

## Consideration in detail

- 2.1 The consideration in detail stage of a bill follows the second reading and is an opportunity to ‘consider the detail’ of the bill. While the second reading debate allows Members to address the broad policy proposals and general principles of a bill, consideration in detail focuses on the bill’s text.
- 2.2 Debate during consideration in detail must be relevant to the question before the House (i.e. that the clause, schedule or proposed amendment be agreed).<sup>1</sup> Members are allowed to speak for an unlimited number of five minute periods.<sup>2</sup>
- 2.3 As a matter of practice, the allocation of the call alternates between government and non-government Members (including crossbench Members proportionate to their representation in the House) giving an equal allocation of time to debate the bill. Ministers will generally receive priority over other government members seeking the call.<sup>3</sup>
- 2.4 Consideration in detail provides an opportunity for the detailed operation of a bill to be debated, for alternative propositions to be put, and for amendments to be proposed and debated. For the main appropriation bill, it is an opportunity for Members to scrutinise specific details of proposed expenditure, and for Ministers to argue the case for items in the budget within their portfolio responsibilities.
- 2.5 The main appropriation bill follows the same procedural steps as any bill before the House. Its significance as a key part of the annual budget, however, means that the conduct of the debate has a unique character. While consideration in detail of the bill is governed by normal bill
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1 *Standing Order 76*, and see *House of Representatives Practice*, 6<sup>th</sup> edn, p. 375. The exemption from the requirement for the debate to be relevant to the question for the main appropriation bill as provided for under *Standing Order 76(c)* applies only to the motion for the second reading and not to the debate in the detail stage.

2 *Standing Order 1*.

3 *House of Representatives Practice*, 6<sup>th</sup> edn, p. 503.

procedures, the debate is different from a typical consideration in detail stage in a number of ways. For example, while the relevance rule applies, 'in practice, debate is permitted to cover departmental activity or government policy in the portfolio area, as well as financial details'.<sup>4</sup> It is also concerned more with administrative, rather than legislative, implementation.

- 2.6 During the consideration in detail of other bills, Members will at times ask questions of the Minister and the Minister may provide a response. However, the expectation of a question and answer format which has been established during consideration in detail of the main appropriation bill is unique to this particular debate.
- 2.7 The debate takes place over a number of sitting days and the time allocated for the debate has increased significantly in recent years (see Table 2.1).

Table 2.1 Time spent on Appropriation Bill (No. 1) 2004-2015

Year	Second reading debate	Consideration in detail	Total
2004	32 hrs 19 mins	8 hrs 50 mins	41 hrs 9 mins
2005	32 hrs 46 mins	8 hrs 58 mins	41 hrs 44 mins
2006	33 hrs 5 mins	11 hrs 34 mins	44 hrs 39 mins
2007	34 hrs 29 mins	12 hrs 28 mins	46 hrs 57 mins
2008	26 hrs 50 mins	12 hrs 30 mins	39 hrs 20 mins
2009	33 hrs 11 mins	13 hrs 12 mins	46 hrs 23 mins
2010	33 hrs 42 mins	13 hrs 13 mins	46 hrs 55 mins
2011	29 hrs 12 mins	19 hrs 19 mins	48 hrs 31 mins
2012	27 hrs 6 mins	17 hrs 14 mins	44 hrs 20 mins
2013	20 hrs 34 mins	16 hrs 08 mins	36 hrs 42 mins
2014	29 hrs 45 mins	18 hrs 26 mins	48 hrs 11 mins
2015	28 hrs 17 mins	18 hrs 27 mins	46 hrs 44 mins

4 Clerk of the House, *Submission 1*, p. 3 and see *House of Representatives Practice*, 6<sup>th</sup> edn, p 432.

- 2.8 The practice with regard to the conduct of the consideration in detail of the main appropriation bill has evolved over time driven by the approach of three key roles:
- Deputy Speaker (or Acting Deputy Speakers);
  - Ministers; and
  - participating Members.
- 2.9 This chapter examines the influence that each of these groups has on the nature and conduct of the debate. It also describes how the debate has evolved over time, leading to the current issues of concern. The following chapter considers whether the current practice best achieves the objective of the debate which is, ultimately, the effective scrutiny of the budget.

## Roles in the debate

### Deputy Speaker

- 2.10 As a smaller, more intimate, venue the Federation Chamber is well suited to this particular debate, allowing for an interactive exchange between Members and the relevant Minister regarding proposed expenditure. The Deputy Speaker chairs the Federation Chamber assisted by members of the Speaker's Panel.
- 2.11 Over the years, different chairs have taken varying approaches to managing the consideration in detail of the main appropriation bill. Some have taken the view that the debate should strictly follow a question and answer format and have required that Members make short statements that contain a question.<sup>5</sup> As there are no provisions in the Standing Orders requiring this approach, other chairs have ruled that there is no requirement for a question and a wide ranging debate is in order.<sup>6</sup>
- 2.12 While there are standing orders that govern the consideration in detail of bills in general, there is very little guidance available to the Deputy Speaker specifically regarding the conduct of the consideration in detail of the main appropriation bill. The fact that this particular debate occurs only once a year also means that its unique format may not be immediately familiar to the chair or Members, particularly those with limited experience in the House.
- 2.13 The allocation of the call is at the discretion of the chair so Deputy Speakers must rely on their own judgement of how the debate should be conducted. This allows for a level of flexibility which may be welcome in

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5 H.R. Deb. (15.06.2006) 128; H.R. Deb (05.06.2008) 4770; H.R. Deb (17.06.2008) 5116.

6 H.R. Deb. (05.06.2008) 4774.

certain circumstances but can also lead to uncertainty and confusion. In 2008, in response to a disagreement between Members regarding the allocation of the call during the debate, Deputy Speaker Burke stated:

There is no convention. There are no standing orders. I do not have anything. I have never been given anything. All I know is that whoever is first on their feet gets the call. I would have given it to the other side but nobody was on their feet. I will give it to the member for Shortland, but then I will go to the other side because I do not necessarily have to give it back to the minister.<sup>7</sup>

- 2.14 As the Federation Chamber is often chaired by new members of the Speaker's panel the lack of specific guidance compounds the difficulty in chairing this debate.

## Ministers

- 2.15 Current practice is that senior portfolio Ministers usually make themselves available during consideration of their portfolio to participate in the debate and respond to Members' questions. Prior to 2008, it was more common for parliamentary secretaries or ministers assisting to represent more senior ministers.<sup>8</sup>
- 2.16 Ministers have taken individual approaches to how they participate in the debate. Ministers have chosen to respond to each contribution individually, to hear from a number of Members (both government and non-government) before answering, or to hear all contributions before responding towards the end of the period allocated to their portfolio.<sup>9</sup> This debate can be challenging for Ministers as they are expected to answer a wide range of questions relating to their portfolio, although it is not uncommon for questions to be taken on notice.
- 2.17 Ministers will often make an opening statement and will sometimes use this opportunity to lay out which of the approaches described above they intend to follow in responding to Members questions or speeches. This has been helpful to all participants in the debate.<sup>10</sup>
- 2.18 Ministers may seek the call when they see fit and will, by convention, usually receive priority over other government Members. However, the allocation of the call is ultimately at the discretion of the chair. In 2008, for

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7 H.R. Deb (05.06.2008) 4767

8 Clerk of the House, *Submission 1*, p. 3.

9 E.g. H.R. Deb (15.06.2006) 125, H.R. Deb (05.06.2008) 4765-4776, H.R. Deb (16.06.2014) 6098-6127. Also see *House Estimates: Consideration of the annual estimates by the House of Representatives*, October 2003, p. 18.

10 For example, H.R. Deb (14.06.2007) 120.

example, Deputy Speaker Burke allowed a number of questions before giving the call to the Minister to respond:

As I have made clear all along, the minister does not necessarily have to respond to each. I think, given the lack of time available, I am going to throw it around and then go back to the minister.<sup>11</sup>

- 2.19 Consideration in detail of the main appropriation bill offers Members the unique opportunity to directly question senior Ministers on departmental activity and government expenditure. It is important that the debate is conducted in a way that makes the most of the opportunity to scrutinise the annual budget and the Government more broadly.

## Members

- 2.20 The approach taken by Members participating in the debate has varied, with some focussing on asking a question or series of questions and others making a longer contribution to the debate that may or may not include a question.
- 2.21 Prior to 2008, it was not usual practice for government Members, other than the relevant Minister, to participate in the debate. Since then, however, government backbench members have participated to a significant extent.<sup>12</sup> The participation of government backbench Members has increased the number of longer contributions being made to the stage where it is usual for most participants in most sessions to speak for 5 minutes at a time.
- 2.22 The increased participation of government backbench Members in the debate combined with the tendency to allocate the call to ministers to respond to each contribution, has led to a significant decrease in time allocated to non-government Members (see Table 2.2).

**Table 2.2** Proportion of time taken by Ministers, other government Members and non-government Members during consideration in detail of the main appropriation bill

	<b>Ministers</b>	<b>Other Government Members</b>	<b>Non-government Members</b>
<b>2005</b>	36%	3%	60%
<b>2010</b>	42%	18%	40%
<b>2015</b>	47%	25%	28%

Source *Members' participation during consideration of proposed expenditure for four sample portfolios (broadly, Communications, Education, Attorney General's and Transport).*

11 H.R. Deb (18.06.2008) 5291.

12 Clerk of the House, *Submission 1*, p. 3.

## Conduct of debate

### Question and answer format

2.23 During the 41<sup>st</sup> Parliament, the then Deputy Speaker actively encouraged a question and answer format for the consideration in detail of the main appropriation bill, stating on separate occasions:

We are looking at how estimates money has been allocated to certain things. This is not an opportunity to make a speech; it is for questions on estimates;

This is not a debate; this is a matter of questions and answers.<sup>13</sup>

2.24 Since then, the question and answer format has largely been followed. The following paragraphs describe the current practice.

2.25 Ministers may answer questions individually or may respond after several questions have been asked. Shadow Ministers and Shadow Parliamentary Secretaries also play an important role, often directing several questions to the Minister for the portfolio area they represent. Both government and non-government backbench Members also ask questions, often with regard to how proposed expenditure might affect their constituency.

2.26 The Clerk notes that while the question and answer format is still followed, in recent years Members' speeches have become longer and less focussed:

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

Debate of this kind is difficult to achieve when members and ministers take up their full 5 minutes, and when the flow is interrupted by the call alternating to the other side (as required by convention). Since 2008 members' speeches seem to have become longer. There are instances where questions appear as token additions at the end of a full five minute speech.<sup>14</sup>

2.27 In 2008, the then Leader of the Nationals, from opposition, observed that the question and answer format had become less effective, suggesting that

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13 H.R. Deb. (15.6.2006) 128; H.R. Deb. (14.6.2007) 154; and see Clerk of the House, *Submission 1*, pp. 4-5.

14 Clerk of the House, *Submission 1*, p. 4.

Members' speeches had taken the place of serious questions to the Minister:

I will begin by making a brief observation about the estimates process, particularly since the minister is Leader of the House — and I do this in a genuine spirit of trying to make this process work better. I have been disappointed that this year's estimates process has been largely taken up by speeches by government members which have occupied the time and therefore denied the capacity for opposition members to ask serious questions of the minister and give them an opportunity to give account for their stewardship of their portfolio. I am not suggesting that anybody has broken the standing orders or that the Speaker has ruled inappropriately in those matters, but the spirit and the conduct of the estimates process has changed this year.

It was, I think, a convention that this time was used essentially by opposition members to ask questions of the minister. I have to say that as a minister I quite enjoyed the challenge, even though sometimes I would be found out, including sometimes by the member opposite when he was asking questions of me. But I think we do need to look at the standing orders to make this process meaningful, because it is the only opportunity for members of parliament to ask questions of ministers as a part of the budget process.<sup>15</sup>

## Allocation of the call

- 2.28 The allocation of the call did not appear to be an issue of concern when Members (including ministers) confined their contributions to a short question or answer or a short debating point. It is the longer set speech that has changed the nature of the debate most significantly.
- 2.29 During all debates in the House and Federation Chamber, the allocation of the call is at the discretion of the Speaker and Deputy Speaker, respectively. It is usual, however, for chairs to follow the principle that the call should alternate between government and non-government Members.<sup>16</sup>

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15 H.R. Deb (18.06.2008) 5289. See also for example H.R. Deb. (05.06.2008) 4770.

16 *House of Representatives Practice*, 6<sup>th</sup> edn, p. 503. See also Standing Order 65(c).

- 2.30 The allocation of the call during consideration in detail of the main appropriation bill has been an issue of concern since government backbenchers started participating regularly in the debate.<sup>17</sup>
- 2.31 During the consideration in detail process on an ordinary bill, the relevant Minister takes a prominent role in the debate and generally receives the call for the government side:
- A Minister (or Parliamentary Secretary) in charge of business during the consideration in detail of a bill ...would usually receive priority over other government Members whenever wishing to speak. This enables the Minister to explain or comment upon details of the legislation as they arise from time to time in the debate.<sup>18</sup>
- 2.32 Prior to 2008, the consideration in detail of the main appropriation bill was typically an exchange between the relevant Minister and Shadow Minister, with other opposition Members also participating. The call was fluid but typically alternated between government (the minister) and non-government Members (including non-aligned Members), with both sides given an approximately equal number of opportunities to speak.
- 2.33 Current practice is that both government and non-government Members direct questions to the relevant Minister. The call is being allocated as it is during question time (non-government Member – Minister – government Member – Minister), although a Minister may choose to respond after a number of Members have made contributions.
- 2.34 The Manager of Opposition Business argues against this approach:
- Practice* and convention clearly envisage that the call should be allocated in two equal proportions between government Members (**including both Ministers and backbenchers**) and non-government Members, and not instead allocated in three proportions between Ministers, government backbenchers and non-government Members. Ministers are allocated the call from the proportion afforded to all government Members and do not enjoy a separate proportion. Any other reading would allow debate to be completely dominated by government Members at the expense of both non-government members and proper parliamentary scrutiny.<sup>19</sup>
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17 Clerk of the House, *Submission 1*, p. 5. See for example H.R. Deb (18.06.2008) 5290; H.R. Deb (15.06.2008) 5425; H.R. Deb (16.06.2015) 6451.

18 *House of Representatives Practice*, 6<sup>th</sup> edn, p. 503.

19 Hon. Tony Burke MP, Manager of Opposition Business, *Submission 2*, p. [2].



- 2.35 The current practice with regard to the allocation of the call does not provide for a balanced distribution of time between government and non-government Members. In 2015, the proportion of time allocated to non-government Members was less than a third of the total time available. This is not consistent with the usual expectation applying to a debate generally, or to a process specifically intended to be an opportunity to subject government proposals to detailed scrutiny.
- 2.36 Allocating the call in the manner applying to question time assumes that the debate during consideration in detail on the main appropriation bill is, or ought to be, analogous to question time. However, during question time there is no proposition before the House to be resolved and therefore no in principle requirement to provide an opportunity for Members to advance alternative views. The Executive has a particular role in question time and as a result receives the call after each questioner.
- 2.37 The consideration in detail stage for all bills involves a debate on a question or series of questions. In the case of the main appropriation bill, debate occurs on a series of questions – that the proposed appropriation for [each portfolio] be agreed to – and it must always be open to Members to argue for or against that proposition. As in any debate the call should alternate, as far as practicable, between government and non-government Members and afford each side roughly equal speaking time.
- 2.38 Chapter 3 offers the Committee’s view on how this debate may be improved.

