

Review of sessional orders

- 1.1 On 9 February 2006 the House adopted a number of sessional orders dealing with arrangements for debate of committee and delegation reports in the Main Committee (as recommended by the committee's report on this matter in November 2005); the duration of Members' statements in the Main Committee; debate times for dissent motions; and provisions relating to the maintenance of order in the Main Committee. These sessional orders were to be in effect for the remainder of 2006 by which time they were to be evaluated.
- 1.2 In addition to the sessional orders adopted in February 2006, the committee also decided to review a sessional order (so 77) adopted in March 2005 and the temporary suspension of a related standing order (100(f)), relating to anticipation. While these revised arrangements were put in place for the remainder of the Parliament, the committee was conscious that an evaluation of their operation would be required and that they would lapse with the dissolution of parliament in preparation for the next election. The committee felt that 18 months was a sufficient period to evaluate their operation and have therefore included these in this review.
- 1.3 The committee commenced its review on these sessional orders by seeking feedback from all Members of the House and also invited the Clerk of the House to comment on the operation of the sessional orders during the trial period. The submission from the Clerk is at Appendix 2 of this report. The committee received no other formal comments on the operation of these sessional orders.
- 1.4 Parallel texts of the original relevant standing orders and the amended sessional orders are given in Appendix 1.

Presentation of committee reports

- 1.5 Amendments by sessional order to standing orders 1, 39(c), 40(b) and (c), 190(e) and 192(a) and (b) were adopted by the House on 9 February 2006, for the remainder of 2006. These changes had been recommended by the Procedure Committee in its November 2005 report – *Procedures relating to House committees* – in order to expand the time available for debating committee reports.
- 1.6 In essence, these provisions make time available in the Main Committee for about two hours (4.00 to approximately 6.00 pm) on Monday afternoon for debate of committee and delegation reports presented earlier the same day in the House.
- 1.7 These changes have proved to be very successful. Several members of a committee who have worked on a report have been able to speak while the topic is fresh. In addition, other Members who are not members of the committee concerned have also spoken in these debates.
- 1.8 In the period 9 February 2006 to 9 October 2006, the Main Committee met on eight of the available ten Mondays to debate committee reports. Fourteen reports were debated for a total of 6 hours and 26 minutes, with 38 members participating.
- 1.9 The committee did not receive any comment from individual members regarding the revised arrangements for tabling and debate of such reports. In a submission the Clerk of the House noted that although:
- ...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.¹
- 1.10 The Clerk also noted that there appears to be some lack of familiarity with the new arrangements and described the action being taken to assist committees in understanding the options available for tabling and subsequent debate. The committee
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1 Mr I C Harris, Clerk of the House of Representatives, *Submission*, pp. 2-3.

considers that the additional time available for debating reports is valuable and supports the adoption of the sessional orders as standing orders. The committee believes that use of the Monday afternoon option will grow with time as members become more familiar with the process.

Recommendation 1

- 1.11 **The committee recommends that sessional orders 1, 39, 40, 190 and 192, relating to the referral of committee and delegation reports to the Main Committee on Mondays and associated speaking times, be made standing orders.**
- 1.12 A positive by-product of the additional meetings of the Main Committee has been the continuation of the meeting after debate on committee reports had concluded, to allow for further debate of other matters, most commonly 'non-legislative' government business such as ministerial statements. The committee welcomes this development as a further extension of opportunities for all members to participate in debate on significant issues.
- 1.13 Another consequence of the referral of committee reports to the Main Committee on Mondays has been an expansion in the Main Committee entry on the Notice Paper. After debate on a report has finished in the Main Committee, the debate is adjourned and made an order of the day for a future sitting. The report thus remains listed on the Notice Paper, but given that debate has already occurred, in reality it is unlikely that the item will be called on for further debate. The Notice Paper for 16 September 2006, for example, lists 14 items under Committee and Delegation reports, dating from 13 February 2006.
- 1.14 The Notice Paper is cleared periodically by a motion in the House discharging a range of items of business. For items in the Main Committee, a two-step process is required: a motion in the Main Committee returning the item of business to the chamber (or alternatively a motion in the Chamber returning the item to the House), and then secondly the discharge motion.
- 1.15 The committee notes that the Clerk, under standing order 42, is authorised to remove from the Notice Paper private Member's business (notices or orders of the day) in either the House or Main Committee that have not been debated for eight sitting Mondays. It would be useful if standing orders could be amended to allow for a

similar provision for committee and delegation reports orders of the day.

- 1.16 The committee believes it would be desirable for the 'eight consecutive sitting Mondays' approach as described in standing order 42 to also encompass committee and delegation reports orders of the day in both the House and the Main Committee.
- 1.17 To implement this a new standing order 40A is required under the "Committee and delegation reports" heading of Chapter 6 of the standing orders.

Recommendation 2

- 1.18 **The committee recommends that new standing order 40A be inserted as follows:**

40A Removal of committee and delegation reports orders of the day

The Clerk shall remove from the Notice Paper an order of the day relating to committee and delegation reports which has not been called on for eight consecutive sitting Mondays.

- 1.19 In reviewing the standing orders relating to the presentation and debate of committee and delegation reports, the committee reconsidered standing order 248 – Consideration of report by House. In view of the wording of standing order 39, as proposed to be amended, the committee regards standing order 248 as being superfluous and proposes that it be deleted.

Recommendation 3

- 1.20 **The committee recommends that standing order 248, relating to further consideration of a report by the House, be deleted.**

Presentation of delegation reports

- 1.21 In addition to considering the operation of sessional orders relating to the referral of committee and delegation reports to the Main Committee for further debate that same afternoon, the committee also considered whether further improvements in the process might be made in respect of delegation reports.

- 1.22 Delegation reports are covered by the same standing and sessional orders as those applying to committee reports, but are by their very nature different in terms of their parliamentary standing. Committees are creatures of the House, set up under standing orders, statute or resolution. Their membership is approved by the House and they report to the House on their activities. Parliamentary delegations are drawn from the House and Senate, but the program of delegations and membership are not decided by the House itself but rather the Presiding Officers. The presentation of reports is not specifically required by standing orders but is largely an accountability mechanism.
- 1.23 The committee considered whether delegation reports should continue to be treated in the same way as committee reports. The committee believes that valuable time could be saved on Mondays for debate on private Members' motions if, as a general rule, delegation reports (along with associated statements) were dealt with in the Main Committee.
- 1.24 Table 1.1 sets out details of the number of delegation reports tabled so far this parliament. None of the delegation reports were referred to the Main Committee for further debate.

Table 1.1 Summary of delegation reports tabled in 41st Parliament (to 11 October 2006)

Year	Number of reports presented	Number of Members speaking	Total time on presentation (mins)
2004	2	3	15
2005	6	10	50.5
2006	10	12	64

- 1.25 Delegation reports account for comparatively small amounts of time compared to the chamber time spent on the presentation of committee reports. However, given the large number of private members motions awaiting an allocation of time for debate, any amount of time that can be saved on Mondays would be an advantage to private Members.
- 1.26 The committee believes that some saving of time could be made by having an option whereby delegation reports are deemed to have been presented through presentation to the Speaker, and for the requirement for subsequent formal presentation to be removed. This is not a unique process. A range of documents, including legislative instruments, are currently deemed to have been presented once they have been forwarded to the Clerk, and such papers are subsequently listed in the next *Votes and Proceedings*. The

documents are not formally presented in the House, but rather handled administratively.

- 1.27 A delegation report thus deemed to have been presented could then be listed on the Notice Paper, under Main Committee, orders of the day, committee and delegation reports. The delegation reports should be given priority on the next sitting Monday afternoon, unless otherwise ordered by the Selection Committee. Given the nature of delegation reports it would appropriate for debate initially to be limited to two members, each speaking for 5 minutes, reflecting the current allocation given to delegation reports in the House. The committee proposes to re-examine this following a trial of the proposed changes.
- 1.28 A delegation could still elect to table in the House if it wished (and this would be most appropriate when the delegation had been led by the Speaker). The alternative provisions would release valuable time for other private Members' business, still allow for debate on the delegation report to occur, and also recognise the qualitative differences between committee and delegation reports.
- 1.29 This change would also be an evolution in the use of the Main Committee. Its subordinate nature would be maintained, as delegation reports would not be formally presented in the Main Committee. However, it would allow for additional debate on a Monday afternoon and for the Selection Committee to be involved in setting private Members' business on sitting Mondays in both the chamber and the Main Committee.
- 1.30 The committee believes that a trial of this procedure should be held, commencing with the 2007 Autumn sittings.

Recommendation 4

- 1.31 **The committee recommends that the following sessional orders be trialled for the first six months of 2007:**

(a) Add to standing order 39:

39(d)(i) Delegation reports may also be presented to the Speaker at any time. Delegation reports thus presented are deemed to have been presented to the House on the next sitting day following presentation, and ordered listed as separate orders of the day on the Notice Paper under Main Committee, committee and delegation reports, for debate during the period provided by standing order 192(b).

(ii) Debate on the delegation reports orders of the day will have priority over all other reports on the next sitting Monday in the Main Committee unless otherwise determined by the Selection Committee.

(b) Insert in standing order 1, timings for *Committee and delegation reports on Mondays*

Delegation reports deemed presented (in accordance with sessional order 39(d)(i))

In the Main Committee

Two members 5 minutes each

Maintenance of order in the Main Committee

- 1.32 Amendments by sessional order to standing order 187 were adopted by the House on 9 February 2006, for the remainder of 2006. These changes provide additional options for the Chair of the Main Committee to maintain order – in particular the new provision of being able to direct a Member or Members to leave the room for a period of 15 minutes, and the discretion the Chair now has of whether or not to report disorder to the House.
- 1.33 Prior to these changes, in cases of disorderly conduct occurring in the Main Committee the Chair could only suspend or adjourn the Committee and report the disorder to the House. Such occasions, which have been few ², are treated seriously by the House – generally such reports have resulted in the naming and suspension of the Member concerned.
- 1.34 The committee is aware that the Deputy Speaker had concerns about the absence of options which would allow the Main Committee to continue, and without there having to be a flow on effect in the House of the Member being reported and automatically named.
- 1.35 The committee considers that as far as possible matters of order in the Main Committee should be resolved in the Main Committee itself without having to be referred to the House. The Main Committee operates generally in an orderly and consensual manner,

² Disorder, leading to suspension of proceedings in the Main Committee and reporting of the matter back to the House has occurred on four occasions to date.

and during the trial period this approach continued with there being no instance of the Chair calling on the new disciplinary powers. However, there have been occasions in the 12 years of operation of the Main Committee where disorder has been an issue, and it is on these rare occasions that the lack of appropriate mechanisms to deal with the disorder have been apparent.

- 1.36 The committee believes that sessional order 187 provides a useful mechanism for maintaining order on those admittedly rare occasions when the consensual nature of proceedings breaks down. The committee therefore sees merit in sessional order 187 being adopted permanently.

Recommendation 5

- 1.37 **The committee recommends that sessional order 187, relating to maintenance of order in the Main Committee, be made a standing order.**

Members' three minute statements in the Main Committee

- 1.38 This amendment by sessional order to standing order 193 was adopted by the House on 9 February 2006, for the remainder of 2006. The change protects the 30 minutes maximum time allocated to members' statements in the Main Committee. Main Committee proceedings are suspended to enable Members to attend divisions in the House. Previously, the period for Members statements ended at 10 am and time lost by divisions occurring before 10 am was not made up.
- 1.39 The proposal to protect the total time available for statements originated from negotiations between the Chief Opposition Whip (a member of the Procedure Committee) and the Leader of the House.
- 1.40 Since February 2006, there have been three occasions when the period for Members' statements was interrupted by divisions in the House, and a further five occasions when the Main Committee met after 9.30 am. On each occasion the period for members statements was able to proceed for the full 30 minutes and Members took the opportunity to speak on these occasions. While the committee received no direct comment from Members on the operation of this sessional order, the fact that the period is fully utilised by Members

is an indication of the importance of this opportunity for private Members.

- 1.41 The committee considers the guarantee of a full 30 minutes for member's statements in the Main Committee to be a welcome innovation and proposes it be made permanent. It ends the uncertainty that Members planning to make statements on a particular day always had – that their opportunity could be lost because of unscheduled events in the House.

Recommendation 6

- 1.42 **The committee recommends that sessional order 193, relating to Members' three minute statements, be made a standing order.**

Speaking times for dissent motions

- 1.43 This amendment by sessional order to standing order 1 was adopted by the House on 9 February 2006, for the remainder of 2006. This new provision provides specific time limits for debates on dissent motions of 10 minutes each for the mover and Member next speaking, and 5 minutes for any other Member, with a total limit of 30 minutes. Previously a dissent motion was treated as a "debate not otherwise provided for" (mover 20 minutes, any other Member 15 minutes, but no limit on the total debate).
- 1.44 The rationale for the sessional order is that, as a motion that suspends all other business until resolved, a dissent motion should be determined expeditiously.
- 1.45 Prior to the adoption of the sessional order there was no provision for termination of a dissent debate other than there being no more speakers or the moving of a closure motion. The committee supports the imposition of a time limit on the total length of such debates, ensuring that speakers focus on the motion of dissent rather than drifting to comments about the dispute which resulted in the dissent. These comments can only appropriately be made on a motion of want of confidence.
- 1.46 There have been two instances of dissent motions since the sessional order has been in effect. The first was on 25 May 2006. In this case three closure motions were moved – that the mover and seconder be no longer heard and that the question be now put. The total time taken, from the moving of the dissent motion until the question on

that motion was put, was 31 minutes. This contrasts with the 30 minutes of debate which could have taken place under the sessional order if no closures had been moved.

- 1.47 The second dissent motion was moved on 11 October 2006. The mover of the motion (Leader of the Opposition), one government member and one further opposition member spoke for a total of 17 ½ minutes before closure of the question was moved. The total process until the conclusion of the vote on the motion was 34 minutes.
- 1.48 Given the serious nature of a dissent motion, the committee would like to see members have an opportunity to set out the arguments in support of and against the particular ruling under dispute. This does not occur when closures are moved. One option considered would be for closure motions (under standing orders 80 and 81) not to apply during debate on dissent motions. However, the committee is not in favour of exempting dissent motions from closure motions at this time, believing that the House should not be constrained from making decisions as the situation at the time requires.
- 1.49 The Committee supports the continuation of the 30 minute time limit for dissent motions, but proposes to keep this matter under review and revisit it in future if necessary.

Recommendation 7

- 1.50 **The committee recommends that sessional order 1, relating to a 30 minute time limit for dissent motions, be made a standing order.**

The anticipation rule

- 1.51 Standing order 77 was amended and standing order 100(f) suspended by sessional order on 17 March 2005, for the remainder of the 41st Parliament. These changes had been recommended by the Procedure Committee in its March 2005 report – *The anticipation rule*.
- 1.52 In making its recommendations, the committee considered that while the objectives of the rule were sound, the standing orders then expressing the rule were used more for tactical advantage than to support the effective management of House business. The changes essentially abolished the application of the rule from Question Time

and restricted the application of the rule at other times to substantive debates.

- 1.53 The anticipation rule has been raised on only two occasions since the introduction of the revised arrangements. As the submission to this review noted:

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.³

- 1.54 On the second occasion the Speaker reminded the member and others of the temporary changes to the anticipation rule. As the Clerk advised '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'.⁴

- 1.55 While the Procedure Committee originally recommended a trial of the new arrangements for the remainder of the Parliament, the arrangements have been operating successfully for 18 months. The committee has now concluded that the change has proved non-controversial, that it has allowed for debate to proceed more freely and that its operation should be regularised.

Recommendation 8

- 1.56 **The committee recommends that:**

(a) sessional order 77, relating to the anticipation rule, be made a standing order; and

(b) standing order 100(f) be deleted permanently from the standing orders.

3 Mr I C Harris, Clerk of the House of Representatives, *Submission*, p. 1.

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Other issues

- 1.57 The submission from the Clerk of the House of Representatives raised two additional matters for consideration by the committee, regarding standing orders 18(a) and 41(d). Neither relates to the particular sessional orders under review, but the committee felt that in both cases the matters were straightforward and could be addressed without delay.
- 1.58 The Committee was also approached regarding the need to clarify in standing orders the status of a Member seated in the Serjeant-at-Arms seat during a division. The committee has taken this opportunity to examine this matter.

Standing order 18

- 1.59 Standing order 18(a) requires that if the Speaker is not available at the commencement of a sitting, the Clerk must 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.
- 1.60 The Clerk has proposed that the requirement for the Clerk to announce the Speaker's absence should be removed from standing order 18(a). The arrangements for the Deputy Speaker or Second Deputy Speaker to take the Chair would not be affected.
- 1.61 The committee notes that the Clerk would still be required, under standing order 18(b) to inform the House of the absence of all three as action would then be required by the House to elect an Acting Speaker or to adjourn the House.
- 1.62 The committee agrees with the proposal put by the Clerk, that an announcement under standing order 18(a) serves little purpose and should be removed.

Recommendation 9

- 1.63 **The committee recommends that standing order 18(a) be replaced by:**
- 18 (a) If the Speaker is absent the Deputy Speaker shall be the Acting Speaker. If both the Speaker and the Deputy Speaker are absent, the Second Deputy Speaker shall be the Acting Speaker.

Standing order 41(d)

- 1.64 The second matter raised by the Clerk was in relation to the presentation of explanatory memoranda for private Members' bills. As the Clerk indicated in regard to paragraph (d) of standing order 41:

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.⁵

- 1.65 The committee notes that there have already been occasions when no leave has been sought by a private Member when presenting an EM to their bill, and supports this practice being recognised in the standing orders. This would ensure consistency of practice for the presentation of EMs, regardless of whether they were for government or private Members' bills.

Recommendation 10

- 1.66 **The committee recommends that standing order 41(d) be amended as follows:**

(d) When each notice is called on by the Clerk, the Member in whose name the notice stands may present the bill, together with an explanatory memorandum (if available), and may speak to the bill for no longer than 5 minutes. The bill shall be then read a first time and the motion for the second reading shall be set down on the Notice Paper for the next sitting. (*additions indicated by underlining*)

- 1.67 The wider issue of providing further debating opportunities for private Members' bills, by utilising time in the Main Committee, was also discussed by the committee and will be the subject of further inquiry.

5 Mr I Harris, Clerk of the House of Representatives, *Submission*, p. 5.

The status of the Serjeant-at-Arms seat in a division

- 1.68 On 17 August 2006, following a division in the House, the Member for Hunter queried whether a Member, seated during the division in the seat allocated to the Serjeant-at-Arms, was entitled to have his vote counted. The Speaker held that the vote should be counted, but suggested that the Member could raise this matter with the Procedure Committee.⁶
- 1.69 Prior to the rewrite of standing orders, former standing order 197 stated:
- No member shall be entitled to vote in any division unless, when the tellers are appointed, the Member is **within the seats allotted to Members ...** (*emphasis added*)
- 1.70 In the revised standing orders, adopted from 16 November 2004, former standing order 197 was deleted. Current standing orders refer to the 'area of Members' seats' in two places:
- Standing order 128:* 'Members calling for a division must not leave the area of Members' seats and they must vote with those members who...'
- And
- Standing order 129:* ... (while the bells are ringing) 'A Member may leave the area of Members' seats unless he or she called for the division'
- 1.71 Standing order 2 contains a definition of 'area of Members' seats', and states this 'means the area of seats on the floor of the Chamber reserved for Members only. It does not include seats in the advisers' box or special galleries'. The definition also refers to Figure 1, a plan of the chamber, but there is no indication visually in that figure of those parts of the chamber considered to be exclusively the area of Members' seats. The use of the word *area* broadens where Members may be to have their votes counted, beyond simply a specific seat or seats.
- 1.72 *House of Representatives Practice* states 'Members not within the area of Members' seats are not counted'.⁷ The Committee notes that the first edition of *House of Representatives Practice* contained a plan of the chamber in the Provisional Parliament House, and those areas

⁶ House of Representatives *Hansard*, 17 August 2006, p. 81.

⁷ *House of Representatives Practice* (5th edition), p. 275.

not considered to be in the 'area within the seats allotted to Members' are clearly marked. The Serjeant-at-Arms seat in that diagram is within the area allotted to members.

- 1.73 The Committee endorses the view that a Member in that seat is entitled to have his or her vote counted. However, the committee believes it would assist members in future if this could be explicitly stated in the standing orders. The committee also suggests that the next edition of *House of Representatives Practice* should reflect this.

Recommendation 11

- 1.74 **The committee recommends that the definition of 'area of members' seats, contained in standing order 2 should be amended as follows:**

area of Members' seats means the area of seats on the floor of the Chamber reserved for Members ~~only~~. It does not include seats in the advisers' box or special galleries, but does include the seat where the Serjeant-at-Arms usually sits. The expression is used in *standing orders 128 and 129 (divisions)*. See *figure 1*.

Margaret May MP
Chair