

Chapter 12 Business

12.1 Routine of business

Standing order 97 sets out the order and type of business for different sitting days.

A detailed explanation of the procedures involved with each of the items in the routine is provided in Appendix A.

97. The House shall conduct its business in the following routine:

Tuesdays

1. At 2.15 p.m. (Speaker takes Chair)
2. Ministerial Statements
3. Notices of Motions (Government Business, Bills, Business with Precedence)
4. Notices of Motions to be Accorded Priority
5. Question Time
6. Ministerial Statements
7. Papers
8. Committee Reports – Tabling
9. Petitions
10. Announcement of Matter of Public Importance
11. Placing or Disposal of Business
12. Motion Accorded Priority
13. Matters of Public Importance
14. Business with Precedence
15. At 5.15 p.m. Notices of Motions (General Notices) followed by Private Members' Statements
16. Government Business

Other Government Business Days (not Fridays)

1. At 10.00 a.m. (Speaker takes Chair)
2. Government Business
3. At 2.15 p.m. (Speaker resumes Chair)
4. Ministerial Statements
5. Notices of Motions (Government Business, Bills, Business with Precedence and notices to be the subject of a motion to re-order later in the sitting)
6. Notices of Motions to be Accorded Priority
7. Question Time
8. Ministerial Statements
9. Papers
10. Committee Reports – tabling
11. Petitions
12. Announcement of Matter of Public Importance
13. Re-ordering of General Business Orders of the Day (for Bills) and General Business (Notices of Motions)
14. Placing or Disposal of Business
15. Motion Accorded Priority
16. Matters of Public Importance
17. Business with Precedence
18. At 5.15 p.m. (Wednesday) or 4.15 p.m. (Thursday) Notices of Motions (General Notices) followed by Private Members' Statements
19. Government Business

General Business Days

1. At 10.00 a.m. (Speaker takes Chair)
2. General Business Notices of Motions for Bills (concluding not later than 10.30 a.m.) Any interrupted item of business shall be set down as an Order of the Day for a later time with

precedence of other General Business Notices of Motions for Bills.

3. General Business Orders of the Day for Bills (concluding not later than 11.30 a.m.) Any interrupted item of business shall be set down as an Order of the Day for a later time with precedence of other General Business Orders of the Day for Bills.
4. General business notices of motions or orders of the day (not being bills) concluding at 1.00 p.m. Any interrupted item of business shall be set down as an Order of the Day for a later time with precedence of other General Business (not for bills).¹
5. 1.00 p.m. to 2.00 p.m. consideration of committee reports presented or Speaker leaves Chair
6. At 2.15 p.m. (Speaker resumes Chair)
7. Ministerial Statements
8. Notices of Motions (Government Business, Bills, Business with Precedence)
9. Notices of Motions to be Accorded Priority
10. Question Time
11. Ministerial Statements
12. Papers
13. Committee Reports - Tabling
14. Petitions
15. Announcement of Matter of Public Importance
16. Placing or Disposal of Business
17. Motion Accorded Priority
18. Matters of Public Importance
19. Business with Precedence
20. Government Business
21. At 5.15 p.m. (Wednesday) or 4.15 p.m. (Thursday) Notices of Motions (General Notices) followed by Private Members' Statements
22. Adjournment

The routine of business may be altered for a particular instance or for a sitting day, usually by a motion to suspend standing and sessional orders² (S.O. 365).³ A sessional order is the usual method of changing the routine of business for a longer period. For instance, on 26 February 2002⁴ the House adopted a sessional order (for the first time) to provide that on any Friday upon which the House sits, whether as a continuation of the sitting of the previous day or as a separate sitting day, government business shall take precedence of all other business including the routine of business. This sessional order was adopted as a standing order in November 2006 (S.O. 98). This means that on Friday there is no Question Time and usually only Government business, including bills, debates such as the Address in Reply, and private members' statements are dealt with. The standing order provides that no quorums can be called, and any divisions called are to be deferred, set down as orders of the day for the next sitting day and determined after Question Time. In addition, the standing order provides that private members' statements are called at the conclusion of government business, after which the House adjourns without motion until the next sitting day.

Standing and sessional orders may be suspended to change the routine of business to enable the House to give precedence to a particular debate over other proceedings or to postpone an event in the routine such as private members' statements or debate on a motion for urgent consideration. For example, in October

¹ Standing Order 107 provides for the following time limits for debates on General Business Notices of Motions and Orders of the Day (not being Bills): Mover – 10 minutes; member next speaking – 10 minutes, four members – 5 minutes each and reply – 5 minutes.

² VP 21/09/2004, pp. 992-3.

³ See also section 28.1 of Part One.

⁴ VP 26/02/2002, p. 16.

1999, the House suspended standing and sessional orders to permit the normal routine of business to be interrupted to allow members of the public to address the House to introduce a debate on the Republic Referendum. The suspension in that instance provided for the Premier to move a motion, time limits to apply to the debate, for part of the normal routine of business (Question Time) to apply at 2.15 p.m., and for the Leader of the House to interrupt the debate at any time and ask the Chair to set down the motion as an order of the day for a later time in which case the normal routine of business would apply.⁵

When the Government has a majority, the routine of business may also be changed to bring forward the Government's legislative program. For example, to deal with the *Civil Liability Amendment (Personal Responsibility) Bill 2002* where the House resolved that: the only business to be dealt with would be that bill; no divisions or quorums were to be called; the House could sit beyond 10.30 p.m. and at the conclusion of the debate on the bill or at midnight the House would adjourn without a motion until the next day.⁶

The House has also suspended standing and sessional orders to allow the routine of business to be changed to accommodate particular special events. For example, the House has suspended standing orders to enable Question Time, which normally occurs at 2.15 p.m. in the routine of business, to commence earlier on particular days.⁷ Similarly, standing and sessional orders have been suspended to change the routine of business to enable members to attend a State Funeral,⁸ and to enable the House to adjourn without a motion following a debate.⁹

12.2 Types of business

The business paper, which lists notices and orders, divides business into four main categories:

- Government business - notices of motions and orders of the day in the charge of Ministers.
- General business - notices of motions and orders of the day in the charge of private members.
- Business with precedence - business granted precedence under standing order 118 (see section 12.5).
- Business taking the place of matters of public importance - motions of censure or no confidence (S.O. 112, S.O. 113, S.O. 114, and S.O. 115).

12.3 Placing or disposal of business ("call over")

Each sitting day, after the announcement of the matter of public importance, the Speaker calls over each category on the business paper to give members an opportunity to withdraw or postpone any notice of motion standing in their name on the paper or to postpone or move a motion to discharge any order of business in their name (S.O. 100). General business notices of motions or orders of the day may be withdrawn or discharged during the call over but general business items can only

⁵ VP 26/10/1999, p. 160.

⁶ VP 30/10/2002, pp. 546-7.

⁷ For instance, Question Time was held at 10.00 a.m. on Tuesday 6 November 2001 in order that it would not clash with the running of the Melbourne Cup in the afternoon, PD 25/10/2001, p. 18006; and at 11.00 a.m. on Wednesday 22 September 2004 due to the fact that the Premier would not be available in the afternoon, PD 21/09/2004, p. 11195.

⁸ VP 27/02/2002, p. 47.

⁹ VP 13/03/2002, p. 94; VP 29/11/2001, p. 1684; VP 03/05/2000, p. 432; VP 08/09/1998, pp. 829-30; and VP 02/11/1997, p. 226.

be postponed in accordance with standing order 101. When the Speaker calls the category of business, any member wishing to postpone or dispose of any of their items seeks the call and, when acknowledged by the Speaker, advises the Chair or moves a motion accordingly.

12.3.1 General Business

The program for general business days is established on the day prior to general business day. In accordance with standing order 101, members advise the Clerk in writing prior to 1.00 p.m. on the day preceding the general business day which general business¹⁰ standing in their name on the business paper is to be postponed. A party whip may also advise the Clerk of which items of general business standing in the name of members of their party are to be postponed. The first ten notices on the business paper not advised to be postponed are deemed to be proceeding. If a member has been granted leave of absence it is accepted practice that the business standing in the member's name is postponed.

Members are still able to withdraw or postpone any notice of motion or an order of the day when it is called on.¹¹ No motion is required for a member to postpone business standing in their name when it is called on and the leave of the House is not required. However, if a member wishes to withdraw an order of the day when it is called on the member is required to move a motion. The motion is considered without debate.

When the House proceeds to consider items of general business members must be present and take some action when the item of general business standing in their name is called on, or else the item lapses.¹² However, on one occasion an unusual occurrence happened when a member who had carriage of a private member's bill was not present in the House and with the concurrence of the House his item was not called on and the House proceeded to the next order of the day. This meant that the item did not lapse.¹³

When Parliament prorogues, all business before the House comes to an end. General business can however be restored to the business paper by resolution of the House. For example, when the House resumed after prorogation on 27 February 2002 standing and sessional orders were suspended to enable members, or the Leader and Shadow Leader of the House on their behalf, to give written notification of any general business notices of motions and orders of the day which had lapsed due to prorogation to be restored to the business paper. The resolution also provided that the restored notices of motion would be printed as a supplement to the business paper and that notices of general business given after 27 February 2002 would have

¹⁰ i.e. general business notices of motion (general notices), general business notices of motion for bills, general business orders of the day (general orders), general business orders of the day for bills.

¹¹ This procedure was first adopted in November 2005 VP 29/11/2005, p. 1795. Prior to this the program for general business day was established in the House with the Speaker calling over each item of business and members indicating whether business was to proceed at the next sitting, be postponed, withdrawn or discharged (by motion).

¹² VP 16/09/1999, pp. 79-80. Three general business notices of motion called on and lapsed because members were not present to move them.

¹³ See the Legislative Assembly Notices (i.e. the business paper) 06/05/2004 where the *Quarantine Station Preservation Trust Bill* was listed as the first general business order of the day for bills followed by the *Roads Amendment (Transfer of Crown Roads) Bill* and PD 06/05/2004, p. 8571 where the *Roads Amendment (Transfer of Crown Roads) Bill* was called after the previous item of business despite the fact that the *Quarantine Station Preservation Trust Bill* had not been postponed.

precedence over the business restored.¹⁴ In fact, none of the restored notices were ever given precedence for debate.¹⁵

The House has also suspended standing and sessional orders to allow a number of general business notices of motions (for bills), an interrupted mover's second reading speech and orders of the day (for bills) from the previous session of the same parliament to be reintroduced at the stage they had reached before the close of the session. This business was to have precedence of all general business notices of motions (for bills) given in the new session.¹⁶ Messages were sent to the Legislative Council requesting that bills, which were in the Council at the time of prorogation, be resumed in the new session at the same stage they had reached prior to prorogation.

12.3.2 Re-ordering General Business

Following the announcement of the matter of public importance on the day preceding the general business day, any two private members may move to re-order:

- a general business order of the day for the resumption of debate on that member's bill; and
- a notice of motion (general notice), listed on the business paper or given that day.¹⁷

Notices of motions for bills and resumption of general notices cannot be re-ordered under this procedure (S.O. 106).

Members seeking to re-order their item of business may make a statement of up to five minutes in support of the re-ordering of an order of the day (for bills) or in support of the notice of motion (general notice). Only one item of business can be re-ordered under each category. If the first motion is agreed to, the second motion is not put. The same process is then repeated whereby any two private members may move to reorder their notice of motion for an item of general business. (S.O. 106).

12.3.2.1 Bills

Where the House accords precedence to an order of the day (for bills), the resumption of debate on that bill takes precedence over all other general business, including notices of motions (for bills), interrupted mover's agreement in principle speeches, even if given precedence on the previous general business day, and orders of the day (for bills) on the business paper for that day.

12.3.2.2 General notices and orders

Where the House accords precedence to a general business notice of motion (general notice), such notice takes precedence over all other notices of motions (general notices) and orders of the day (general orders) on the business paper for that day (but not notices of motions (for bills), interrupted mover's agreement in

¹⁴ VP 27/02/2002, p. 45.

¹⁵ It is unusual for general business (general notices) to be restored to the business paper following prorogation. Standing orders do however provide specifically for bills, including private members' bills, to be restored (S.O. 237). See section 20.6.6.5 of Part One for more information on the restoration of bills after prorogation.

¹⁶ VP 12/03/2002, pp. 60-1.

¹⁷ Under the standing orders general business notices of motions (other than for bills) are given immediately prior to private members statements. However, a member wishing to re-order a notice of motion in accordance with S.O. 106 may give notice of their motion at the time notices of motions for bills and business with precedence are given. VP 15/11/2005, pp. 1742-5.

principle speeches or orders of the day (for bills), which are dealt with at different times under the standing orders).¹⁸

In addition to the re-ordering procedure, the House is able to accord precedence to any general business notice of motion, or any other item of business, through the mechanism of suspending standing and sessional orders to provide that a particular motion or bill take precedence or be brought on forthwith.¹⁹

12.4 Formal Business

Prior to November 2005 provision was made for the Speaker to give the House the opportunity to deal with any notice or order as formal business.²⁰ Under this procedure the Speaker inquired whether there was any objection to each notice and each order of the day for the third reading of a bill on the business paper to be dealt with formally. Usually the Speaker grouped items, and the whips of each party would object. If no objection was taken by any member, the notice or order was deemed to be formal and the member having carriage of the matter could move the motion (in the case of a notice) immediately, or the Speaker would propose the question on an order and the question would then be decided without amendment or debate. It was usual for the order of the day for third readings of amended bills to be dealt with formally. However, this did not preclude the House from proceeding to a division on the question if a member called a vote. Certain business such as motions establishing a select or standing committee (except on a private bill) or for the adoption of a report of a committee could not be dealt with formally. The standing orders adopted in November 2006 have removed the procedure as it was considered that it was rarely used, unnecessary and sometimes delayed the bringing on of Question Time.

12.5 Business with Precedence

Under standing order 118, certain matters are accorded precedence of all other business. Business with precedence has a particular place in the routine of business (S.O. 97). At this time, unless otherwise provided for,²¹ the following types of business is accorded precedence:

1. Dissent from Speaker's ruling.
2. No confidence in the Government, Minister or Speaker
3. Censure of Member or Speaker.
4. Privilege/contempt.²²
5. Expulsion of a member.
6. Arrangement of business of the House.
7. Days and hours of sitting.
8. Disallowance of statutory rules.

¹⁸ Two motions for precedence agreed to - one an order of the day (for bills), the other for a general business notice of motion. Another member then sought to move that his motion also be accorded precedence. The Speaker ruled that as the House had already agreed to give precedence to one general business notice of motion, there was no opportunity available for the other motion to be given precedence: VP 07/03/2001, p. 1082; VP 28/03/2001, pp. 1116-7.

¹⁹ See for example, VP 19/09/2002, p. 452 where standing and sessional orders were suspended to provide for the consideration forthwith of a general business notice of motion regarding the retirement of the Acting Manager, Parliamentary Printing.

²⁰ See comments made by the Leader of the House PD 15/11/2005, p. 19677.

²¹ For example the standing orders provide that a motion of no confidence in the Government is to have precedence of all other business (S.O. 111) and that motions of censure and motions of no confidence in a Minister or the Speaker are to take the place of matters of public importance (S.O. 112, S.O. 113, S.O. 114, S.O. 115).

²² It has been held that a motion did not relate to privilege and therefore was not accorded precedence because the Speaker had determined that no prima facie case had been established. See Ruling of Deputy Speaker Punch, PD 26/09/1968, p. 1353.

9. Business accorded precedence by the House.²³
10. Votes of thanks or condolence.
11. Printing of papers.

This standing order ranks business accorded precedence in order from 1 to 11 to provide for the situation where one or more of these matters are to be considered on any one day.

12.5.1 Votes of Condolence

On 9 April 1966, the then Premier issued a memorandum containing guidelines as to how the government would prefer to deal with motions following the death of a member or former member as follows:

Death of a sitting member including Premier, Minister or Speaker	- Motion of sympathy to be moved, and House to adjourn as a mark of respect.
Death of former Premier, Minister or Speaker (no longer in Parliament)	- Motion of sympathy to be moved. No adjournment of the House. ²⁴
Death of former member who ceased to be a member not more than 15 years ago	- Motion of sympathy to be moved. No adjournment of the House. ²⁵
Death of former member who ceased to be a member more than 15 years ago	- Message of condolence to be adopted, without debate. Members to stand in silence as a mark of respect. Speaker to inform House that a message had been sent to the family on behalf of House and House stands as mark of respect. ²⁶

There is no provision in the standing orders for specific time limits to apply where members are speaking on condolence motions. Under S.O. 85 a time limit of 20 minutes applies for debates not otherwise provided for. By custom, however, members are not restricted in time when speaking on a condolence motion. The time in the day's business for a condolence motion is arranged between the party whip and the Leader of the House to facilitate attendance of the deceased member's family and friends.

The House may also adjourn as a mark of respect or extend condolences for people other than members or former members. For example, following the death of Diana, Princess of Wales the House adjourned as a mark of respect²⁷ and on occasions condolences are extended to the families of significant Australians, by way of ministerial statement, with the leaders of all parties speaking.²⁸ The Speaker has

²³ Standing order amended to read "Business accorded precedence", formerly "Motions accorded precedence", VP 25/09/1996, p. 432.

²⁴ VP 15/09/1998, p. 841; VP 08/04/1997, p. 712. However, the House has suspended standing orders to enable the House to adjourn as a mark of respect at the conclusion of a condolence motion for a former Deputy Premier. VP 26/09/2002, p. 492.

²⁵ VP 16/04/1996, p. 17.

²⁶ VP 31/03/1998, p. 419; VP 31/03/1998, p. 420. See also PD 13/12/1995, p. 4883 where member paid tribute to a former backbench member in a private member's statement as the customary practice precluded a motion of sympathy.

²⁷ VP 16/09/1997, p. 33.

²⁸ See for example PD 13/12/1995, p. 4887, on the death of Andrew Olle, ABC journalist; PD 05/09/2006, pp. 1379-80, on the death of Steve Irwin; and PD 19/09/2006, p. 1791, on the death of Peter Brock.

also left the Chair for a period of time as a mark of respect.²⁹ Copies of the *Hansard* of the debate on a condolence motion are forwarded to the bereaved by the Clerk.

12.6 Matters of Public Importance

A matter of public importance (MPI) is a vehicle for discussion of a matter, without the House having to make a final judgement by way of resolution. Consequently the matter for debate is usually framed as a very brief, general statement.

Under standing order 110, the Speaker is to determine, at least 30 minutes prior to Question Time, whether an issue a member wishes to raise through this avenue is a matter of sufficient public importance to take up the time of the House. The criteria the Speaker uses is whether the MPI procedure is the most appropriate vehicle to raise the issue, the timeliness of the issue, and, in choosing between matters, the make-up of the House. If more than one matter is submitted, the Speaker is required to make a determination as to which matter is of the greatest public importance. Under the standing order, the Speaker's decision in these matters cannot be challenged. Speaker's rulings provide that a member may raise their doubts as to whether a matter is one of public importance when the matter is announced in the House, but not once discussion on the matter has commenced.³⁰

Written notice of the matters submitted and the matter selected for discussion, is given to the Premier, the Leader of the Government, the Leader of the Opposition, the responsible Minister in the House, Independent members and members submitting matters. In addition, notices to all members are placed on notice boards at least 30 minutes prior to question time (S.O. 110(3)). It is interesting to note that a subject which has been raised as a matter of public importance can be debated more than once in the same session as no vote is taken, and thus the "previous question" rule does not apply.³¹

The discussion can take a maximum of 60 minutes, although this has been extended through the suspension of standing orders. If a motion accorded priority, formerly referred to as urgent motions, (S.O. 109) has been considered by the House at the same sitting, the discussion on the matter of public importance is truncated to 30 minutes. In situations where a truncated matter of public importance has been postponed until the next sitting day the time limits for the truncated debate continue to apply even if there is no longer any preceding motion accorded priority.³²

The standing orders of the House do not provide for a certain number of members to speak for or against any opposing propositions in a discussion. However, they do provide that up to 6 members (or 3 in cases where a truncated debate occurs) can speak and the Speaker has advised that the practice of the House in relation to MPIs is to call three members from the Government side and three members not

²⁹ VP 01/05/1996, p. 84 where the Speaker left the Chair for 35 minutes as a mark of respect for the 35 victims of the Port Arthur shootings.

³⁰ PD 22/09/1992, p. 6137, and pp. 6153-4.

³¹ A point of order was raised during the announcement of matters of public importance that the matter had already been previously debated and that it was prohibited under the standing orders. The Speaker advised that it is correct that the House cannot debate a motion which is the same in substance as any question already determined by the House but that a matter of public importance is not a motion and as no vote is taken and standing order 164 (now S.O. 154 "same question not to be put") did not apply. PD 13/11/2002, p. 6678.

³² A point of order was raised that an argument could be put forward for re-establishing the correct procedure of allowing five members to speak in the debate on the matter of public importance as the time constraint caused by the debate on the urgent motion no longer applied. The point of order was not upheld. PD 19/09/2001, p. 16827.

supporting the Government to speak to the motion.³³ However, it has become common practice for the House to agree to motions to enable additional members to speak in such debates.³⁴ Discussion of an MPI is interrupted at the time set down in the standing orders to allow the giving of general business notices of motions and private members' statements respectively (S.O. 108). Discussion on an MPI may resume later in the sitting, although on a rare number of occasions, by suspension of standing orders, resumption of discussion on an MPI has been set down for a future sitting.³⁵

12.7 Business taking the place of matters of public importance (no confidence and censure)

The following items of business take the place of matters of public importance:

- Motions of no confidence in a Minister³⁶
- Motions of no confidence in the Speaker;³⁷ and
- Motions of censure of a member or the Speaker.³⁸

Only one item of business taking the place of an MPI may be dealt with at any one sitting. In order to assure that business taking the place of an MPI is dealt with as expeditiously as possible, the House has developed the practice that orders of the day in relation to motions of censure and no confidence also have precedence over MPIs. (S.O. 112-115).³⁹

Notices of motions of no confidence are called on the day after the notice is given and notices for censure motions are called on the same day.⁴⁰ These items appear on the business paper under the category of "Business Taking the Place of Matters of Public Importance".

No confidence motions may not be postponed nor amended⁴¹ but they may be withdrawn.⁴² A motion of no confidence in a Minister or the Speaker may also incorporate other issues. For instance, on one occasion when a motion of no confidence was moved in a Minister for Transport the motion also called for the Auditor-General to review the terms and conditions of the M5 motorway contracts and report to the House by a specified time.⁴³

³³ On one occasion a member rose on a point of order claiming that an Independent member had spoken against the motion in addition to three other members and that as he was going to be the third speaker for the motion that he should be allowed to speak. The Speaker did not uphold the point of order and the call remained with the member first given the call. PD 07/05/1992, p. 3961

³⁴ VP 10/03/2004, p. 649; VP 19/10/2004, p. 1031; VP 18/06/2003, p. 182; VP 15/10/2003, p. 355.

³⁵ VP 05/04/2000, p. 363.

³⁶ VP 19/09/1995, pp. 203 and 208.

³⁷ A standing order dealing specifically with motions of no confidence in the Speaker was first adopted in 1996, such motions previously being dealt with under the provisions for no confidence in a Minister, VP 25/09/1996, pp. 441-2. A motion of no confidence in the Speaker was moved by the Opposition due to the House not sitting at the scheduled time the preceding day. The question was negatived on division VP 20/06/2001, pp. 1292-3 and PD 20/06/2001, pp. 14901-8.

³⁸ A new standing order dealing specifically with motions of censure of the Speaker was first adopted in 1996, such motions previously being dealt with under the provisions for censuring a member, VP 25/09/1996, p. 442.

³⁹ VP 30/10/1996, p. 543, PD 30/10/1996, pp. 5549-50.

⁴⁰ In 1992, a member moved that the Member for The Hills, Anthony Packard, attend in his place to respond to a notice of motion already given regarding his conduct. VP 30/04/1992, p. 275.

⁴¹ Prior to the adoption of the standing order relating to no confidence motions when such a motion was moved in the House it was permissible to make amendments to the motion. See for example, PD 22/11/1994 p. 5542 and pp. 5598-600.

⁴² Notice of motion of no confidence in Minister withdrawn on behalf of Leader of the Opposition, VP 08/04/1997, p. 732.

⁴³ PD 22/11/1994, p. 5542 and pp. 5598-5600.

The standing orders permit the closure to be moved on no confidence or censure motions after a certain number of members have spoken in the debate.⁴⁴ The debate on a no confidence motion may be adjourned, the order of the day for the adjourned debate taking the place in the routine for MPs. It is interesting to note that on 10 July 1888, a motion of no confidence was moved against the then Speaker, Mr Young, who saw fit to leave the Chair because the motion was personal to himself. On a point of order being taken that the standing orders did not permit his absence, he resumed the Chair and continued to occupy it during debate. The standing orders were subsequently amended to allow the Speaker to leave the Chair whenever he wished and to have the Chair occupied by the Deputy Speaker.⁴⁵

Motions of no confidence and censure against members supporting the Government are inevitably negated on party lines.⁴⁶ This includes motions of no confidence moved in relation to the Speaker.⁴⁷ However, on a number of occasions during the 50th Parliament, where a number of non-aligned Independent members in the Legislative Assembly held the balance of power, motions censuring the Premier were resolved in the affirmative.⁴⁸ During this period the Independent members had an agreement with the Liberal/Coalition Government whereby they agreed to vote with the Government on motions of no confidence except where matters of corruption or maladministration were involved, which reflected upon the conduct of the Government as a whole, in which case the Independent members retained the right to move a motion of no confidence.⁴⁹ Independents elected to Parliament in subsequent Parliaments seem to have continued this practice despite them not holding the balance of power.⁵⁰

The Speaker has ruled that a censure motion must use the word “censure” at the commencement of the motion otherwise it will not be considered to bring standing orders 114 and 115 into play. In 2001, a member sought leave to amend a notice of motion given that day to reorder paragraphs. In the original motion, the word “censure” did not appear at the commencement of the motion and the Speaker ruled that it was therefore not one of censure for the purposes of standing order 114. The Speaker also ruled that the proposed amendment to reorder the paragraphs would change the scope of the motion, in that it would not constitute a formal censure motion and therefore it was ruled out of order.⁵¹

In relation to the censure of the Speaker, precedents of the House indicate that any such motion of censure is required to be framed absolutely and specifically and

⁴⁴ See S.O. 112 and S.O. 113, which provide that the closure may be moved after 4 members have spoken to the motion of no confidence in a Minister or the Speaker, and S.O. 114 and S.O. 115 which provide that the closure can be moved on a motion censuring a member or the Speaker.

⁴⁵ See VP 06/12/1892, p. 219, where a new standing order allowing the Speaker to leave the Chair and for the Deputy to act in his place without formal communication to the House was adopted by the Legislative Assembly.

⁴⁶ See for example, VP 08/09/1999, pp. 41-3 and 45-6; VP 06/06/2000, pp. 552-3; VP 28/06/2001, p. 1363; VP 16/10/01, p. 1505; and VP 27/06/2002, p. 359.

⁴⁷ See VP 04/11/1953, pp. 123 – 125, where a vote of no confidence in Speaker Lamb for amongst other things displaying partiality in favour of Government members was negated on division. See for further examples, VP 26/02/1912, p. 216; VP 25/11/1912, p. 237; VP 05/09/1957, p. 33; VP 26/09/1962, p. 57.

⁴⁸ See PD 28/04/1992, pp. 2905-9 and PD 22/09/1994, pp. 3588 and 3627 where votes of censure in the Premier were supported by the Independent members.

⁴⁹ See the Memorandum of Understanding Between the Hon. N. F. Greiner MP, Premier for and on behalf of the Liberal/National Party Government (The Government) and Mr John Hatton MP, Ms Clover Moore MP and Dr Peter Macdonald MP (The Independent members), Item A.

⁵⁰ See for example, VP 27/06/2002, p. 359; where the Independent members voted with the Government on the motion of no confidence in the Minister for Transport and Minister for Roads which did not involve corruption or maladministration.

⁵¹ PD 28/02/2001, p. 12067 and VP 28/02/2001, 1057.

restricted to matters concerning the Speaker and not concern matters of which the Speaker had no official cognisance,⁵² or another matter such as a censure of the Government.⁵³ The actions of the Speaker cannot be criticised in debate or upon any form of proceeding except a substantive motion, such as a motion of censure or no confidence and, as noted by *May*, any reflection upon the character or action of the Speaker that is not part of a contribution to debate on a substantive motion may be punished as a breach of privilege.⁵⁴

12.8 No confidence in the Government

As confidence of the elected members of the Legislative Assembly in the Executive is the basis of the Executive's mandate to govern, a vote of no confidence in the Government is a most serious matter. Section 24B *Constitution Act 1902* provides that the Governor may dissolve the Assembly if:

- (a) a motion of no confidence in the Government is passed by the Legislative Assembly (being a motion of which not less than 3 clear days' notice has been given in the Legislative Assembly);⁵⁵ and
- (b) during the period commencing on the passage of the motion of no confidence and ending 8 clear days thereafter, the Legislative Assembly has not passed a motion of confidence in the then Government.

Section 24B also requires that, after a motion of no confidence is passed, the Legislative Assembly may not be prorogued before the end of that 8-day period and may not be adjourned for a period extending beyond that 8-day period, unless the motion of confidence has been passed.

In accordance with the provisions of the Constitution Act and the gravity of a motion of no confidence in the Government, standing order 111 provides that:

- If a motion is given under section 24B(2) of the Constitution Act, the motion takes precedence of all other business on the sitting day that is three clear days after notice is given (i.e., there must be at least three whole calendar days between the giving of notice and moving the motion);⁵⁶
- The motion may not be postponed nor amended, although it can be withdrawn with the leave of the House;
- The debate cannot be adjourned and certain motions closing debate (the previous question) or controlling the debate (That the member be now heard, or That the member be not further heard) cannot be moved;
- The closure ("That the question be now put") cannot be moved until at least 8 members have spoken;
- The sitting continues until the question is determined but the Speaker will leave the Chair at 10.30 p.m. each day and the sitting will resume at 10.00 a.m. on each successive business day until the question is determined; and

⁵² See ruling of Speaker Meagher, PD 06/10/1915, p. 2372.

⁵³ See ruling of Speaker Willis, VP 20/02/1912, p. 200; PD 20/02/1912, pp. 2957-8.

⁵⁴ See *May*, pp. 386-7 and 438-9.

⁵⁵ During the 51st Parliament, a motion of no confidence was brought on before three days had passed through a suspension of standing orders, VP 98/99/1998, pp. 827-30. If this motion had passed, it would not have fulfilled the conditions under s.24B by which the Governor could dissolve the Assembly, although the Governor may have had a discretion to dissolve the House under s.24B(5) *Constitution Act 1902* or to dismiss the Government under ss.35C(2) & 35E(2).

⁵⁶ The current standing orders provide for motions of no confidence to be moved that do not conform with the conditions set out in s. 24B of the Constitution Act. The need for this provision was identified when in 1998 the Leader of the Opposition gave notice of a motion of no confidence in the Government and the House then suspended standing orders to allow the motion to be moved on the same day. The issue arose as to whether a motion of no confidence moved within 3 days of the giving of notice is one which could give rise to the Governor's discretion under section 24B of the Act. VP 08/09/98, pp. 827-30.

- When the question is determined, the Speaker adjourns the House without a question being put until the next sitting day.⁵⁷

Rulings of previous Speakers have set the boundaries of debate for no confidence motions in the Government. For instance, Speaker Rozzoli ruled that such a debate included the possibility of attack on any member, who in the performance of the member's duties, contributed to the functions of government but that it did not extend to addressing matters which concerned actions allegedly taken by another member prior to them becoming a member of Parliament nor to attacking another member personally.⁵⁸

12.9 Motions Accorded Priority

A procedure for consideration of motions to be accorded priority (formerly called urgent motions) was first adopted in 1994 and provides that the Speaker call for notices of motions to be accorded priority prior to Question Time at each sitting (S.O. 109). When called upon, the member reads the notice aloud and then hands three written⁵⁹ copies to the Clerk. The Speaker has ruled that the oral version of the notice for a motion to be accorded priority must be the same as the written version.⁶⁰ In one instance the Speaker ruled that a motion not in accordance with the facts, was out of order and that a paragraph would need to be amended.⁶¹ Debate on the motion takes place at the conclusion of Question Time, so members have some time to prepare for the debate.

If two notices are received (the maximum allowable), members have five minutes each to argue why their motion should be accorded priority. The Speaker puts the question "that the motion of the Member for ... be accorded priority" in the order in which the notices were received.⁶² The total time allocated for debate on a motion accorded priority is 40 minutes.

Standing orders have been suspended to allow both motions proposed to be debated at the same sitting and for additional speakers to participate in the debate.⁶³ Standing and sessional orders have also been suspended to allow debate to be adjourned until a later hour, or the next day⁶⁴ and for a motion to be considered as a matter of public importance.⁶⁵ On one occasion a notice of motion was given which proposed that in view of the serious allegations made against him the Speaker vacate the Chair. The House voted on division for the notice to not proceed.⁶⁶

⁵⁷ Standing orders have been suspended to provide for different sitting times and the continuing of business after the question was determined. VP 08/09/1998, pp. 827-30.

⁵⁸ PD 01/07/1992, pp. 5206-8.

⁵⁹ The notice of motion for a motion accorded priority must be typed and signed by the member in accordance with the standing orders relating to notices of motion (S.O. 134-5).

⁶⁰ In the House, a Minister gave notice of a motion for urgent consideration which differed from the written version that had been lodged with the Clerk. The Speaker ruled it out of order as it was not in the proper form. VP 23/05/2000, 481.

⁶¹ VP 20/06/2000, 601.

⁶² The Standing Orders and Procedure Committee agreed that flexibility should be provided to members in explaining why their motion should proceed ahead of another member's motion, PD 18/09/1996, p. 4302; the issue for determination was priority, not urgency, and the member was entitled to make reference to points made by the other member to explain priority. PD 17/10/1996, p. 5040. The current standing orders adopted in November 2006 renamed the procedure to reflect this view and to make it clear that it is a motion that should be given priority.

⁶³ Both motions debated, VP 21/9/1999, p. 96; VP 26/10/1999, p. 160; VP 31/5/2000, p. 526; VP 04/04/2000, p. 344; VP 23/10/2002, p. 513; Both motions debated with additional speakers, one allowing unlimited speakers, VP 19/10/1999, p. 129; motion for urgent consideration on the collapse of Ansett allowed for an unlimited number of speakers VP 18/09/2001, 1456.

⁶⁴ VP 03/05/2000, p. 440.

⁶⁵ PD 01/03/2005, p. 14322.

⁶⁶ VP 31/10/2000, p. 810.

As with most motions, a motion accorded priority may be amended before it is voted upon by the House (see Chapter 16).⁶⁷ On one occasion, the closure was moved and agreed to in order to allow the consideration of a second separate amendment to the motion.⁶⁸

If the debate on a motion accorded priority is interrupted pursuant to standing or sessional orders, such as at 4.15 p.m. on Thursdays for the giving of general business general notices and private members' statements, the motion lapses. If a division has occurred on an amendment to the motion and the division concludes after 4.15 p.m. there is no provision for the House to then express a view on the original motion. On one occasion, after a division on an amendment concluded after 4.15 p.m. on a Thursday, the Speaker sought the concurrence of the House to put the question on the original motion but concurrence was not given.⁶⁹

12.10 Private members' statements

The standing orders (S.O. 108) make provision for private members' statements.

In summary:

- At 5.15 p.m. on Tuesday and Wednesday and at 4.15 p.m. on Thursday⁷⁰ the business before the House shall be interrupted for the giving of general business notices of motions and the taking of private members' statements.⁷¹
- After general business notices of motions have been given 16 private members are permitted to speak for up to five minutes each;⁷² Ministers, or parliamentary secretaries in accordance with standing order 366, may reply to each statement for up to two minutes.⁷³
- Divisions in progress when private members' statements are due to be called on are to be completed as are any proceedings under a "guillotine" that are in progress.
- A division on any question or call for a quorum cannot be made during private members' statements.
- Private members' statements may be taken between items of business, by leave, or until certain business is to be conducted as specified by the Minister then in charge of the House.

There are Speakers' rulings to the effect that:

- Matters of general concern may be raised, mostly pertaining to a member's electorate or local matters or matters of concern to a constituent.⁷⁴ However,

⁶⁷ PD 04/06/1998, p. 5824.

⁶⁸ PD 25/09/2002, p. 5395.

⁶⁹ PD 31/08/2006, p. 1315.

⁷⁰ Standing Order 98 provides that on Friday sittings private members' statements can be brought on after any government business has been dealt with, after which the House will adjourn without motion until the next sitting day. See for example PD 25/06/2004, p. 10218 where private members' statements began at 10.18 a.m. and the House adjourned at 12.26 p.m.

⁷¹ This procedure was first adopted as a sessional order in November 2005, VP 15/11/2005, pp. 1744-5.

⁷² Any additional members must seek the leave of the House to make a private member's statement.

⁷³ A Minister, or parliamentary secretary, may reply on behalf of another Minister, PD 16/04/1996, p. 39.

⁷⁴ PD 20/05/1998, p. 4946, PD 27/05/1998, p. 5320; the member intimated he was about to release a report and the Speaker ruled that such action would be outside the leave of private members' statements, PD 15/10/1998, p. 8475.

members generally are permitted to cover wider issues of public policy where a connection with the member's constituency is established.⁷⁵

- Attacks on other members are not permissible except by way of substantive motion.⁷⁶
- Statements reflecting on the character or conduct of persons outside the Parliament are inappropriate.⁷⁷
- Reflections on the judiciary are not permitted.⁷⁸
- Ministers should not use private members' statements to raise policy issues that fall within their portfolio responsibilities except when relevant in replying to matters raised by private members.⁷⁹
- Similarly, shadow ministers should not raise portfolio policy issues by way of an attack on the Minister under the guise of a private member's statement.⁸⁰
- Private members' statements should not be used to anticipate or continue debate on a matter in the Assembly or the Council, nor should they be used to debate legislation or comment on policy matters.⁸¹
- Members should make a statement rather than develop an argument.⁸²
- During the currency of the Address in Reply debate, the matter raised in a private member's statement must be a strictly local one or an urgent matter that cannot be expected to wait until the member has an opportunity to speak to the Address in Reply. The matter should also be one which it is highly unlikely that another member would raise during the Address in Reply.⁸³

12.11 Ministerial statements

Standing orders first adopted in 1994 make provision for Ministers to make statements both before and after Question Time and at other times by leave of the House (S.O. 103 and 104). The statements are not time limited and the Leader of the Opposition (or any member deputed) may respond for an equivalent length of time. On occasion, leave has been granted for an additional speaker to address the House (e.g. a third party leader).⁸⁴ Prior to this there were no clear rules governing the giving of ministerial statements in the House and such statements were "vague, imprecise and contain[ed] many anomalies".⁸⁵

Speakers' rulings on ministerial statements provide that they must relate to Government policy and that a Minister in making a ministerial statement may deal with matters of administration so long as they are related to the matter of policy being enunciated⁸⁶; and no debate is permitted in that the response must traverse only those matters raised by the Minister.⁸⁷ On one occasion a Minister gave a

⁷⁵ PD 09/11/1999, p. 2433; and see PD 14/09/1999, p. 410 where a Minister suggested a member should have notified a Minister to give him an opportunity to be present to respond when an item of general policy was raised; PD 04/09/2001, p. 16297. See also Speaker Murray's statement PD 04/09/2001, pp. 161297 and 161330.

⁷⁶ PD 04/09/2001, p. 16297.

⁷⁷ PD 02/05/1989, p. 7148; PD 06/05/1997, p. 833; PD 09/11/1999, p. 2433; PD 29/03/2001, p. 12939; PD 04/09/2001, p. 16297.

⁷⁸ PD 04/09/2001, p. 16297.

⁷⁹ PD 04/09/2001, p. 16297.

⁸⁰ PD 17/10/1996, p. 5000; PD 04/09/2001, p. 16297; PD 31/05/2000, p. 6288.

⁸¹ PD 04/09/2001, p. 16297.

⁸² PD 24/04/1996, p. 449.

⁸³ PD 23/08/1988, pp. 339-40.

⁸⁴ See for example, VP 04/04/2000, p. 322. This practice usually applies when a ministerial statement is used to express condolences.

⁸⁵ See comments of Speaker Ellis, PD 20/09/1972, p. 834.

⁸⁶ See ruling of Speaker Ellis, PD 08/11/1966, p. 2204.

⁸⁷ See rulings of Speaker Weaver, PD 11/04/1940, p. 7910; Speaker Maher, PD 15/02/1961, p. 2405; and Speaker Ellis, PD 03/11/1965, p. 1711.

personal explanation concerning a ministerial statement given by him and subsequent events.⁸⁸

12.12 Statutory rules and instruments

Part 6 of the *Interpretation Act 1987* provides for the making, tabling and disallowance of statutory rules and certain other instruments by either House of Parliament. The Act defines "statutory rule" as "(a) a regulation, by-law or ordinance that is made by the Governor or that is made by a person or body other than the Governor, but is required by law to be approved or confirmed by the Governor; or (b) a rule of court".

In addition to statutory rules, the tabling and disallowance procedures of Part 6 of the Act also apply to other statutory instruments by virtue of provisions of other Acts.⁸⁹ A full list of disallowable statutory rules and instruments is published by the Parliamentary Counsel's Office.⁹⁰

Notices of motion for disallowance of an instrument that does not fall within the ambit of an Act providing for the disallowance of that instrument have been ruled out of order.⁹¹

Section 40(1) of the *Interpretation Act 1987* provides that written notice of the making of a statutory rule shall be laid before each House of Parliament within 14 days after being published in the Gazette or, if not published in the Gazette, within 14 days after it is made.

The House has adopted the practice of the Clerk announcing in the House the receipt from Parliamentary Counsel of notices of the making of statutory instruments, as published in the Government Gazette. This satisfies the tabling provision in the *Interpretation Act 1987*. The tabling of other instruments that might be disallowable but are not gazetted remain the responsibility of Ministers and their agencies.⁹²

Section 41 provides that either House may pass a resolution to disallow a statutory rule at any time before the notice is laid before the House (after publication in the Gazette) or at any time after its tabling as long as notice is given within 15 sitting days after the tabling.⁹³ These 15 sitting days apply regardless of whether the Parliament is dissolved or has expired. For instance if a statutory rule is tabled on the last sitting day of a Parliament a member will have 14 sitting days in the next Parliament in which to move a motion to disallow the rule.

⁸⁸ PD 29/05/2001, p. 13821.

⁸⁹ See for example, *Crown Lands Act 1989* – notifications under section 84 (made by the Minister) of proposed revocations of dedication of land and *Ombudsman Act 1974* – proclamations under section 14 (made by the Governor) amending Schedule 1 in relation to any class or conduct of a public authority.

⁹⁰ See the *Automatic Parliamentary Tabling Scheme* available under the legislation guides section of the Parliamentary Counsel's website at <http://www.pco.nsw.gov.au/publications.htm>

⁹¹ See for example, PD 30/06/1992, p. 4862 where a notice of motion for disallowance of a notification given under section 18 of the *Fisheries and Oyster Farms Act 1935* ruled out of order on the grounds that it was not made by the Governor or required to be approved or confirmed by the Governor; and PD 18/11/1993, p. 5702 where the Speaker ruled a motion to disallow a Supreme Court Practice Note out of order as it was not subject to the scrutiny of Parliament.

⁹² See for examples, VP 29/06/1999, p. 202 where the Leader of the House tabled variations to the Shareholders' Agreement pursuant to the *National Rail Corporation (Agreement) Act 1991*; VP 19/10/1999, p. 124 where the Minister tabled a notice of proposed amended terms and conditions of Sydney Water's Operating Licence pursuant to the *Sydney Water Act 1994*; and VP 26/10/1999, p. 158 where the Minister tabled proposed revocations of dedications of Crown land pursuant to the *Crown Lands Act 1989*.

⁹³ House agreed to postpone consideration of a disallowance motion. VP 20/10/98, pp. 958 and 959

Standing order 116 sets out the procedure for disallowance and standing order 118 accords it priority of other business. Prior to 1994 any motion to disallow regulations lapsed if it was not moved on the day it had been accorded precedence. However, despite this, on one occasion it was ruled that if there had been no opportunity to move a disallowance motion it does not lapse and is accorded precedence until moved.⁹⁴ This is the practice currently followed by the Legislative Assembly today.

Under the current standing orders, the Speaker may put the question when debate has exceeded 30 minutes (S.O. 85). Members, and the mover in reply, may speak for up to 10 minutes each. However, the Speaker can use discretion to alter the speaking time of members.⁹⁵

Section 41(6) of the Interpretation Act, provides that the House may disallow part of a statutory rule. However, there is no provision or power for the House to amend a statutory rule by adding words or provisions. Under s. 41(4) the effect of a successful disallowance motion is to restore or revive the pre-existing scheme. Furthermore, under s. 8 of the *Subordinate Legislation Act 1989*, a statutory rule the same in substance as one disallowed cannot be published in the Gazette within four months after the date of disallowance, unless the disallowance resolution has been rescinded.

In sitting periods the Legislative Assembly Procedure Office produces a weekly Statutory Rules and Instruments Paper which shows all the regulations which are subject to disallowance, their Government Gazette reference and the time period within which a motion for disallowance may be moved. Out of sitting periods, this paper is published monthly (S.O. 32).

12.12.1 The effect of sittings extending over more than one day on disallowance motions

Section 18 of the *Interpretation Act 1987* defines a reference to a sitting day, in relation to a House of Parliament, as "a day on which the House actually sits" and a reference to a number of sitting days as "a reference to that number of sitting days, regardless of whether those days occur within the same or within different sessions of Parliament". This includes sitting days within different Parliaments.

Notwithstanding the definition in the *Interpretation Act 1987* it is the practice of the House to consider a sitting as the period between the opening of the House by the Speaker and its adjournment pursuant to a motion or order of the House. A sitting that continues after midnight is therefore only one sitting day. Similarly a sitting that is suspended by the Speaker leaving the Chair and resumed on a later day or days is considered to be one sitting day.

It would be an abrogation of the rights of the House and its members to consider each calendar day that the House meets following the suspension and resumption of a single sitting, a separate sitting day for the purposes of, for example, notices of

⁹⁴ See ruling of Speaker Cameron, PD 01/10/1975, p. 1318.

⁹⁵ During debate on a motion to disallow a regulation (for which 1 hour was normally allocated – now 30 minutes), a member sought the call when debate had been under way for 45 minutes. The Deputy Speaker reminded the member that the mover of the motion may wish to speak in reply before the conclusion of debate. Another member sought the call and the Deputy Speaker warned the member that, if he spoke, there would be no opportunity for the mover to speak in reply, unless the Chair exercised his discretion. The Deputy Speaker limited the member's speaking time to five minutes. PD 24/10/2001, p. 17934

motions for the disallowance of statutory instruments which are required to be given within 15 sitting days of the tabling of the instrument. Members are required by standing order 97 to give notices of motions in accordance with the routine of business. Notices of motions for disallowance, which is business accorded precedence, are to be given prior to Question Time at 2.15 p.m. each sitting day. On the resumption of a suspended sitting the business of the House is resumed at the point where the sitting was suspended and members do not get a further opportunity to give notices of motions.

12.12.2 Other documents that may be laid upon the Table pursuant to legislation

Provision is made in various pieces of legislation for certain documents to be tabled in the House. For example, section 19 of the *Forestry Act 1916* provides that the Governor may lay upon the Table of each House proposed revocations or alterations of dedications under the Act and, if both Houses resolve that the proposals should be carried out, the Governor may Gazette the proposals. When the House has wished to amend such a proposal, it has sent a message to the Governor requesting that he or she submit an amended proposal for approval.⁹⁶

In some instances statutory provisions specifically require documents to be tabled. For example, variations to the Shareholders' Agreement must be tabled pursuant to section 8(2) and 8(4) of the *National Rail Corporation (Agreement) Act 1991*. The Act provides that amendments to the agreement must be tabled in each State Parliament party to the agreement and the Commonwealth Parliament within 15 sittings days. Amendments to the agreement are subject to disallowance in any Parliament within 15 sitting days of being tabled.⁹⁷

⁹⁶ VP 18/06/1996, p. 280; VP 20/06/1996, p. 314-5; VP 27/06/1996, p. 333.

⁹⁷ VP 29/06/1999, p. 202.