

## *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 Federation Chamber and the presentation of reports from the Federation Chamber, 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,<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> The procedures for private Members' business introduced in 1988 ameliorated this situation. Since then, the time available for private Members' business has further increased, and additional opportunities have been created for Members to raise matters in the House and Federation Chamber.<sup>4</sup>

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

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. (23.2.1978) 194, 218; H.R. Deb. (24.5.1978) 2444; H.R. Deb. (7.6.1978) 3172; H.R. Deb. (23.8.1978) 632; H.R. Deb. (19.9.1978) 1162; H.R. Deb. (23.8.1979) 601, 607; H.R. Deb. (24.10.1979) 2435; H.R. Deb. (25.10.1979) 2530, 2557; H.R. Deb. (4.10.1980) 402.

4 See 'Members' 90 second statements' and 'Constituency statements' at page 587.

second reading of the main appropriation and supply bills and, subject to the relevancy rule, in the consideration of the proposed 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

Time is reserved on each sitting Monday for non-government business as follows:

#### *In the House*

Petitions<sup>5</sup> (from 10 a.m. for up to 10 minutes);

Committee and delegation business and private Members' business (to 12 noon).<sup>6</sup>

#### *In the Federation Chamber*

Committee and delegation business and private Members' business (from 11 a.m. to 1.30 p.m., and from 4.45 p.m. to 7.30 p.m.).

There are no longer separate periods for committee business and private Members' business. The amount of time available for the latter depends on the amount of committee business. This practice allows greater flexibility to accommodate the flow of committee report presentation, which is necessarily low at the beginning of a Parliament and tends to peak towards the end. 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.<sup>7</sup> 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.<sup>8</sup>

### Selection and programming of business—role of the Selection Committee

The timetable for committee and delegation business and private Members' business on Mondays, in the House and in the Federation Chamber, is the responsibility of the Selection Committee, which determines the order of consideration of matters, and the times allotted for debate on each item and for each Member speaking.<sup>9</sup>

5 Presentation of petitions and any Petitions Committee report—see 'Petitions' in the Chapter on 'Documents'.

6 S.O. 34.

7 VP 1993–96/25–6 (5.5.1993); VP 1996–98/43 (1.5.1996); VP 1998–2001/55 (12.11.1998), 59 (23.11.1998) (priority to Address in Reply, Selection Committee not having met to select private Members' business). VP 1993–96/2181–2 (19.6.1995) (motion on French nuclear testing). VP 1996–98/239 (17.6.1996) (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 (9.8.1999). VP 1998–2001/1531 (19.6.2000) (death of sitting Member). VP 1998–2001/2595–6 (17.9.2001) (terrorist attacks in the USA). VP 2002–04/191 (27.5.2002) (death of former Prime Minister). VP 2002–04/477 (14.10.2002) (terrorist attacks in Bali). VP 2008–10/849 (9.2.2009) (Victorian bushfires and Queensland floods). VP 2013–16/1219 (23.3.2015) (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 (27.8.2001).

8 E.g. VP 1993–96/1769 (1.2.1995); 1996–98/375 (21.8.1996), 563 (9.10.1996); VP 2008–10/1235 (17.8.2009).

9 S.O. 222. In the 42nd Parliament a Selection Committee was not established and its functions were managed by the Whips (former S.O. 41A).

The Selection Committee meets usually once each sitting week on Tuesday to consider committee and delegation business and private Members' business. If necessary the committee can also meet on other days.

The Selection Committee reports its determinations regarding private Members' and committee business to the House in time for them to be adopted and published on the Notice Paper of the sitting Thursday before the Monday being considered. The report is treated as adopted by the House on presentation and is printed in Hansard.<sup>10</sup>

The standing orders oblige the Selection Committee to give notices by private Members of their intention to present bills priority over other notices and orders of the day.<sup>11</sup> In other matters relating to the selection and programming of private Members' business the following general principles have been followed:

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;
  - (c) in a way which seeks to ensure balance is achieved over each period of sittings;
  - (d) in a manner that ensures appropriate participation by non-aligned Members.
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.<sup>12</sup>

## Referral of business to the Federation Chamber

The Selection Committee selects private Members' notices and other items of private Members' and committee and delegation business for referral to the Federation Chamber, or for return to the House. Such a referral by determination of the Selection Committee, once the determination has been reported to the House, is deemed to be a referral by the House.<sup>13</sup>

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<sup>10</sup> S.O. 222(e). Selection Committee determinations adopted may be varied by order of the House, e.g. VP 2010–13/1252–3 (27.2.2012), 1749 (10.9.2012).

<sup>11</sup> S.O. 41(b).

<sup>12</sup> H.R. Deb. (21.10.2010) 1158–9.

<sup>13</sup> S.O.s 183, 222.

## COMMITTEE AND DELEGATION BUSINESS

The periods on Mondays from 10.10 a.m. to 12 noon in the House, and from 11 a.m. to 1.30 p.m. and from 4.45 p.m. to 7.30 p.m. in the Federation Chamber, may be used for private Members' business (*see* page 577); for the resumption of debate on orders of the day relating to parliamentary committee and delegation reports previously presented, and for the presentation of these reports. Statements by the chair or deputy chair of a committee (or both) concerning a committee inquiry may also be made.<sup>14</sup> For presentation of committee reports at other times *see* 'Presentation of reports' in the Chapter on 'Committee inquiries'.

Business periods on Tuesdays, Wednesdays and Thursdays in the Federation Chamber may be used for either government business or for committee and delegation business. During these periods proceedings may be resumed on motions in relation to committee and delegation reports.<sup>15</sup>

### Consideration in the House or Federation Chamber

Subject to any determination by the Selection Committee, the Member presenting a report and other Members may each make statements in relation to the report for a maximum of 10 minutes. After the statements the Member presenting the report may move without notice a specific motion in relation to the report (normally 'That the House take note of the report'), and debate on the question is adjourned to a future day. The Selection Committee often allots five minutes for statements rather than the 10 minute maximum. However, Members have been permitted to speak again by leave<sup>16</sup> and Members have been given an extension of time.<sup>17</sup> When time has not been allocated for statements a Member has spoken by leave.<sup>18</sup> When reports scheduled for presentation are not available the House is informed and the next business is proceeded with.<sup>19</sup>

Following presentation of reports, orders of the day for resumption of debate on earlier reports may be debated according to the order of priority and times allotted for debate determined by the Selection Committee.<sup>20</sup> Each Member may speak for a maximum of 10 minutes or for any lesser period allotted.<sup>21</sup> If the consideration of any question has not concluded by the time appointed, 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 announces 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.<sup>22</sup>

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 Federation Chamber.

<sup>14</sup> S.O. 39.

<sup>15</sup> S.O. 40(c).

<sup>16</sup> E.g. VP 1990–93/884 (20.6.1991); VP 2004–07/1226 (19.6.2006); VP 2010–13/1877 (21.6.2010).

<sup>17</sup> E.g. VP 1990–93/566 (7.3.1991); VP 1993–96/1343 (10.10.1994).

<sup>18</sup> VP 2004–07/564 (5.9.2005).

<sup>19</sup> E.g. VP 2002–04/1311 (24.11.2003).

<sup>20</sup> Since there has been opportunity for debate of reports in the Main Committee/Federation Chamber the resumption of debate in the House has been rare.

<sup>21</sup> S.O. 40, e.g. VP 1993–96/1343 (10.10.1994).

<sup>22</sup> VP 2002–04/1311–2 (24.11.2003).

## Removal of reports from the Notice Paper

Generally, debate on a motion to take note of a report is adjourned and the order of the day remains listed as House or Federation Chamber business on the Notice Paper, thus enabling further debate. If not called on for eight consecutive sitting weeks the order of the day is automatically removed from the Notice Paper.<sup>23</sup>

## PRIVATE MEMBERS' BUSINESS

A private Member is defined by the standing orders as a Member other than the Speaker or a Minister.<sup>24</sup> This definition, indirectly, provides additional opportunities to opposition leaders.<sup>25</sup> In addition since 2010 the standing orders have provided that the Speaker and Deputy Speaker may participate in private Members' business.<sup>26</sup>

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 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,<sup>27</sup> although leave may be sufficient for this.<sup>28</sup> Priority must be given to notices of intention to present private Members' bills.<sup>29</sup> 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.<sup>30</sup>

A Member may withdraw a notice of motion or of intention to present a bill even though it has been accorded priority,<sup>31</sup> and may alter the date in respect of which a notice has been given after it has been given priority.<sup>32</sup>

## One private Member acting for another

If a Member is not present when his or her notice is called on, another Member, at his or her request, may set a future time for the moving of the motion or presentation of the bill.<sup>33</sup>

While there is no provision in the standing orders allowing a private Member to move a motion on behalf of another, this has been done by leave,<sup>34</sup> and standing orders have been suspended to permit a private Member's bill to be presented by another Member.<sup>35</sup> When the sponsor of a private Member's bill has not been available, leave has been granted for another Member to move the second reading on his or her behalf.<sup>36</sup>

23 S.O. 42.

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

25 The definition places a restriction on who may sponsor business, not on who may speak. The Prime Minister and Ministers sometimes speak on high-profile 'conscience' issues. However, the participation of Ministers in private Members' business debates is otherwise unusual. For further discussion of the definition of private Member *see* Ch. on 'Members'.

26 S.O. 41(e).

27 E.g. VP 1990–93/1013 (11.9.1991); VP 1996–98/588 (10.10.1996); VP 2002–04/747 (3.3.2003).

28 VP 2004–07/1733 (26.2.2007); VP 2013–16/972 (24.11.2014).

29 S.O. 41(b).

30 S.O. 41(e).

31 E.g. NP 171 (8.3.2001) 9793; NP 172 (26.3.2001) 9835.

32 E.g. NP 172 (26.3.2001) 9835, VP 1998–2001/2176 (26.3.2001). A Member may also postpone his or her motion or bill by setting a future time when the notice is called on (S.O. 113), e.g. VP 2016–18/1015 (4.9.2017) (here to a specified date, but more usually to the next sitting Monday).

33 S.O. 113, e.g. VP 2016–18/165, 166 (10.10.2016) (postponed to a later hour); VP 2016–18/97, 98 (12.9.2016) (postponed to the next sitting Monday).

34 E.g. VP 2002–04/1648 (31.5.2004); VP 2010–13/916 (19.9.2011); VP 2013–16/972 (24.11.2014), 1769, 1770 (30.11.2015).

35 VP 2002–04/510 (21.10.2002).

36 VP 2010–13/916 (19.9.2011), 2280 (27.5.2013). These instances occurred under former procedures, when the second reading was not moved immediately after presentation but on a later day.

## Removal of private Members' business from the Notice Paper

An item of private Members' business which has not been called on for eight consecutive sitting Mondays is removed from the Notice Paper.<sup>37</sup> However, an item removed from the Notice Paper in this way can be reinstated by means of a new notice.

## Consideration in government time

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. 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,<sup>38</sup> to initiate debate on a matter of particular significance to the Parliament<sup>39</sup> or to the community<sup>40</sup> 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),<sup>41</sup> in order to enable a vote to be taken (*see below*) or to enable a matter to be disposed of expeditiously.<sup>42</sup> Such action may also be taken when the Government has decided to support a private Member's bill, to provide time for further debate and facilitate speedy passage.<sup>43</sup>

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, to date, not been successful.

Selection Committee determinations do not apply to items being taken in government time, and unless otherwise ordered the 'normal' times provided in standing order 1 apply.

## Voting on private Members' business

When an item of private Members' business is to be voted on, it has been the practice for the vote to take place in government business time, following the suspension of standing orders.<sup>44</sup> This practice was continued when, in the 43rd Parliament, express provision was made for the Selection Committee to recommend items of private Members' business to be voted on.<sup>45</sup>

In that Parliament the practice was for the Leader of the House, during government business time on Thursday morning, to move a motion without notice to suspend standing orders in order to call on immediately specified private Members' orders of the day—that is, the items recommended by the Selection Committee to be voted on.<sup>46</sup> In the 44th Parliament the provision for the Selection Committee to recommend items of private Members' business to be voted on was removed, and the practice of regularly providing time for voting on Thursdays was not continued.

37 S.O. 42. A private Member's notice is also removed if the sponsoring Member ceases to be a private Member (or a Member).

38 E.g. VP 1978–80/269 (31.5.1978).

39 E.g. the reference of a matter to the Court of Disputed Returns, VP 1977/108–12 (5.5.1977).

40 E.g. VP 1978–80/683 (21.3.1979); VP 1980–82/139 (12.3.1981); VP 1987–90/389 (25.2.1988); VP 2016–18/1261 (5.12.2017).

41 E.g. VP 1998–2001/382 (10.3.1999); VP 2013–16/704 (15.7.2014); *see* 'Delegated legislation' in Ch. on 'Legislation'.

42 E.g. VP 2008–10/970 (19.3.2009).

43 E.g. VP 1998–2001/675–7 (28.6.1999).

44 E.g. VP 1990–93/918 (21.6.1991), 1490 (7.5.1992); VP 1993–96/718 (3.2.1994), 871 (24.3.1994); *see also* VP 1996–98/494–5 (16.9.1996); VP 2016–18/1261 (5.12.2017).

45 Former S.O. 222(a)(ii).

46 For first three instances of this process in the 43rd Parliament *see* H.R. Deb. (28.10.2010) 1990–4; H.R. Deb. (18.11.2010) 2944–57; and H.R. Deb. (25.11.2010) 3761–73. In total 12 items were voted on, of which seven were agreed to (including one bill) and five negated. Recommendation for a vote does not override S.O. 42, and an item may be removed from the Notice Paper without a vote occurring, e.g. Wild Rivers (Environmental Management) Bill 2011, NP 112 (18.6.2012) 46.

## 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. The time for each debate and for each Member speaking is set by the Selection Committee—for example, the mover of a motion and the Member next speaking may be allotted 10 minutes each, and other Members five minutes each. Amendments are sometimes moved to private Members' motions.<sup>47</sup>

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). 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 suspended<sup>48</sup>), and for that reason the debate cannot be closed.<sup>49</sup>

When a private Member's motion has been voted on the practice has been for it to be called on outside of the times reserved for private Members' business—see p. 578. 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,<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> However, when regular opportunities for votes to occur on private Members' motions became available in the 43rd Parliament (see p. 578) the practice developed of Members moving to amend their own motions immediately prior to the vote, with a view to making their terms more acceptable to Members on both sides of the House and thus increasing the chances of agreement.<sup>53</sup>

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.<sup>54</sup>

No action was taken by the Government in the terms of the resolution.<sup>55</sup>

47 E.g. VP 1996–98/112 (20.5.1996); VP 2013–16/563 (16.6.2014). Ministers have moved such amendments, e.g. VP 1983–84/228–9 (15.9.1983), 532–3 (8.3.1984). Sometimes Members have been given leave to amend their own motions, e.g. VP 2010–13/1191–2 (9.2.2012).

48 E.g. VP 1996–98/495 (16.9.1996).

49 H.R. Deb. (9.3.1998) 780–81.

50 E.g. VP 1973–74/458 (18.10.1973); VP 1978–80/683–4 (21.3.1979); VP 1996–98/399–400 (9.9.1996).

51 E.g., a motion to determine the proposed site for the new and permanent Parliament House, VP 1973–74/289–90 (23.8.1973), 476 (24.10.1973); and see 'Free votes' in Ch. on 'Order of business and the sitting day' for other examples.

52 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 1974–75/286–7 (31.10.1974).

53 E.g. H.R. Deb. (24.3.2011) 3129, 3130, 3132.

54 VP 1964–66/251 (18.3.1965).

55 Such motions, and, for example, the several voted on and agreed to in the 43rd Parliament (e.g. VP 2010–13/649 (16.6.2011), condemning, and calling on the Government to abandon, proposed action on asylum seekers; VP 2010–13/907–9 (15.9.2011), calling on the Government to take certain action in relation to early childhood learning) are treated in effect as declarations of opinion. See also 'Motions agreed to—resolutions and orders of the House—effect' in Ch. on 'Motions'.

## 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 stands<sup>56</sup> presents the bill. The Member may also present an explanatory memorandum on the bill and leave is not required for this.<sup>57</sup> The bill is then read a first time and the Member moves the motion for the second reading. He or she then speaks to the motion for up to 10 minutes before the debate is automatically adjourned and the resumption of debate set down on the Notice Paper for the next sitting.<sup>58</sup> As the Selection Committee has allocated a 10 minute period for this item of business, it is permissible for the seconder to speak for the remainder of the 10 minutes if the mover does not speak for the full period. When the debate is resumed the mover may speak in continuation for five minutes. The occasion for the resumption of the debate on the bill's second reading, and the times to be allocated for debate, are matters for the Selection Committee.<sup>59</sup>

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.<sup>60</sup> 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.<sup>61</sup> Second reading amendments have been moved to private Members' bills.<sup>62</sup>

If a private Member's bill is to be voted on, the practice has been that the vote occurs during government business time following the suspension of standing orders—*see* page 578. 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 determine times for consideration of the remaining stages of the bill.<sup>63</sup> The consideration in detail stage may then take place during private Members' business time in the Federation Chamber, with voting on amendments (and the third reading) occurring later in the House.<sup>64</sup> Private Members' bills have been referred to committees for advisory reports.<sup>65</sup>

56 The standing orders make provision for notices from individual Members only. In a situation where two Members have jointly sponsored a private Member's 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 2002–04/1085 (18.8.2003). Similarly, the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (later passed into law) was sponsored by three Members but presented by one of them, VP 2010–13/713 (4.7.2011). (Senate S.O. 76(4) provides for joint notices.)

57 S.O. 41(b). E.g. VP 2002–04/391 (16.9.2002); VP 2004–07/175 (14.2.2005); VP 2013–16/1226 (24.3.2015). Leave is required to present another document, e.g. VP 2004–07/1017 (27.3.2006), or to present an explanatory memorandum at a later time, e.g. VP 2010–13/927 (20.9.2011).

58 S.O. 41(c).

59 Prior to the 43rd Parliament few private Members' bills were selected to progress beyond the first reading stage.

60 E.g. H.R. Deb. (14.9.2010) 9496.

61 E.g. VP 1974–75/790 (5.6.1975); VP 1996–98/1003 (9.12.1996); H.R. Deb. (28.10.2010) 1990; VP 2010–13/906–7 (15.9.2011), 2063–4 (6.2.2013).

62 E.g. VP 2004–07/942 (13.12.2006); VP 2016–18/783 (29.5.2017).

63 S.O. 41(d); e.g. Auditor-General Amendment Bill 2011, H.R. Deb. (7.7.2011) 7984.

64 E.g. VP 2010–13/857, 868 (12.9.2011), 903–7 (15.9.2011).

65 E.g. Sydney Airport Curfew (Air Navigation Amendment) Bill 1995 (following suspension of standing orders), VP 1993–96/2286–7 (30.6.1995). Several private Members' bills were referred following Selection Committee determination in the 43rd Parliament, and the Fair Work Amendment (Protecting Take Home Pay of All Workers) Bill 2017 in the 45th Parliament (22.6.2017). Removal of the bill from the Notice Paper pursuant to S.O. 42 does not discontinue the referral, e.g. Wild Rivers (Environmental Management) Bill 2011, NP 112 (18.6.2012) 46, NP 113 (19.6.2012) 71.

As with private Members' motions, private Members' bills have sometimes related to matters of social and/or moral significance, such as euthanasia<sup>66</sup> and superannuation entitlements of same-sex couples.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

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 Senator<sup>72</sup> or a Minister in the Senate.<sup>73</sup> Similarly, private Members<sup>74</sup> and Ministers<sup>75</sup> have taken responsibility for private Senators' bills when they have been received in the House. A private Member takes responsibility for a private Senator's bill by moving, on the occasion of the bill's first reading in the House, that the second reading be made an order of the day for the next sitting (no seconder is required). The bill is then listed on the Notice Paper under Private Members' business. If a Minister moves this motion the bill is listed as government business.<sup>76</sup> 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.<sup>77</sup>

In 2011 Senate amendments to a private Member's bill were reported during government business time and the motion that the amendments be considered immediately was moved by a Minister; however, the subsequent motion that the House agree to the amendments was moved by the Member who had initiated the bill.<sup>78</sup>

66 VP 1996–98/399–400 (9.9.1996).

67 VP 1998–2001/563 (7.6.1999); VP 2002–04/1715 (21.6.2004).

68 VP 1954–55/190 (5.5.1955), 254 (7.6.1955).

69 VP 1990–93/918–9 (21.6.1991).

70 VP 1974–75/198–200 (26.9.1974), 246–8 (17.10.1974).

71 NP 30 (30.10.1974) 2840; VP 1974–75/426–8 (5.12.1974).

72 E.g. Parliament Bill 1974.

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

74 E.g. Superannuation Guarantee (Administration) (Exemption of Council Allowances) Amendment Bill 1993; Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU 486) Bill 2006; Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2011.

75 E.g. Parliamentary Presiding Officers Amendment Bill 1992. *See also* VP 1998–2001/1300 (15.3.2000) (Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999); VP 2002–04/1582 (1.4.2004), 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).

76 In 2006 a private Member, by leave, moved a motion suspending standing orders enabling him to have carriage of a private Senator's bill, despite the order of the day for its consideration being set down under government business, VP 2004–07/1612 (30.11.2006). In 2011, in a similar case of a private Senator's bill listed as government business, the 2nd and 3rd readings were moved by a private Member with no suspension of standing orders, VP 2010–13/1013 (31.10.2011), 1027–8 (1.11.2011).

77 VP 1998–2001/70–1 (24.11.1998).

78 VP 2010–13/407 (21.3.2011).

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 Australian Parliament.

### *Drafting*

House staff are the first source of assistance to private Members in drafting matters. Any dealings between a Member and a parliamentary drafter are confidential. In recent years House staff have had access to an Office of Parliamentary Counsel drafter, on attachment to the Department of the House of Representatives, to provide professional drafting services to private Members. While attached to the Department the drafter serves the House of Representatives and not the Government.

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.<sup>79</sup>

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.<sup>80</sup> 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. This principle and its significance is discussed more fully in the Chapter on ‘Financial legislation’.

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.

<sup>79</sup> H.R. Deb. (25.10.1905) 4048.

<sup>80</sup> That is, as potential legally effective Acts of Parliament.

In the application of this standing order, a proposed increase in expenditure funded by an existing appropriation is considered to be a proposal for an appropriation, requiring a message from the Governor-General. The same applies to a proposed change to the objects and purposes or destination of an existing appropriation.

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.<sup>81</sup>

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 Act 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 Act 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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup>

A motion proposing to suspend standing orders to permit a private Member to move to increase the scope of a proposed tax has been ruled out of order, as it would allow an action contrary to a fundamental principle of the scheme of government established by the Constitution.<sup>86</sup>

81 Some private Members' bills which would cause expenditure if enacted have allowed for appropriation by other, not yet existing, Acts—for example, the commencement clause of the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005 provided for provisions to commence when an (unspecified) Act appropriating money had been assented to. In the 2010 version of the same bill the means of appropriation was less specific—i.e. provisions to commence "by proclamation, provided that funds have been appropriated for the purposes of this Act" (but, in response to concerns over an uncertain commencement date, it was also provided that the provisions would not commence at all if funds were not appropriated within six months of assent). *See also* Tobacco Excise bill referred to below.

82 H.R. Deb. (10.11.1988) 2790–1; VP 1987–90/875 (10.11.1988).

83 H.R. Deb. (5.3.2001) 24900, 24904.

84 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.

85 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 2002–04/510 (21.10.2002).

86 VP 2010–13/1085 (22.11.2011); H.R. Deb. (22.11.2011) 13418. *See also* Ch. on 'Financial legislation'.

*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 saw a significant increase in their number. Private Members introduced 59 bills between 1901 and 1987. This figure had almost doubled within the next five years. Between 1988 and June 2010 about 10 private Members' bills per year, on average, were introduced. The revised procedures introduced at the start of the 43rd Parliament led to a further increase. A record 28 private Members' bills were introduced in 2017. Table 16.1 lists all private Members' bills which have passed into law since Federation. By December 2017, 30 non-government bills had passed into law—10 initiated by private Members, 13 by private Senators and 7 by the Speaker and the President.

**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        |
| Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) 2006 (Act No. 5 of 2006)                  | Senator Nash      |
| Prohibition of Human Cloning for Reproduction and the Regulation of Human Embryo Research Amendment 2006 (Act No. 172 of 2006)     | Senator Patterson |
| Evidence Amendment (Journalists' Privilege) 2011 (Act No. 21 of 2011)  | Mr Wilkie         |
| Territories Self-Government Legislation Amendment (Disallowance and Amendment of Laws) 2011 (Act No. 166 of 2011)                  | Senator Brown     |
| Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) 2011 (Act No. 182 of 2011)                    | Mr Bandt          |
| Auditor-General Amendment Act 2011 (Act No. 190 of 2011)   | Mr Oakeshott      |
| Low Aromatic Fuel 2013 (Act No. 1 of 2013)   | Senator Siewert   |
| Marriage Amendment (Definition and Religious Freedoms) Act 2017 (Act No. 129 of 2017)  | Senator Smith     |

\* sponsored by the Government in the House of Representatives.

In addition, the provisions of other private Members' bills have become law by being incorporated into government legislation, for example:

- 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.<sup>87</sup>
- 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 Member's bill introduced three times between 1990 and 1992.<sup>88</sup>
- 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 subject and of another in preparing and giving notice of his intention to introduce a private Member's bill.<sup>89</sup>
- 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,<sup>90</sup> 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.<sup>91</sup>
- In 2011 the government Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill incorporated principles of a private Member's bill on the same matter which had been introduced by the Leader of the Opposition.<sup>92</sup>
- The government Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Bill 2012 followed the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bills 2005 and 2010, bills introduced with a similar aim by a private Member in earlier Parliaments.<sup>93</sup>
- The government Australian Citizenship Amendment (Defence Families) Bill 2012 followed the Australian Citizenship Amendment (Defence Service Requirement) Bill 2012, a private Member's bill dealing with the same matter.

One of the more significant non-government bills 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.<sup>94</sup> 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

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87 *And see* H.R. Deb. (14.5.1959) 2223.

88 H.R. Deb. (17.12.1992) 4180.

89 VP 1993–96/1058 (6.6.1994) (motion); H.R. Deb. (12.5.1994) 876 (notice, which was later withdrawn).

90 Introduced by the Leader of the Opposition, VP 1993–96/2228–9 (26.6.1995). The second reading debate and referral to the committee occurred during government business time, VP 1993–96/2286–7 (30.6.1995).

91 Superannuation Guarantee (Administration) Amendment Bill 2000. VP 1998–2001/1818 (30.10.2000).

92 H.R. Deb. (24.3.2011) 3143–5, 3176.

93 The private Member's bill had bipartisan support. In his second reading speech to the 2010 bill Mr Kerr noted that 'It is sensible that a measure such as this will emerge as the product of the work of private members and senators who are also senior members of the bar rather than as a bill sponsored by the government. It makes it clear, if there was any suspicion, that this is not pursued by the executive to chasten the courts.' H.R. Deb. (31.5.2010) 4710. While the bill lapsed at dissolution of the House, in the following Parliament the Attorney-General announced the Government's intention to reintroduce it (press release dated 18 March 2011).

94 *See* Ch. on 'Parliamentary privilege'.

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.

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

| <i>Bill</i>  | <i>Initiator in House</i> |
|--|---------------------------|
| Parliamentary Privileges 1987<br>Passed into law (Act No. 21 of 1987).   | Speaker Child             |
| Public Service (Parliamentary Departments) Amendment 1988<br>Passed House only.  | Speaker Child             |
| Public Service (Parliamentary Departments) Amendment 1993<br>Passed House only.  | Speaker Martin            |
| Parliamentary Service 1997<br>Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside.         | Speaker Halverson         |
| Parliamentary Service (Consequential Amendments) 1997<br>Passed into law (Act No. 189 of 1997).  | Speaker Halverson         |
| Parliamentary Service 1997 [No. 2]<br>Passed both Houses (amended in Senate). House did not agree to Senate amendments; bill laid aside. | Speaker Sinclair          |
| Parliamentary Service 1999<br>Passed into law (Act No. 145 of 1999).   | Speaker Andrew            |
| Parliamentary Service Amendment 2001<br>Passed into law (Act No. 125 of 2001)  | Speaker Andrew            |
| Parliamentary Service Amendment 2005<br>Passed into law (Act No. 39 of 2005)   | Speaker Hawker            |
| Parliamentary Service Amendment 2013<br>Passed into law (Act No. 4 of 2013)  | Speaker Burke             |
| Parliamentary Service Amendment 2014<br>Passed into law (Act No. 26 of 2015)   | Speaker Bishop            |

## GRIEVANCE DEBATE

The grievance debate is derived from the centuries old financial procedures of the UK 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 motion ‘That grievances be noted’ is now a standing referral to the Federation Chamber.<sup>95</sup> The final order of the day in the Federation Chamber on each sitting Tuesday is the grievance debate. The question proposed by the Chair is ‘That grievances be noted’, to which question any Member may address the Chair. If consideration of the

<sup>95</sup> S.O. 192B. (Before 2008 the grievance debate occurred in the House—see earlier editions for details.)

question has not concluded after one hour, the debate is interrupted by the Chair. The debate is then adjourned, and its resumption made an order of the day for the next sitting.

Any Member may address the House on, or move an amendment to,<sup>96</sup> the question ‘That grievances be noted’ but, in practice, Ministers rarely participate in order to give more private Members the opportunity to speak.<sup>97</sup> A Member’s speech is limited to 10 minutes<sup>98</sup> and it is the traditional practice for the first speaker to be called from the Opposition.<sup>99</sup> 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 or concerns of constituents. The matter raised need not necessarily be an actual ‘grievance’. 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. Through the application of the general rules of debate a Member may not anticipate discussion of a subject which appears on the Notice Paper and is expected to be debated on the next sitting day, but incidental reference is permitted.<sup>100</sup>

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.<sup>101</sup> Only three amendments have been agreed to, two of them involving amendments to proposed amendments.<sup>102</sup>

A Member may present a petition during the grievance debate provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.<sup>103</sup>

## MEMBERS’ 90 SECOND STATEMENTS

During this period 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.<sup>104</sup> 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 Chair has given the call preferentially to Members who have been present for the full period,<sup>105</sup> and to Members who were not regular participants.<sup>106</sup> The raising of spurious points of

96 VP 1974–75/452 (13.2.1975).

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

98 S.O. 1.

99 H.R. Deb. (20.9.1973) 1333.

100 S.O. 77. *See also* Ch. on ‘Control and conduct of debate’.

101 VP 1974–75/452 (13.2.1975); H.R. Deb. (13.2.1975) 276–9.

102 VP 1907–08/284–5 (19.3.1908); VP 1920–21/163 (13.5.1920), 271–2 (26.8.1920).

103 S.O.s 206, 207(b).

104 S.O. 43. However, Ministers have spoken on indulgence (e.g. 18.6.2012, 1.12.2014) and by leave (e.g. 27.6.2012) during this period.

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

106 H.R. Deb. (22.3.2004) 26755.

order and other disruptive tactics are not in accord with the spirit of the procedure and have not been tolerated.<sup>107</sup>

A Member may present a petition during this period, provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.<sup>108</sup>

In the House a daily 30 minute period for 90 second statements is scheduled at 1.30 p.m. prior to Question Time. In the Federation Chamber a 45 minute period is scheduled at 4 p.m. on Mondays.<sup>109</sup>

## CONSTITUENCY STATEMENTS

Periods are reserved for Members' constituency<sup>110</sup> statements at the start of Federation Chamber proceedings on every day that the Federation Chamber meets. This opportunity lasts for 30 minutes, irrespective of suspensions for divisions in the House. Any Member (including Parliamentary Secretaries and Ministers, and the Speaker<sup>111</sup> and Deputy Speaker) may speak for no longer than three minutes.<sup>112</sup> If no other Member rises, a Member who has already spoken may speak a second time. The period for statements is sometimes extended (by motion moved in the House or by leave of the Federation Chamber) when there is no other business to be considered by the Federation Chamber.<sup>113</sup> The standing orders do not define 'constituency statements', and matters of more general interest have been raised without objection.<sup>114</sup>

A Member may present a petition during this period provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.<sup>115</sup>

## 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,<sup>116</sup> and by this means the adjournment debate provides Members with an opportunity to speak on any matter they wish to raise. 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 they have rarely participated,<sup>117</sup> and the period is regarded as an opportunity for private Members (*see* 'Call of the Chair' at page 590). Objection has also been raised when Parliamentary Secretaries have participated,<sup>118</sup> although more recently their participation has not been objected to.<sup>119</sup>

107 H.R. Deb. (17.3.1988) 983; H.R. Deb. (6.5.1993) 289.

108 S.O.s 206, 207(b).

109 Timetable operating since February 2014; previously the period was 15 minutes, and originally was in the House only, on Mondays.

110 Prior to 2008 known simply as 'Members' statements' (and Ministers were excluded).

111 First time H.R. Deb. (26.6.2013) 7192.

112 S.O. 193.

113 E.g. VP 2004–07/1813 (27.3.2007), (to 90 minutes); VP 2013–16/1495 (12.8.2015), (to 60 minutes).

114 E.g. H.R. Deb. (12.2.2009) 1314.

115 S.O.s 206, 207(b).

116 S.O. 76(a).

117 E.g. H.R. Deb. (21.11.2016) 3748–9.

118 H.R. Deb. (30.9.1997) 8832–3—point of order objecting to Parliamentary Secretary's participation disallowed.

119 E.g. H.R. Deb. (5.9.2006) 103.

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:<sup>120</sup>

- the Speaker interrupts proceedings to propose the question ‘That the House do now adjourn’ at 7.30 p.m. on Mondays, Tuesdays and 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. Only a Minister may move ‘That the question be now put’.

In all cases, whether the adjournment debate has been initiated by a Minister or by the Chair, if debate is still continuing at 8 p.m. on Mondays, Tuesdays and Wednesdays or at 5 p.m. on Thursdays, or if debate concludes prior to these times, the Speaker automatically adjourns the House until the time of its next meeting. Before the Speaker adjourns the House, 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 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. After the extension or on the earlier cessation of the debate, the Speaker automatically adjourns the House until the time of its next meeting. Standing and sessional orders have been suspended, by leave, to enable the debate to extend beyond the normal time.<sup>121</sup>

### 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.<sup>122</sup> 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.<sup>123</sup> 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 the speech 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,<sup>124</sup> matters irrelevant to the motion may be debated.<sup>125</sup> 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.

120 S.O. 31. Times current for 45th Parliament.

121 E.g. VP 1993–96/2567–8 (26.10.1995); VP 1998–2001/712 (30.6.1999), 1063 (21.10.1999).

122 Standing orders have been suspended to enable Members speaking in the debate to speak for one period of 10 minutes, VP 1993–96/1723 (8.12.1994); VP 1996–98/360 (27.6.1996), 1051 (12.12.1996); VP 1998–2001/269 (10.12.1998).

123 S.O. 1. Leave is required for a Member to speak a third time. When no other Member has risen a Member has spoken a third and fourth time, H.R. Deb. (21.6.2011) 6760, 62, 64.

124 See Ch. on ‘Control and conduct of debate’.

125 S.O. 76(a).

Through the application of the general rules of debate a Member may not anticipate discussion of a subject which appears on the Notice Paper and is expected to be debated on the next sitting day, but incidental reference is permitted.<sup>126</sup> 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.<sup>127</sup> A Member may reply to matters raised in a previous debate to correct a misrepresentation by way of a personal explanation.<sup>128</sup> Remarks cannot be based on a question asked earlier in the day, but the facts may be stated without dealing with the question.<sup>129</sup> Provided that no other rules of debate are contravened, matters before State Parliaments may be discussed,<sup>130</sup> as may be activities of another Member of the Parliament.<sup>131</sup> Members have customarily advised other Members if they proposed to make remarks concerning them in the adjournment debate, although there is no formal requirement for them to do so. With the agreement of Members present, a Member has used the first slot in the adjournment debate to continue and complete a speech on a bill that had been interrupted by the automatic adjournment provisions.<sup>132</sup>

A Member may present a petition during the adjournment debate provided the Petitions Committee has checked the petition for compliance with the standing orders and approved it for presentation.<sup>133</sup>

### 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.<sup>134</sup> Subsequently, if Members are rising on both sides, the Chair alternates the call in the normal way,<sup>135</sup> 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.

The Speaker has stated that he would give preference for the call to backbenchers over frontbenchers from the same side of the House,<sup>136</sup> and that it would not be proper 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.<sup>137</sup>

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.<sup>138</sup> 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.<sup>139</sup> These practices were not continued.

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

127 H.R. Deb. (23.3.1972) 1196.

128 H.R. Deb. (26.5.1955) 1201.

129 H.R. Deb. (21.2.1952) 256.

130 H.R. Deb. (25.11.1953) 529–30.

131 H.R. Deb. (25.10.1950) 1395.

132 H.R. Deb. (11.10.2016) 1587.

133 S.O.s 206, 207(b).

134 H.R. Deb. (10.5.1973) 2041.

135 *See* Ch. on 'Control and conduct of debate'.

136 H.R. Deb. (11.3.1998) 1040, 1042.

137 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.

138 H.R. Deb. (14.5.1952) 342.

139 H.R. Deb. (11.3.1953) 871–5.

## Adjournment debate in the Federation Chamber

The Federation Chamber 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 Federation Chamber do now adjourn’,<sup>140</sup> which may be debated.<sup>141</sup> 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 Federation Chamber. However, the timing and duration of the debate are not fixed by the standing orders,<sup>142</sup> and the debate may be extended or occur on a day other than Thursday by agreement between the whips. The Deputy Speaker has stated that unless advised of an agreement for extended debate, after 30 minutes the Chair would cease to recognise Members seeking the call and put the question,<sup>143</sup> although in practice some flexibility is often allowed.

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 Federation Chamber do now adjourn’ to be put immediately without debate.<sup>144</sup>

## MATTERS OF PUBLIC IMPORTANCE

The order of business provides for discussion of a matter of public importance (MPI) on every sitting day, except Mondays.<sup>145</sup> The MPI takes place following the presentation of documents shortly after Question Time. 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, and although occasionally a matter proposed by a government Member has been selected,<sup>146</sup> 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.

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140 S.O. 190(e).

141 S.O. 191(a).

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

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

144 S.O. 191(b), e.g. VP 1998–2001/273 (10.12.1998), 892 (23.9.1999); VP 2002–04/283 (20.6.2002); VP 2010–13/616 (2.6.2011).

145 S.O. 34.

146 E.g. H.R. Deb. (16.8.2007) 89; H.R. Deb. (22.2.2011) 926.

## Proposal of matter to Speaker

Matters are usually proposed to the Speaker by letter in terms such as the following:

[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.<sup>147</sup>

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 Deputy Speaker, as Acting Speaker, decides whether matters are in order and determines priority, if necessary, before the House meets. In the event of the absence of both the Speaker and Deputy Speaker, the Second Deputy Speaker could perform the function.<sup>148</sup>

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).<sup>149</sup>

A matter is put before the House only if the Speaker has decided that it is in order<sup>150</sup> and the Speaker is not obliged to inform the House of matters determined to be out of order.<sup>151</sup> Members cannot read to the House (or present) matters determined to be out of order or not selected for discussion.<sup>152</sup>

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.<sup>153</sup> 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

147 E.g. VP 1985–87/1713 (2.6.1987); VP 1996–98/1997 (24.9.1997).

148 VP 1978–80/985, 989 (13.9.1979); VP 1996–98/532 (19.9.1996).

149 VP 1985–87/675 (11.2.1986); VP 1987–90/1419 (29.8.1989).

150 VP 1964–66/547 (23.3.1966); VP 1985–87/548 (14.11.1985).

151 H.R. Deb. (30.9.1954) 1767.

152 VP 1954–55/85–6 (30.9.1954); H.R. Deb. (30.9.1954) 1773.

153 VP 1954–55/85–6 (30.9.1954); H.R. Deb. (30.9.1954) 1767–73; VP 1951–53/283–4 (5.3.1952) (in respect of according priority); H.R. Deb. (17.3.1982) 1042.

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.<sup>154</sup>

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 matters after the terms were altered to refer to 'the Government' rather than 'the Howard Government' or 'the Rudd 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 proposed<sup>155</sup>), the Speaker selects the matter to be read to the House that day.<sup>156</sup> 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.<sup>157</sup> A matter determined to be in order but not selected for discussion has been accepted and selected for discussion on a later occasion.<sup>158</sup>

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.<sup>159</sup> 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.<sup>160</sup>

### *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.<sup>161</sup> 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

154 VP 1985–87/548–9 (14.11.1985).

155 VP 1977/396–7 (3.11.1977).

156 S.O. 46(d).

157 VP 1985–87/545–6 (14.11.1985).

158 Matter not accorded priority on 22 May 1979 was accorded priority the next day, VP 1978–80/792 (22.5.1979), 806 (23.5.1979).

159 H.R. Deb. (19.9.1996) 4458.

160 VP 1954–55/221 (24.5.1955), 265–6 (9.6.1955).

161 VP 1932–34/938 (31.7.1934) (the motion also anticipated an order of the day); VP 1943–44/101 (17.3.1944); H.R. Deb. (17.3.1944) 1562.

- 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’.<sup>162</sup> 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*

In determining whether a matter of public importance is in order the Speaker has regard to the extent to which the matter concerns the administrative responsibilities of Ministers or could come within the scope of ministerial action. 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 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.<sup>163</sup>

### *Anticipation*

The anticipation rule<sup>164</sup> was amended in 2005 and now applies only ‘during a debate’. It does not apply to the discussion of a matter of public importance.<sup>165</sup>

### *Current committee inquiries*

A matter of public importance encompassing a subject under consideration by a committee of the Parliament has been permitted.<sup>166</sup>

### *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.<sup>167</sup> 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.<sup>168</sup> 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 proceeded to discuss the matter with the latter part omitted.<sup>169</sup> In 1969 discussion of a matter before the Commonwealth Conciliation and Arbitration

162 *But see* VP 1970–72/172 (2.6.1970); VP 1974–75/571–2 (10.4.1975), 1044 (28.10.1975), 1066 (29.10.1975), 1086 (4.11.1975), 1096 (5.11.1975); VP 1993–96/744 (9.2.1994) for discussions of matters relating to the procedure and practice of the House.

163 VP 1970–72/1018–20 (19.4.1972).

164 S.O. 77; *and see* ‘Anticipation’ in Ch. on ‘Control and conduct of debate’.

165 This wording of the revised standing order 77 was deliberate—*see* Standing Committee on Procedure, *The anticipation rule*, March 2005, p. 29.

166 The subject under inquiry was wastage and the defence force (N.P. (26.4.1988) 2171) and this subject was canvassed during discussion on a matter drafted in wider terms (H.R. Deb. (26.4.1988) 2056–64); *see also* VP 1993–96/753 (10.2.1994) (community cultural, recreation and sporting facilities—an issue subject to an inquiry by the Standing Committee on Environment, Recreation and the Arts).

167 *See* ‘Sub judice convention’ in Ch. on ‘Control and conduct of debate’.

168 VP 1974–75/169–70 (18.9.1974); H.R. Deb. (18.9.1974) 1460.

169 VP 1962–63/297–8 (15.11.1962); H.R. Deb. (15.11.1962) 2462–74.

Commission was ruled to be in order on the ground that it was not before the Commonwealth Industrial Court.<sup>170</sup>

### *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.<sup>171</sup> 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.<sup>172</sup> 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.<sup>173</sup> 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,<sup>174</sup> 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.<sup>175</sup>

### *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 the bill.<sup>176</sup> A motion of dissent from the ruling was negatived. 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 negatived the motion of

170 H.R. Deb. (16.4.1969) 1145.

171 S.O. 114(b).

172 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 (7.4.1971), 666-7 (23.8.1971).

173 VP 1951-53/357-8 (5.6.1952), 421-2 (12.9.1952); VP 1985-87/1432 (17.2.1987), 1484 (26.2.1987), 1511 (18.3.1987), 1539 (24.3.1987); VP 1998-2001/1080 (23.11.1999), 1128 (7.12.1999).

174 H.R. Deb. (1.11.1950) 1718.

175 VP 1977/302-3 (4.10.1977), 308 (5.10.1977).

176 VP 1967-68/211 (27.9.1967); H.R. Deb. (27.9.1967) 1356-8.

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.<sup>177</sup>

### *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.<sup>178</sup> 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.<sup>179</sup> 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.<sup>180</sup> 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’.<sup>181</sup>

### *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.<sup>182</sup> Reasons for withdrawal have included:

- coverage of the subject of the discussion in earlier debate that day;<sup>183</sup>
- late commencement of the discussion prior to the imminent Budget speech;<sup>184</sup>
- a government motion in the same terms as the matter proposed for discussion;<sup>185</sup>
- general agreement to extend the preceding debate;<sup>186</sup>
- ‘in the interest of the better functioning of the House’ following debate of a censure motion;<sup>187</sup>

177 VP 1967–68/218 (3.10.1967).

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

179 VP 1944–45/58 (28.9.1944).

180 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.

181 H.R. Deb. (20.9.1922) 2443–4.

182 VP 1998–2001/1299 (15.3.2000); VP 2004–07/129 (9.12.2004) (matter withdrawn by Manager of Opposition Business, by leave).

183 H.R. Deb. (4.11.1977) 2901; H.R. Deb. (8.2.2005) 22, 45.

184 H.R. Deb. (21.8.1984) 60.

185 H.R. Deb. (22.11.1989) 2662, 2679.

186 H.R. Deb. (21.8.1990) 1153, 1155.

187 H.R. Deb. (20.9.1990) 2333.

- following debate of a censure motion in similar terms;<sup>188</sup>
- to make way for motions moved by the Prime Minister<sup>189</sup> and Leader of the Opposition;<sup>190</sup> and
- to enable discussion of a different matter proposed by another Member.<sup>191</sup>

## 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 proposer<sup>192</sup> or because they lacked the necessary support.<sup>193</sup> 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 suspended<sup>194</sup> and on another leave was granted<sup>195</sup> 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.<sup>196</sup> 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 and Parliamentary Secretaries, have supported the discussion of matters proposed by non-Government Members.<sup>197</sup> 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.<sup>198</sup>

### *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

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188 VP 1998–2001/1299 (15.3.2000).

189 H.R. Deb. (30.10.1996) 6156.

190 H.R. Deb. (26.5.1998) 3701, 3717.

191 H.R. Deb. (24.9.1997) 8340. Standing orders suspended to permit the other proposal to be submitted and discussed forthwith.

192 H.R. Deb. (24.5.1989) 2819, VP 1987–90/1273 (24.5.1989) (proposer suspended from House); H.R. Deb. (31.3.1992) 1480; VP 1990–93/1404 (31.3.1992); VP 2008–10/899 (25.2.2009); VP 2010–13/2387 (6.6.2013); H.R. Deb. (16.7.2014) 8156 (matter withdrawn); VP 2016–18/838–9 (15.6.2017).

193 VP 1920–21/799 (1.12.1921); VP 1929–31/941 (30.10.1931); VP 1954–55/356 (19.10.1955), 365 (25.10.1955); H.R. Deb. (19.8.1993) 356.

194 VP 1962–63/463 (7.5.1963). The Member's plane had been delayed by fog, H.R. Deb. (7.5.1963) 1043.

195 VP 2004–07/214 (8.3.2005).

196 VP 1987–90/527–8 (18.5.1988); *see also* VP 1987–90/1273 (24.5.1989).

197 E.g. H.R. Deb. (12.11.2002) 8785; H.R. Deb. (22.6.2010) 6123.

198 H.R. Deb. (20.9.1977) 1297–8.

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.<sup>199</sup>

### *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*

One hour is provided for the whole discussion. The proposer and the Member next speaking are each allowed 10 minutes to speak, and any other Members five minutes each.<sup>200</sup> 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 leave<sup>201</sup> and following the suspension of standing orders.<sup>202</sup>

### *Interruptions*

Discussion has been interrupted temporarily, following suspension of standing orders, to enable the Budget and associated bills to be introduced<sup>203</sup> and, by leave, to allow a ministerial statement to be made.<sup>204</sup> A discussion has been interrupted by the motion to call on the business of the day (*see below*) so that Senate amendments to a bill could be considered, after which standing orders were suspended to allow the discussion to be resumed.<sup>205</sup> 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 negatived,<sup>206</sup> but in such circumstances a motion that the business of the day be called on has also been moved.<sup>207</sup> 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 allotted for the discussion.<sup>208</sup>

### *Termination of discussion*

The time allowed for discussion of a matter is limited to one hour. At the expiration of this time the discussion is automatically concluded. The House has extended the time for discussion,<sup>209</sup> and further extended the time,<sup>210</sup> by suspending standing orders. The discussion cannot be adjourned and the motion 'That the question be now put' cannot be moved, there being no question before the House (instead the motion to call on the

199 E.g. VP 1962-63/297-8 (15.11.1962); H.R. Deb. (15.11.1962) 2460-74; VP 1974-75/169-70 (18.9.1974); H.R. Deb. (18.9.1974) 1460.

200 S.O. 1.

201 VP 1964-66/139 (1.9.1964).

202 VP 1962-63/298 (15.11.1962).

203 VP 1968-69/489-90, 491 (12.8.1969).

204 VP 1970-72/988 (28.3.1972); VP 1978-80/671 (8.3.1979).

205 VP 2008-10/620-2 (16.10.2008).

206 VP 1974-75/528-30 (5.3.1975); VP 1990-93/1430-2 (28.4.1992).

207 VP 1985-87/198-9 (8.5.1985).

208 VP 1970-72/920-2 (22.2.1972); and *see* Ch. on 'Control and conduct of debate'.

209 VP 1968-69/416 (29.4.1969).

210 VP 1968-69/417 (29.4.1969).

business of the day may be moved—*see below*). The motion that a Member speaking ‘be no longer heard’ may however be moved.<sup>211</sup>

Discussion may be concluded prior to the time limit if no Member rises to speak on the matter. Discussion may be interrupted by the automatic adjournment provisions.<sup>212</sup>

### *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.<sup>213</sup> 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. The Leader of the House or another Minister may 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, or 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 hour<sup>214</sup> and the standing order providing for the MPI has itself been suspended until a certain bill has been disposed of.<sup>215</sup>

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).<sup>216</sup>

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211 VP 1996–98/532–3 (19.9.1996); VP 2010–13/1001 (13.10.2011).

212 E.g. VP 2002–04/1129 (21.8.2003); VP 2010–13/1892 (11.10.2012); VP 2013–16/403 (20.3.2014).

213 S.O. 46(e).

214 VP 1976–77/565 (9.12.1976); VP 1993–96/456 (16.11.1993).

215 VP 1974–75/639–40 (15.5.1975).

216 VP 1993–96/191–2 (31.8.1993); H.R. Deb. (31.8.1993) 524–7 (suspended until 28.10.1993).

