation payments and general benefits and its abuse of legislative processes to prevent debate *and voting on the adequacy of Repatriation entitlements.*

The italicised words were ruled out of order on the grounds that their primary purpose was to draw attention to the way in which the Repatriation Bill 1967 had been drafted with a restricted title which limited debate to pensions payable to children of a deceased member of the Forces. When the bill was debated at the second reading, an amendment dealing with a wider range of repatriation matters had been ruled out of order as not being relevant to

160 VP 1962-63/297-8; H.R. Deb. (15.11.62) 2462-74.

161 H.R. Deb. (16.4.69) 1145.

162 S.O. 114(b).

163 Matter submitted on 23 August 1971 was amended before submission to House so as not to be identical to matter previously discussed on 7 April 1971, VP 1970-72/514, 666-7.

164 VP 1951-53/357-8, 421-2; VP 1985-87/1431, 1485, 1511, 1539; VP 1998-2001/1080, 1128.

165 H.R. Deb. (1.11.50) 1718.

166 VP 1977/302, 308.

the bill.¹⁶⁷ A motion of dissent from the ruling was negated. The words were also ruled out of order as, by inference, there was a criticism of the Chair, and a reflection upon the vote (current standing order 74) which negated the motion of dissent. It might also be noted that the wording proposed was deficient in that it tended to raise more than one matter. The matter was submitted and discussed in its amended form.¹⁶⁸

Subject that can only be debated upon a substantive motion

A matter of public importance is similar to a motion or question seeking information in that words critical of the character or conduct of a person whose actions can only be challenged by means of a substantive motion, should not be included in the matter proposed.¹⁶⁹ A formal adjournment motion has been ruled out of order as it reflected on the conduct of the Speaker which could only be questioned by means of a substantive motion.¹⁷⁰ In 1972 the Speaker ruled privately that a matter of public importance should not be the vehicle for the use of words critical of the conduct of a Member of the House.¹⁷¹ It was ruled privately in 1955 that the committal to prison of Messrs Fitzpatrick and Browne, after being found guilty of a breach of privilege, could not be discussed as an urgency matter.

In 1922 the Speaker allowed a formal adjournment motion criticising the judgment and award of a judge in the Commonwealth Court of Conciliation and Arbitration. He ruled that discussion must be confined to the award and such matters as did not involve criticism and reflection on the judge. In giving reasons for his ruling the Speaker saw the matter as one of some doubt which ‘must depend largely on the tone and scope of the discussion’. He had regard to the fact that the Member was debarred from moving a substantive motion because precedence had been given to government business, and he did not feel justified in ruling the motion out of order ‘provided it is clearly understood that, under cover of this motion, no attack or personal reflection can be made upon the Judge or the Court, nor can the conduct of the Judge be debated’.¹⁷²

Matter proposed withdrawn

Matters proposed which have been accepted and included on the Daily Program have been withdrawn, by the proposer notifying the Speaker in writing. The Speaker has informed the House of this fact when the time for discussion was reached. A matter has also been withdrawn after its announcement to the House.¹⁷³ Reasons for withdrawal have included:

- coverage of the subject of the discussion in earlier debate that day;¹⁷⁴
- late commencement of the discussion prior to the imminent start of the Budget speech;¹⁷⁵
- a government motion in the same terms as the matter proposed for discussion;¹⁷⁶

167 VP 1967–68/211; H.R. Deb. (27.9.67) 1356–8.

168 VP 1967–68/218.

169 S.O.s 89, 100(c); and see Ch. on ‘Control and conduct of debate’.

170 VP 1944–45/58.

171 On 7 April 1971 a matter accusing a Minister of ‘provocative behaviour’ was altered. The matter discussed on 21 March 1972 had been altered at the Speaker’s suggestion as it originally contained expressions critical of the conduct of a Member.

172 H.R. Deb. (20.9.22) 2443–4.

173 VP 1998–2001/1299; VP 2004–05/129 (matter withdrawn by Manager of Opposition Business, by leave).

174 H.R. Deb. (4.11.77) 2901; H.R. Deb. (8.2.2005) 22, 45.

175 H.R. Deb. (21.8.84) 60.

176 H.R. Deb. (22.11.89) 2662, 2679.

- general agreement to extend the preceding debate;¹⁷⁷
- ‘in the interest of the better functioning of the House’ following debate of a censure motion;¹⁷⁸
- following debate of a censure motion in similar terms ;¹⁷⁹
- to make way for motions moved by the Prime Minister¹⁸⁰ and Leader of the Opposition;¹⁸¹ and
- to enable discussion of a different matter proposed by another Member.¹⁸²

Discussion

Matter read to House and supported

If a matter has been proposed within the specified time, accepted as in order, and selected if more than one matter has been proposed, the Speaker reads it to the House before the calling on of government business.

After reading the matter to the House the Speaker calls on those Members who approve of the proposed discussion to rise in their places. The proposed discussion must be supported by at least eight Members, including the proposer, standing in their places as indicating approval. The Speaker then calls upon the proposer to open the discussion.

On occasions matters have not been further proceeded with because of the absence of the proposer¹⁸³ or because they lacked the necessary support.¹⁸⁴ The Member who proposes a matter for discussion must, under the standing orders, open the discussion in the House. However, on one occasion standing orders were suspended¹⁸⁵ and on another leave was granted¹⁸⁶ to enable another Member to act for the Member who had proposed a matter for discussion. On another occasion, when the Member who had proposed the approved discussion had been suspended from the service of the House prior to opening the discussion, standing orders were suspended to permit another Member to move a motion on a related subject.¹⁸⁷ The action of Members rising in their places does not necessarily indicate approval of the subject matter in any way, but simply indicates approval to a proposed discussion taking place. Government Members, including Ministers, have supported the discussion of matters proposed by non-Government Members.¹⁸⁸ Once a proposed discussion commences the only relevant provision concerning the number of Members present in the House is that relating to a quorum, and there is no requirement that all or any of the supporting Members remain.¹⁸⁹

177 H.R. Deb. (21.8.90) 1153, 1155.

178 H.R. Deb. (20.9.90) 2333.

179 VP 1998–2001/1299

180 H.R. Deb. (30.10.96) 6156.

181 H.R. Deb. (26.5.98) 3701, 3717.

182 H.R. Deb. (24.9.97) 8340. Standing orders suspended to permit the second proposal to be submitted and discussed forthwith.

183 H.R. Deb. (24.5.89) 2819, VP 1987–89/1273 (proposer suspended from House); H.R. Deb. (31.3.92) 1480; VP 1990–93/1404.

184 VP 1920–21/799; VP 1929–31/941; VP 1954–55/356, 365; H.R. Deb. (19.8.93) 356.

185 VP 1962–63/463. The Member’s plane had been delayed by fog, H.R. Deb. (7.5.63) 1043.

186 VP 2004–05/214.

187 VP 1987–89/527–8; *see also* VP 1987–89/1273.

188 E.g. H.R. Deb. (12.11.02) 8785.

189 H.R. Deb. (20.9.77) 1297–8.

Matter amended

No amendment can be moved to a matter being discussed as it is not a motion before the House, although, as mentioned earlier, matters proposed are often amended on the suggestion of the Speaker or the Clerk before being accepted by the Speaker. In addition, the Speaker may not be aware when approving a matter for discussion that the matter, or part of the matter, is sub judice. Part of a matter has been ruled out of order in the House on this ground on several occasions.¹⁹⁰

Relevance

The chair may take action under standing order 75(a) on the grounds of irrelevance if a Member's speech strays from the approved topic of discussion. Although standing order 76 refers to 'question under discussion' and there is technically no question before the chair, the action of the House in supporting a proposed discussion of a particular matter in effect confines the discussion to the matter proposed.

Speaking times

The proposer and the Member next speaking are each allowed 15 minutes to speak and any other Member 10 minutes.¹⁹¹ A Member may be granted an extension of time by the House. The proposer of a matter of public importance has no right of reply although a proposer has spoken again by leave¹⁹² and following the suspension of standing orders.¹⁹³

Interruptions

Discussion has been interrupted temporarily, following suspension of standing orders, to enable the Budget and associated bills to be introduced¹⁹⁴ and, by leave, to allow a ministerial statement to be made.¹⁹⁵ A discussion has been interrupted by a motion to suspend standing orders to enable a motion to be moved relating to the subject matter under discussion. No such motion has been successful, discussion often continuing after the motion to suspend standing orders has been negated,¹⁹⁶ but in such circumstances a motion that the business of the day be called on has also been moved.¹⁹⁷ A motion to suspend the standing orders temporarily supersedes discussion of a matter of public importance but the discussion remains as a proceeding still before the House and, as a result, the time taken up by the motion, or any other form of interruption, forms part of a Member's speech time and part of the period of two hours allotted for the discussion.¹⁹⁸

Termination of discussion

The time allowed for discussion of a matter is limited to two hours. At the expiration of the allotted two hours the discussion is automatically concluded. The House has extended the time for discussion,¹⁹⁹ and further extended the time,²⁰⁰ by suspending standing orders.

190 E.g. VP 1962–63/297–8; H.R. Deb. (15.11.62) 2460–74; VP 1974–75/169; H.R. Deb. (18.9.74) 1460.

191 S.O. 1.

192 VP 1964–66/139.

193 VP 1962–63/297–8.

194 VP 1968–69/489–90, 491.

195 VP 1970–72/988; VP 1978–80/671.

196 VP 1974–75/528–30; VP 1990–92/1430–2.

197 VP 1985–87/198–9.

198 VP 1970–72/920–2; and see Ch. on 'Control and conduct of debate'.

199 VP 1968–69/416.

200 VP 1968–69/417.

The discussion cannot be adjourned and the motion ‘That the question be now put’ cannot be moved, there being no question before the House. The motion that a Member speaking ‘be no longer heard’ may however be moved.²⁰¹

Discussion may be concluded prior to the two hour time limit if no Member rises to speak on the matter and this is now the usual method of ending the discussion. It has become the practice in recent times to limit the number of Members participating in a discussion, by arrangement between the parties, to two (or occasionally three) Members from each side, which means that the discussion is concluded well before the expiration of the allotted two hours and generally in about 50 minutes. However, until the two hours have elapsed it is in order for any Member who has not yet spoken to seek the call, despite any such arrangement, and from time to time the discussion may be prolonged beyond the expected time.²⁰² Discussion may be interrupted by the automatic adjournment provisions.²⁰³

Motion to call on business of the day

At any time during the discussion any Member may move a motion ‘That the business of the day be called on’, which question is put immediately and decided without amendment or debate.²⁰⁴ The term ‘business of the day’ has been given a wide interpretation to include ministerial statements, announcements of messages from the Senate and the Governor-General, and so on—the motion is in effect a closure. Such motions are, from time to time, moved immediately the proposer has been called by the Chair to open the discussion. It has become common in recent years for the Leader of the House or other Minister to take this action following occasions when the House has spent time earlier in the day on unscheduled opposition initiated debate (for example, censure motion, motion to suspend standing orders to debate a matter, motion of dissent from ruling of the Chair).

Suspension of MPI procedure

As well as the premature termination of the discussion by use of the motion to call on the business of the day, priority to other business may be provided by the suspension of standing orders. Standing orders have been suspended to enable matters to be discussed at a later hour²⁰⁵ and the standing order providing for the MPI has itself been suspended until a certain bill has been disposed of.²⁰⁶

In 1993 the House suspended the standing order providing for the MPI for several weeks to allow more time for the debate of legislation (in the context of a Senate deadline for the receipt of bills for consideration during the same period of sittings).²⁰⁷

201 VP 1996–98/533.

202 Possibly by an independent Member.

203 E.g. VP 2002–04/ 1129.

204 S.O. 46(e).

205 VP 1976–77/565; VP 1993/456.

206 VP 1974–75/639–40.

207 H.R. Deb. (31.8.93) 524–27 (suspended until 28.10.93).