

## **INQUIRY INTO RULES FOR NOTICES OF MOTIONS**

**Organisation:** House of Representatives

**Name:** Hon Tony Smith

**Date received:** 10 February 2017

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**THE HON TONY SMITH MP**  
**Speaker of the House of Representatives**

9 February 2017

Mr David Blunt  
Clerk of the Parliaments and  
Clerk of the New South Wales Legislative Council  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Mr Blunt

**PROCEDURE COMMITTEE INQUIRY INTO THE RULES FOR NOTICES OF MOTION**

Then President Harwin wrote to me on 24 November 2016 and invited me to provide a submission to the Procedure Committee's inquiry into the rules for notices of motion. As I understand the Council has still to elect a new President, I am addressing my submission to you and ask that you pass it on to the Procedure Committee.

I appreciate the opportunity to provide some information regarding the arrangements for notices of motion in the Australian House of Representatives<sup>1</sup> and the background to them.

The broad issues described as faced by the Legislative Council regarding increases in the volume and length of notices are similar to those faced by the House of Representatives in the late 1970s and early 1980s. The House sought to address these issues by introducing sessional orders which discontinued the provision for giving notices openly (orally).

The paragraphs that follow provide some relevant history and background regarding the House's procedures for notices of motion. I have also outlined some of the other opportunities available to private Members to raise matters of concern to them in the House.

**Previous provision for giving notice openly**

Under the practice which applied in the House of Representatives prior to February 1985, notices of motion could be given openly (orally) when called on. The standing orders of the House provided for the Speaker to amend notices containing unbecoming expressions or offending against any standing order before they appeared on the Notice Paper, otherwise the standing orders were not prescriptive as to the content of notices. The Chair therefore relied on the practice of the House in ensuring notices were given in an appropriate form. Despite repeated interventions from the Chair and a number of rulings from successive Speakers, the procedure was continually abused in that notices often were inordinately and unnecessarily long and contained debating points or introduced argument.<sup>2</sup>

<sup>1</sup> Attachment A to this letter comprises relevant standing orders. Attachment B comprises the current order of business for the House and Attachment C the current indicative order of business for the Federation Chamber.

<sup>2</sup> See statement by Speaker Snedden, *House of Representatives Debates*, 4 May 1977, p. 1510 (available via [http://www.aph.gov.au/Parliamentary\\_Business/Hansard/Hansreps\\_2011](http://www.aph.gov.au/Parliamentary_Business/Hansard/Hansreps_2011))

The House Procedure Committee noted that private Members had expressed frustration at the limited opportunities they had to speak on matters and that this had led to notices of motion often being given for their immediate publicity.<sup>3</sup>

In the early 1980s, the House of Representatives encountered a significant increase in the volume of notices of motion. Whereas the number of oral notices given in 1980 was 167 (an average of 3.3 per sitting day), by 1984 this had risen to 633 (an average of 12.2 per sitting day). Further, the Procedure Committee reported that notices given were 'frequently without substance', and that their volume and length were affecting the production cost of the Notice Paper.<sup>4</sup>

On 25 February 1985 the House adopted sessional orders which altered the procedure for giving notices of motion and notices of intention to present bills by removing the provision enabling Members to state the terms to the House. The sessional orders did not affect the right of Members to give notice in writing. In recognition of the fact that the opportunity to give notices orally was being removed, the Government extended the adjournment debate from 30 minutes to 45 minutes to provide additional opportunities for Members to raise matters of concern to them.<sup>5</sup>

Following these changes, the House Procedure Committee resolved to examine alternative opportunities for Members to concisely address the House. In its May 1985 report, the Committee recommended the adoption of a new standing order to enable a 15 minute period of Members' 90 second statements.<sup>6</sup> After initially failing to attract the support of the Government, the recommendation was eventually implemented when new sessional orders were adopted with effect from 15 March 1988.<sup>7</sup>

The sessional orders which took effect from 15 March 1988 also restored the opportunity for Members to give a notice of motion openly by stating its terms to the House during the 15 minute period for Members' 90 second statements, and delivering a fair copy of its terms to the Clerk at the Table.<sup>8</sup> Very little use was made of this provision, which was eventually discontinued in 2008 when the relevant standing order was amended.

#### **Current provision for giving notice**

Currently a notice of motion must be given by a Member delivering a copy of its terms to the Clerk at the Table.<sup>9</sup> The notice must be signed by the Member, and a seconder in the case of a private Member, and may specify the day proposed for moving the motion (which may be the next day of sitting or any other suitable day). There is therefore no provision for giving notices openly, whether for Ministers or private Members. The first knowledge that other Members have of a notice, in the ordinary course, is when they see it on the Notice Paper.<sup>10</sup> An important exception to this is that a notice which expresses a censure of, or want of confidence in, the Government, or a censure of any Member, must be reported to the House by the Clerk at the first convenient opportunity (SO 106(c)). In practice, the Clerk reads the terms of the notice at the next convenient opportunity.<sup>11</sup>

<sup>3</sup> House of Representatives Standing Committee on Procedure, First Report, *Alternative opportunities for Members to concisely address the House*, 13 May 1985, p. 4 (available via [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=report\\_register/bycomlist.asp?id=948](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=948))

<sup>4</sup> House of Representatives Standing Committee on Procedure, First Report, *Alternative opportunities for Members to concisely address the House*, 13 May 1985, p. 4.

<sup>5</sup> House of Representatives Votes and Proceedings, No. 3 - 25 February 1985, p. 34.

<sup>6</sup> House of Representatives Standing Committee on Procedure, First Report, *Alternative opportunities for Members to concisely address the House*, 13 May 1985, pp. 8.

<sup>7</sup> House of Representatives Votes and Proceedings, No. 33 - 9 December 1987, p. 301.

<sup>8</sup> A. R. Browning, *House of Representatives Practice*, 2<sup>nd</sup> edn, 1989, p. 321.

<sup>9</sup> Standing order 106. A general discussion of motions is contained in Chapter 9 of *House of Representatives Practice*, 6 ed. 2012, p. 289. General arrangements for private Members are discussed in Chapter 16, beginning p. 574.

<sup>10</sup> Once received by the Clerk, copies of notices are also kept in a folder at the Table where they can be viewed by any Member.

<sup>11</sup> See *House of Representatives Debates*, 22 May 2012, p. 5073.

### **Private Members' motions**

Private Members' motions are moved and debated during the periods on Mondays in the House and Federation Chamber reserved for private Members' and committee business.

The House Selection Committee meets each week to make determinations regarding committee, delegation and private Members' business for the Monday sitting of the next week. The Committee's determinations cover the selection of notices and allocation of time for those notices lodged by private Members and private Members' orders of the day (adjourned debates on motions moved earlier), and committee and delegation business, to be debated on the Monday of the next sitting week.<sup>12</sup>

Individual time limits for each Member speaking are also determined (usually 5 or 10 minutes for each speaker). Determinations are reported to the House in time for them to be included in Thursday's Notice Paper. Items not selected for debate on the following eight sitting Mondays are removed from the Notice Paper.

Determinations showing the items selected for debate and the times allocated, are printed in Hansard and published in the Notice Paper. In choosing items for debate, guidelines are observed which are intended to ensure that individual Members have a fair chance of having matters debated and that the nature of the subject, for example, its importance and topicality, and the extent to which it comes within the responsibility of the Commonwealth Parliament, are considered.

For motions selected for debate, when the notice is called on by the Clerk, the Member who is to move the motion usually states 'I move the motion relating to ... in the terms in which it appears on the Notice Paper'. It is open to the Member to read out the full terms of the motion, however as the time spent reading the terms of the motion reduces the time available to the Member to speak in support of it, Members usually opt not to read out the full terms. (I should also note that there is a discernible trend in recent years for some unnecessarily lengthy motions to be moved rather than the preferred concise terms of a proposal for debate and determination.)

Debate on a private Member's motion is adjourned and made an order of the day for a subsequent private Members' Monday (and subject to the Selection Committee's determination). Orders of the day not selected for further debate are removed from the Notice Paper after eight sitting Mondays.

### **Other opportunities for private Members to raise matters in the House**

Mr Harwin's letter also noted the limited opportunities available to members of the Legislative Council to have matters which they believe to be of community, national or international importance placed on the parliamentary record. The current order of business for the House and Federation Chamber provides four mechanisms for private Members to raise matters of concern to them:

*Members' 90 second statements* - A 30 minute period of Members' statements takes place immediately before Question Time in the House each sitting day at 1.30 pm. In the Federation Chamber, a 45 minute period of Members' statements takes place at 4 pm on Mondays. (SO 43)

*Constituency statements* - At the start of every meeting of the Federation Chamber a 30 minute period is allocated for Members to make 3 minute constituency statements. (SO 193)

*Grievance debate* - A grievance debate is scheduled to commence at 6.30 pm on Tuesdays in the Federation Chamber and lasts for 1 hour. (SO 192B)

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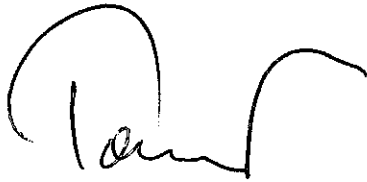
<sup>12</sup> The Committee's role is established in standing order 222—available at Attachment A.

*Adjournment debate* - An adjournment debate is scheduled at the end of every sitting of the House. Half an hour is provided on Mondays, Tuesdays and Wednesdays starting at 7.30 pm, and half an hour on Thursdays (4.30 pm). An adjournment debate also takes place in the Federation Chamber. These are generally for a half-hour on Thursdays, starting at 12.30 pm, or on earlier completion of business. (SOs 31 and 191)

In a normal sitting week these mechanisms provide 186 separate opportunities for private members to raise matters in the House. At times, the period for constituency statements and the adjournment debate in the Federation Chamber can be extended, providing even more opportunities.

I wish the Committee well in its inquiry and would be happy to provide further information if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Smith', with a large, stylized initial 'T' and a long, sweeping horizontal stroke.

**THE HON TONY SMITH MP**

Speaker of the House of Representatives

## **Attachment A – Relevant standing orders of the House of Representatives**

### **Notices of motion**

#### **106 Giving notice**

- (a) A Member giving a notice of motion must deliver it in writing to the Clerk at the Table.
- (b) The notice may specify the day proposed for moving the motion and must be signed by the Member and a seconder.
- (c) A notice of motion which expresses censure of or no confidence in the Government, or a censure of any Member, must be reported to the House by the Clerk at the first convenient opportunity.

#### **107 Notice given for an absent Member**

A Member may give a notice of motion on behalf of, and at the request of, another Member who is absent. The notice must show both the absent Member's name and the signature of the Member acting for him or her.

#### **108 Order of notices**

The Clerk shall enter notices on the Notice Paper in the order in which they are received, and before orders of the day. *Standing orders 41 (private Members' business), 42 (removal of business), 45 (order of government business), 113 (motion not moved) and 222 (Selection Committee)* also apply to the order of notices. A notice of motion becomes effective only when it appears on the Notice Paper.

#### **109 Speaker amends notice**

If a notice:

- (a) contains inappropriate language or does not conform with the standing orders, the Speaker must amend the notice; or
- (b) contains matters which are not relevant to each other, the Speaker may divide the notice.

#### **110 Member may change notice**

A Member who has given a notice of motion may:

- (a) change the terms of the notice by notifying the Clerk in writing in time for the change to be published on the Notice Paper before the motion is called on;
- (b) change the day proposed for moving the motion to a later day by notifying the Clerk in writing before the motion is called on; or
- (c) withdraw the notice by notifying the Clerk in writing before the motion is called on.

### **Private Members' business**

#### **41 Private Members' business**

- (a) In the periods set for committee and delegation business and private Members' business under *standing orders 34 and 192*, private Members' notices and orders of the day shall be considered in the order shown on the Notice Paper. When the time set by *standing orders 34 or 192* or determined by the Selection Committee ends, the Speaker shall interrupt proceedings and the matter shall be listed on the Notice Paper for the next sitting.

##### ***Private Members' bills – priority***

- (b) The Selection Committee, in making determinations:

- (i) shall give priority to private Members' notices of intention to present bills over other notices and orders of the day; and
- (ii) shall set the order in which the bills are to be presented.

***First and second reading***

(c) Subject to this standing order, the first and second reading shall proceed in accordance with *standing orders 141 and 142*. The Member who has presented the bill may speak to the second reading for no longer than 10 minutes at the time of presentation and 5 minutes on resumption of the debate. The Selection Committee may determine times for consideration of the remainder of the second reading debate.

***Priority following second reading***

(d) If the motion for the second reading is agreed to by the House, further consideration of the bill shall be accorded priority over other private Members' business and the Selection Committee may determine times for consideration of the remaining stages.

***Alternation of notices***

(e) Subject to paragraph (b)(i), the Selection Committee shall provide for the consideration of private Members' notices to alternate between those of government and non-government Members.

***Participation of Speaker and Deputy Speaker***

(f) The Speaker and Deputy Speaker may participate in private Members' business.

## **42 Removal of business**

The Clerk shall remove from the Notice Paper items of private Members' business and orders of the day relating to committee and delegation reports which have not been called on for eight consecutive sitting Mondays.

## **43 Members' statements**

(a) In the House at 1.30 pm on Mondays, Tuesdays, Wednesdays and Thursdays, the Speaker shall interrupt business and call on statements by Members. The period allowed for these statements may extend until 2 pm.

(b) In the Federation Chamber at 4 pm on Mondays, the Deputy Speaker shall interrupt business and call on statements by Members. The period allowed for these statements may extend until 4.45 pm.

(c) During these periods, when called on by the Chair, a Member, but not a Minister (or Parliamentary Secretary\*), may make a statement for no longer than 90 seconds.

# **Adjournment**

## **31 Automatic adjournment of the House**

(a) At the time set for the adjournment to be proposed in *standing order 29, column 3 (set meeting and adjournment times)* the Speaker shall propose the question –

***That the House do now adjourn.***

This question shall be open to debate and no amendment may be moved.

(b) If this question is before the House at the time set for adjournment in *standing order 29, column 4 (set meeting and adjournment times)*, or if the debate concludes prior to this time, the Speaker shall immediately adjourn the House until the time of its next meeting.

(c) The following qualifications apply:

***Division is completed***

- (i) If there is a division at the time set for the adjournment to be proposed in *standing order 31(a)*, that division, and any consequent division, shall be completed.

\* Including Assistant Ministers who are Parliamentary Secretaries

***Minister may require question to be put immediately***

- (ii) If a Minister requires the question to be put immediately it is proposed under paragraph (a), the Speaker must put the question immediately and without debate.

***Only a Minister may move closure of question***

- (iii) Notwithstanding the provisions of *standing order 81*, only a Minister may move during the adjournment debate —

***That the question be now put.***

The question must be put immediately and resolved without amendment or debate.

***Minister may extend debate***

- (iv) Before the Speaker adjourns the House under paragraph (b), a Minister may ask for the debate to be extended by 10 minutes to enable Ministers to speak in reply to matters raised during the debate. After 10 minutes, or if debate concludes earlier, the Speaker shall immediately adjourn the House until the time set for its next meeting.

***Question negatived***

- (v) If the question is negatived, the House shall resume proceedings from the point of interruption.

***Unfinished business***

- (vi) If the business being debated is not disposed of when the adjournment of the House is proposed, the business shall be listed on the Notice Paper for the next sitting.

## **Suspension and adjournment of Federation Chamber**

### **191 Adjournment debate in Federation Chamber**

- (a) The question ***That the Federation Chamber do now adjourn*** may be debated, but no amendment may be moved to the question.
- (b) The following qualifications apply:

***Member may require question to be put***

- (i) If a Member requires the question for adjournment to be put immediately it is proposed, the Deputy Speaker must put the question immediately and without debate.

***Minister may extend debate***

- (ii) At the conclusion of the debate a Minister may ask for the debate to be extended by 10 minutes to enable Ministers to speak in reply to matters raised in the debate. After 10 minutes, or if debate concludes earlier, the Deputy Speaker shall immediately adjourn the Federation Chamber.

***Unfinished business***

- (iii) If the business being discussed is not disposed of when adjournment is proposed, the business shall be listed on the Notice Paper for the next sitting.

## **Federation Chamber business**

### **192 Federation Chamber's indicative order of business**

The normal order of business of the Federation Chamber is set out in figure 4.

#### **192B Grievance debate**

- (a) The order of the day for the grievance debate stands referred to the Federation Chamber and shall be taken as the final item of business each Tuesday.
- (b) After the Deputy Speaker proposes the question —  
***That grievances be noted—***

any Member may address the Federation Chamber or move any amendment to the question. When debate is interrupted after one hour or if it concludes earlier, the Deputy Speaker shall adjourn the debate on the motion, and the resumption of the debate shall be made an order of the day for the next sitting.

### **193 Members' three minute constituency statements**

The first item of business on any day that the Federation Chamber meets shall be constituency statements by Members. The Deputy Speaker may call a Member to make a constituency statement for no longer than three minutes. The period for Members' constituency statements may continue for 30 minutes, irrespective of suspensions for divisions in the House.

## **Standing committees**

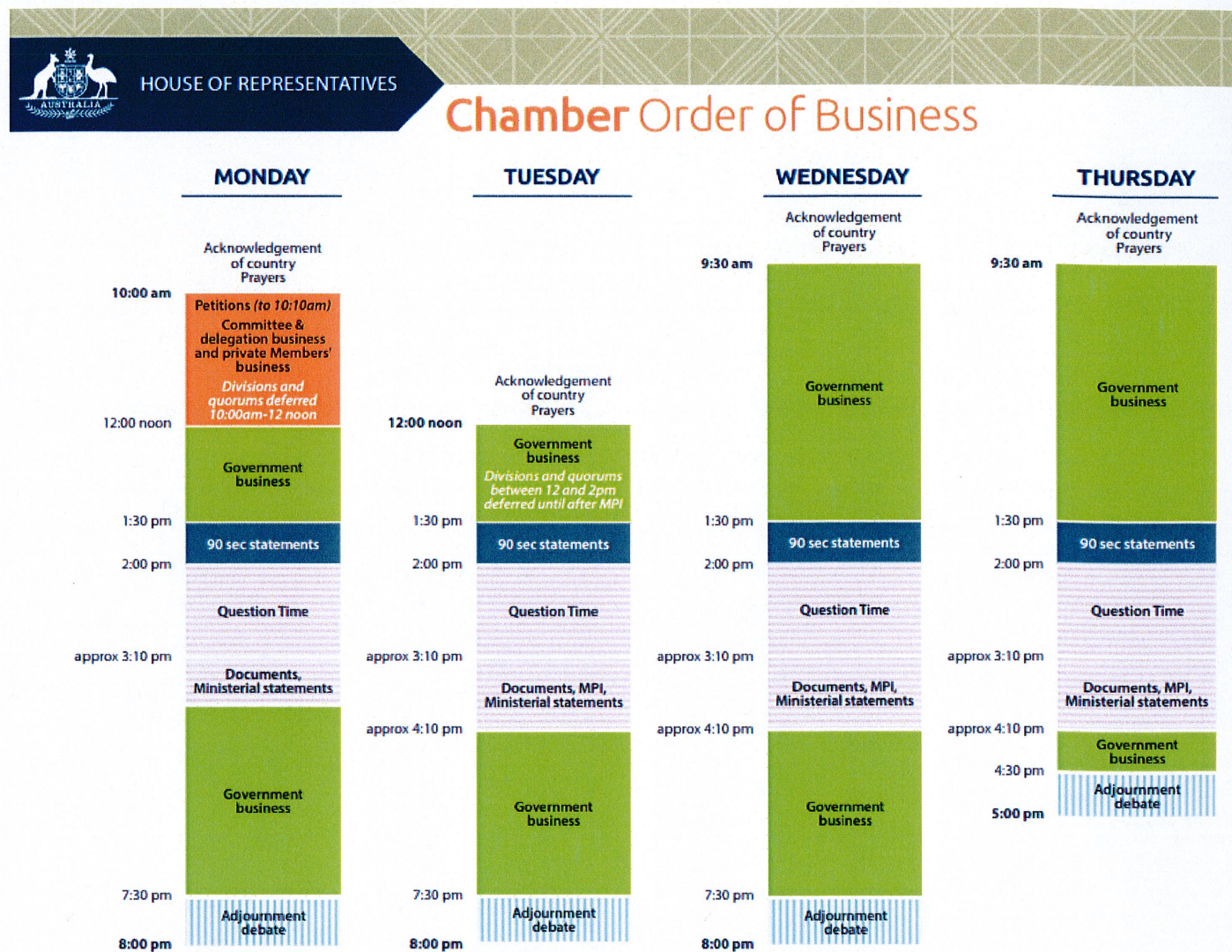
### **222 Selection Committee**

- (a) A Selection Committee shall be appointed to:
  - (i) arrange the timetable and order of committee and delegation business and private Members' business for each sitting Monday in accordance with *standing orders 39 to 41*;
  - (ii) select private Members' notices and other items of private Members' and committee and delegation business for referral to the Federation Chamber, or for return to the House; and
  - (iii) select bills that the committee regards as controversial or as requiring further consultation or debate for referral to the relevant standing or joint committee in accordance with *standing order 143*.
- (b) The committee shall consist of eleven members: the Speaker, or in the absence of the Speaker the Deputy Speaker, the Chief Government Whip or his or her nominee, the Chief Opposition Whip or his or her nominee, the Third Party Whip or his or her nominee, four government Members, and three non-government Members. The Speaker shall be the Chair of the committee. A quorum shall be three members of the committee.
- (c) For committee and delegation business and private Members' business, the committee may determine the order of consideration of the matters, and the times allotted for debate on each item and for each Member speaking.
- (d) In relation to committee and delegation business and private Members' business the committee must report its determinations to the House in time for its decisions to be published on the Notice Paper of the sitting Thursday before the Monday being considered. In relation to bills the committee must report its determinations as soon as practical in respect of each bill or each group of bills.
- (e) Reports of the committee under paragraph (d) shall be treated as having been adopted when they are presented. Reports shall be published in Hansard.
- (f) A referral by determination of the Selection Committee pursuant to paragraph (a)(ii) or (a)(iii), once the determination has been reported to the House, is deemed to be a referral by the House.

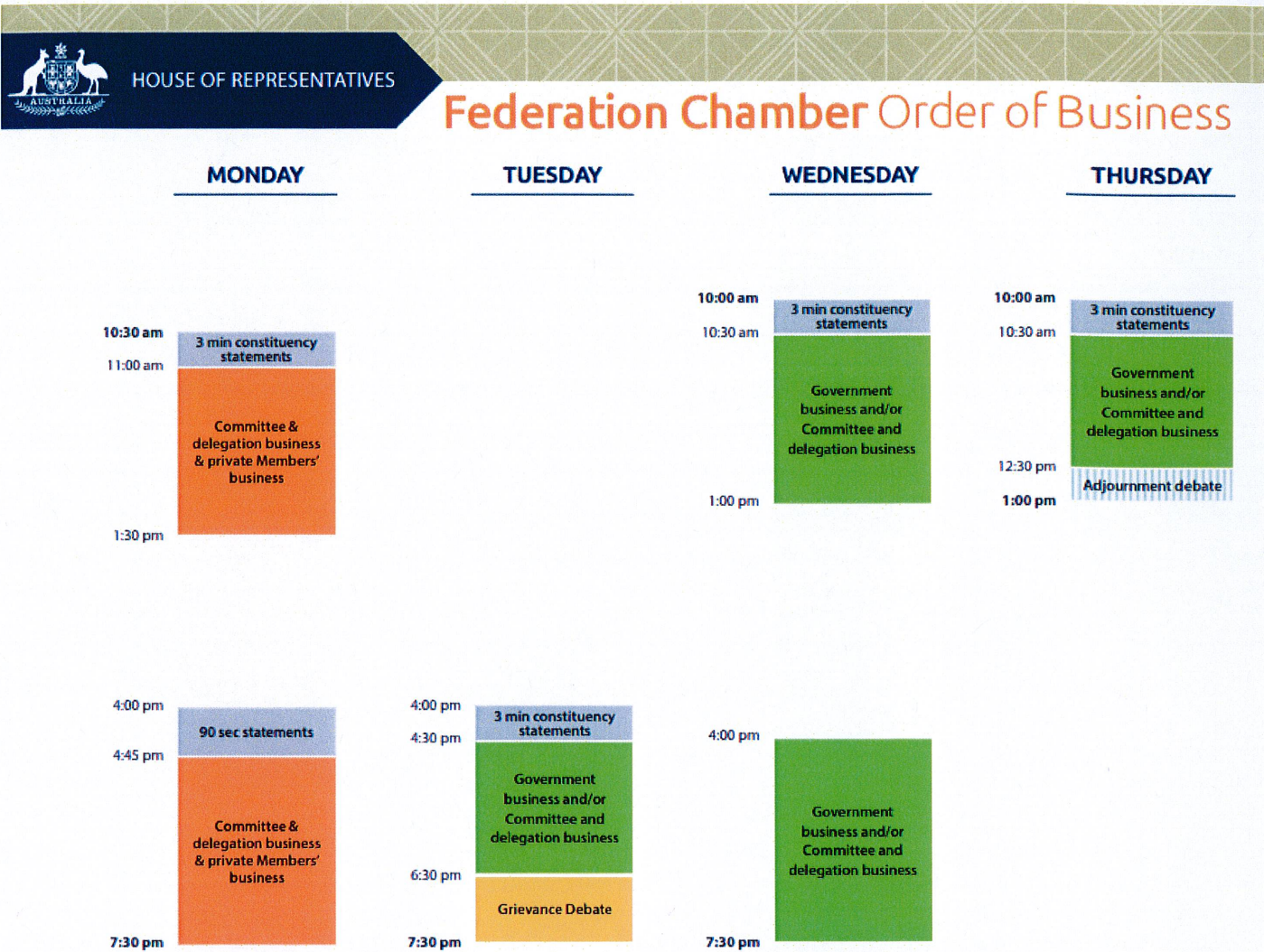
(House of Representatives Standing Orders are available online at:

[http://www.aph.gov.au/About Parliament/House of Representatives/Powers practice and procedure/House of Representatives Standing Orders](http://www.aph.gov.au/About%20Parliament/House%20of%20Representatives/Powers%20practice%20and%20procedure/House%20of%20Representatives%20Standing%20Orders))

## Attachment B – House of Representatives order of business



Attachment C – Federation Chamber indicative order of business



The meeting times of the Federation Chamber are fixed by the Deputy Speaker and are subject to change. Times shown for the start and finish of items of business are approximate. Adjournment debates can occur on days other than Thursdays by agreement between the Whips.