

Appendix 2: Submission from Mr I C Harris, Clerk of the House of Representatives

Submission to the Standing Committee on Procedure's ongoing inquiry into the maintenance of the standing and sessional orders

Over the past two years, the House has introduced two groups of amendments to its standing orders through suspensions of certain orders and the adoption of sessional orders. On 17 March 2005, the application of the anticipation rule was modified for the remainder of the 41st Parliament, and on 9 February 2006, certain arrangements for the Main Committee and times applying to dissent motions were modified for the remainder of 2006.

The submission addresses each of the changes or groups of changes effected by the suspension of orders and adoption of sessional orders. The comments and observations in relation to the various issues covered by these changes include the department's data, for the respective review periods up to and including 9 October 2006, indicating the frequency of use or application of the individual measures and any feedback from Members where available.

The submission also identifies two additional matters which the Procedure Committee may wish to consider more generally in relation to its ongoing monitoring of the standing and sessional orders.

Anticipation rule [sessional order 77 and temporary removal of so 100(f) introduced on 17 March 2005]

Since 17 March 2005, there have been two occasions on which a Member has raised, as a point of order, the anticipation rule during proceedings in the chamber. On one of these occasions a Member sought, mistakenly during a matter of public importance, to raise the anticipation rule (as stated in so 77) in relation to a Member speaking about a bill currently before the House. On the other occasion a Member raised the rule (as stated in suspended so 100(f)) on the basis that legislation referred to by a Minister, in answering a question during question time, was scheduled for debate at that sitting. On that occasion the Speaker reminded the Member raising the point of order that the anticipation rule had been changed for the remainder of the session. While it was apparent that the Member raising the point of order, and indeed other Members in the chamber at the time, had overlooked the matter of the temporary changes to the anticipation rule, no Member then present expressed any concerns in relation to the changed arrangements. Nor were concerns about the changed arrangements raised by Members after the incident.

Apart from these two incidents, no Member has raised any queries or concerns about the anticipation of the discussion of a subject in the chamber during proceedings, nor has a Member sought procedural advice in relation to such a matter. The temporary changes to the anticipation rule do not appear to have made a significant impact on proceedings, either on the progress of debate in proceedings or in relation to questions to Ministers.

Monday meetings of the Main Committee to debate committee reports [changes affecting sos 1, 39, 40, 190 and 192 from 9 February 2006]

Since 9 February 2006, 14 committee reports, two of which were effectively delegation reports of committee visits, have been debated on Mondays in the Main Committee. Of the available sittings since the changes were introduced, the Main Committee has met on eight of the ten Mondays to enable debate on committee reports.

While not every committee has used or requested the Monday debating option in the Main Committee ten different House and joint committees have used the facility, and several committees have availed themselves of the option on more than one occasion in relation to different reports. On each of these occasions the support of the Chief Whips has been sought and obtained in advance, speakers lists for these reports created in the Chief Whips' offices and specific advice obtained from committee secretariats about which committee members wish to speak in the relevant Main Committee debate. It is understood that both the Chief Government Whip and the Chief Opposition Whip have indicated their general support for this measure and no request to refer the continuation of debate on a committee report to the Main Committee on the same Monday of presentation has been denied. This extension of debating time for committee reports seems to have been well used during the period of review, with 6 hours and 26 minutes of debate taking place, during which a total of 38 speakers contributed. To put these figures into context, the total time given to the presentation and consideration of committee reports in the House and Main Committee was 39 hours in 2003-04 and ten hours in 2004-05.¹ This evidence and comments from committee members indicates a general level of approval with the increased opportunity for debate on committee reports. While some Members have expressed the view that they would prefer to speak in the chamber, they are satisfied that the changed arrangements have led to an increase in total time available for debate on reports, with some Members enjoying a second speaking opportunity on the same report. The benefits have included better debate of recommendations, improved media coverage at the time of presentation and opportunities to vary the standard speaking order. For example, in relation to one report, a deputy chair deferred to another Member for the statement in the House and took an opportunity to speak in the Main Committee.

Perhaps not surprisingly, as the procedures are still new, there have also been some comments which indicate lack of familiarity with arrangements for managing the process of identifying reports for referral to the Main Committee and for Members nominating to participate in debate there. The Hon Ian Causley, Deputy Speaker and Chair of the Selection Committee, informed chairs (and secretaries) of House and joint committees, in February and May 2006, of the new arrangements and the procedures applying. The need to ensure that Members and staff are better informed about the new

¹ Standing Committee on Procedure, *Procedures relating to House Committees* 5 December 2005, Parliamentary Paper No. 451/2005, p. 4.

procedures is also being addressed at the administrative level through the provision of detailed instructions to committee secretaries when they inquire about tabling arrangements via the Selection Committee. The expected referral of a committee report is reflected on the relevant Monday House/Main Committee *Daily Program* and it is understood that speakers lists are put up on the Chief Whips' notice boards several days before the Monday of presentation so that all Members (not just committee members) have an opportunity to signal their desire to speak to the report in the Main Committee on the day it is presented. As more committees present reports under the changed arrangements there will be further opportunities to use the extra debating time in the Main Committee and for those involved to become more familiar with the arrangements. It is noted in passing that the Monday 4-6pm Main Committee further consideration of committee reports period has, to date, been interrupted only once (Monday 19 June) by a division in the House (notwithstanding the provisions of standing order 133).

A related by-product of the regular Monday Main Committee meetings since May 2006 is the continuation of the meeting after debate has concluded on committee reports presented that day. This 'extra' Main Committee Monday meeting time has been used once for the continuation of debate on the Budget, as per practice in previous years, but more frequently for the consideration of 'non-legislative' government business e.g. further debate on statements by the Prime Minister and the Leader of the Opposition on the commitment of troops to East Timor, the ministerial statement about the ADF commitment to Afghanistan, the ministerial statement on energy initiatives, statements by the Prime Minister and the Leader of the Opposition on Vietnam Veterans' Day and the 40th anniversary of the Battle of Long Tan, and the motion by Minister Lloyd on local government. Thus the advent of more regular Monday Main Committee meetings to further consider committee reports presented that day in the chamber seems to have also led to an expansion of Main Committee opportunities for Members to debate 'non-legislative' government business items referred to the Main Committee. This could be viewed as another step in the maturation of the Main Committee and the development of its order of business.

Standing order 42

One final issue in relation to the business considered at the Monday meetings of the Main Committee is the listing of the business on the Notice Paper. Standing order 42 currently permits certain private Members' business items to be removed from the Notice Paper after eight consecutive sitting Mondays.

The Procedure Committee may wish to consider proposing amendments to the standing order so it also applies to committee and delegation reports orders of the day that are either on the House's agenda or on the Main Committee's agenda. At present Main Committee orders of the day relating to committee and delegation reports are not subject to any automatic removal mechanism and thus their numbers tend to grow substantially, and fairly quickly, on the Main Committee's agenda during a Parliament unless they are recalled by the House and discharged or returned to the House by the Main Committee and discharged. As the recall or return of such orders happens infrequently it may be preferable to have the same automatic removal regime apply to them as currently applies to private Members' business items in the House. This would result in a consistent application of removal arrangements for non-government business items in both the House and Main Committee.

Allowing full 30 minutes for Members' statements in the Main Committee [changes affecting so 193 from 9 February 2006]

Since 9 February 2006, on three occasions the period for Members' statements was interrupted by divisions in the House, and on a further five occasions the Main Committee met after 9.30 am. The speaking opportunities during this period were always fully subscribed by Members indicating that they greatly value three minute statements.

'Sin-bin' arrangements for the Main Committee [changes affecting so 187 from 9 February 2006]

There were no occasions on which the Deputy Speaker invoked this provision. This lack of use of the arrangement could be interpreted as a measure of its success, with Members having behaved in a manner to expressly ensure that they would not have this sanction applied. However, it is also true that the Main Committee is characteristically orderly and consensual. During the period of the trial this characteristic has endured and the procedure providing for a disorderly Member to be directed to leave for 15 minutes was not therefore used. Nevertheless, during the 12 year history of the Main Committee there have been occasions on which disorder has been a problem and it is on these very rare occasions when a remedy would be useful.

Dissent motions—total time and individual speaking times [changes affecting so 1 from 9 February 2006]

There was one occasion only on which this measure could have applied. In this case, because of the motions for closure of Member moved in relation to the mover and seconder of the dissent motion, the time limit was immaterial and the total time for the debate and attendant divisions was 31 minutes.

The Procedure Committee may wish to consider recommending the continuation of the 30 minute limit, and corresponding individual time limits.

Two additional matters in relation to the ongoing maintenance of the standing and sessional orders***Standing order 18—temporary absence of the Speaker***

The Procedure Committee may be willing to consider an aspect of the application of standing order 18 in the interests of potentially greater convenience for the House at the commencement of a sitting, should the Speaker be unavailable. If the Speaker is not available at the commencement of a sitting the terms of paragraph (a) require the Clerk to inform the House accordingly and the Deputy Speaker takes the Chair as Acting Speaker. If neither the Speaker nor the Deputy Speaker is available the Second Deputy Speaker takes the Chair.

The Speaker is sometimes asked to be available to meet more significant visiting dignitaries, and with the House meeting at 9 am on Wednesdays and Thursdays there may be more occasions on which the Speaker is not available to take the Chair.

It seems that the requirement for the Clerk to announce the Speaker's absence serves no practical purpose, and the Procedure Committee may consider that this requirement should be dropped – the effect would be that the Deputy Speaker, or sometimes the Second Deputy Speaker, would simply take the Chair without any announcement.

It is recommended that current standing order 18(b) continue to apply, and that when the Speaker, the Deputy Speaker and the Second Deputy Speaker are all absent, the Clerk advise the House and an Acting Speaker be elected for the period of the absence.

Standing order 41 paragraph (d)—first reading of a private Members' bill

The Procedure Committee may be willing to consider an aspect of the application of standing order 41. Paragraph (d) of standing order 41 governs the first reading of a private Members' bill. The standing order is silent about the presentation of a companion explanatory memorandum (EM). If a narrow view were taken of House practice in relation to the presentation of documents it could be claimed that leave should be sought by the private Member to present his/her EM, if one is available. This sits at odds with the treatment of EMs to government bills. Paragraph (b) of standing order 141 requires an EM to be presented to a government bill but does not require a Minister to seek leave to do so. In this Parliament there have been several instances where no leave has been sought to present an explanatory memorandum to a private Members' bill at the time the bill is presented and this seems to be a sensible development mirroring the arrangements for EMs to government bills. The Procedure Committee may wish to consider proposing an amendment to paragraph (d) of standing order 41 so a Member 'may present the bill, **together with an explanatory memorandum (if available)**, and may speak to **the bill** for no longer than 5 minutes' (emphasised words reflect the suggested changes).