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Contemporary Challenges to Liberal Democracies

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THE ROLE OF PRIVATE MEMBERS' BILLS

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1 INTRODUCTION

The intention of this paper is to determine the role of Private Members' Bills (PMBs) in a liberal democracy such as Australia. In particular, it will be considered whether they contribute to the representative and participatory aspects of our democratic system of government.

The term 'Private Member' is a fairly imprecise term. It generally refers to a back-bencher (but sometimes a Minister) acting in their individual capacity rather than as a Member of the Government or Opposition.¹ Thus, a PMB is a Bill introduced by a Member acting in his or her own individual capacity.

The number of PMBs to pass all stages of Parliament and receive Royal assent has always been quite small, compared to Government Bills. A feature of the Australian system of democratic government has been the emergence of a few strong political parties and the diminishing accountability of the Executive to the Parliament. This has enabled the governing party of the day to dominate Parliament, not just in terms of numbers to ensure that the Executive can secure finance, but also in the control of the procedural agenda. The scope for Private Members to introduce legislation in modern Westminster legislatures is effectively limited by precedence given to Government business and the reality of numbers in the House, but Parliamentary practice has generally provided some opportunity for Private Members to introduce Bills.²

While Governments may dominate the agenda and the legislation introduced into it, the opportunity for debate on legislation and the raising of important constituent issues by all Members may be seen as examples of 'representative' and 'participatory' democracy at work. It provides a means where the community, through their elected representatives – Members of Parliament whether in the Government or not – is able to have concerns raised. This is also, it may be argued, an aspect of a liberal democracy in which all people have the ability to participate in politics.³

To evaluate the role PMBs have in upholding representative democracy and the importance of the institution of Parliament, this paper provides some Queensland case studies and makes some comparisons between jurisdictions regarding the numbers of PMBs introduced and passed into law in lower houses over the past decade.⁴ Some observations will be made to indicate the significance of certain statistical trends. The paper will focus on some examples of PMBs that have received Royal assent and those which did not. The view that will prevail throughout this paper is that all

¹ Corcoran R, *Collins Australian Dictionary of Political Terms*, 1994.

² Queensland Electoral and Administrative Review Commission, 'Review of the Office of the Parliamentary Counsel', *Issues Paper No 7*, September 1990, p 29.

³ Emy H V, Hughes O E, *Australian Politics: Realities in Conflict* (2nd ed), 1991, Melbourne, pp 258-259.

⁴ I have relied heavily on information and statistics provided to me by staff of the Tables Offices of state, territory and federal Parliaments. I am grateful to those persons for their assistance.

PMBs have an important part to play in Australia's parliamentary processes, whether they achieve Royal assent or not. Thus, comments will be made about the ways in which those PMBs play a valuable part in enabling all Members of Parliament to participate in policy-making and the legislative process.⁵

So, what value, if any, do PMBs have in the Australian system of Government?

1.1 VALUE OF PRIVATE MEMBERS' BILLS

A number of commentators have suggested that while few PMBs have entered the statute books, the significance of PMBs cannot be measured merely in terms of the number passed. Unsuccessful proposals have their value.⁶

Many constituents vote for a representative who may not become a Minister or even a Government Member. Unless there is opportunity for such a Member to introduce legislation and have it debated, such constituents may feel that their best interests are not being served and, ultimately, the democratic process is being undermined.⁷ Some Parliaments, such as the Queensland Legislative Assembly have responded to this 'participatory'/'representative' view of democracy by adopting procedures that facilitate the introduction and finalisation of the debate of PMBs.

The activities of Private Members in organising sufficient support for its legislation and the negotiation of procedural rules to enable its debate have produced the comment that PMBs are 'an expression of the pure function of the Legislature'.⁸ An example of where procedural rules have been developed to facilitate the debate of PMBs is, as will be seen later, the undertaking to enhance the role of PMBs provided to an Independent Member in Queensland by a minority Government reliant upon his support.

There are many issues dealt with in PMBs that Governments are opposed to and might never have proposed. While such Bills will inevitably fail, the issue will at least be raised and, occasionally, debated.

Sometimes the debate itself on a PMB may be educative by raising topics or, even incidental matters, that enhance public awareness. A Queensland example, to be discussed later, was the

⁵ Note that the paper will not consider the Senate in conformity with the writer's decision to limit the discussion to lower houses of Parliament.

⁶ Eg Miers D R & Page A C, Private Members Legislation, *Legislation*, (2nd ed), London, 1990, pp 98-103, p 103.

⁷ Deshpande S G, 'Removing Barriers to Private Members' Business', *Canadian Parliamentary Review*, Spring 1995, pp 23-25, p 23.

⁸ Bromhead P A, *Britain's Developing Constitution*, 1974, p 137.

introduction by a then One Nation Party Member of the Transplantation and Anatomy Amendment Bill 1998. While that Bill ultimately failed Second Reading, it had the value of raising awareness about the issue of organ donation and was referred to a Standing Committee which recommended a coordinated approach to a range of measures that would improve donor numbers.

PMBs may also prompt Government action that may not have otherwise occurred, or may not have been high on the list of a Government's priorities. A Minister might be stirred into introducing, or promising to introduce, legislation or into initiating an inquiry into the matter raised by a PMB. Examples of this will be provided by some Queensland case studies.

From time to time, the only aim in introducing a PMB might be to secure some media or public attention. The very topics of many PMBs attract media interest. The organ donation issue is one example of this. Sometimes those Bills deal with new issues which are easy to understand and form an opinion on (eg enforcing the wearing of school uniforms, euthanasia), or about matters that there are strong feelings about either way (eg gun ownership, abortion, euthanasia).⁹

PMBs sometimes deal with social or moral issues that are so controversial and divisive (eg euthanasia, abortion) that the Government would not wish to sponsor them. Those Bills tend to attract public interest due to their controversial nature but they are often the least successful. Even if the Government of the day agrees with a particular cause or issue, it may not want to introduce it with its own 'stamp' on it if it is likely to upset important interest groups or sections of the population at the next election. A PMB can thus be a vehicle for initiating changes in areas where the Government may be wary of going itself but will be prepared to offer technical advice and help the Private Member with consulting stakeholders. Such assistance and support will still not make it a Government Bill in name.¹⁰

It has also been noted that PMBs enable Members to participate in considering legislation in a manner quite unlike that associated with Government Bills and that these Bills may have an effect on the morale and image of Parliament.¹¹

In Alberta, Canada, where the Standing Orders were amended in 1993 to increase the opportunity for the debate on PMBs,¹² some of the Members have commented this gives Private Members the ability to introduce legislation on issues that the government departments seem reluctant to, and to raise concerns and ideas that need to be dealt with. There is also some power to influence Ministers

⁹ Bromhead P A, *Private Members' Bills in the British Parliament*, 1956, p 174.

¹⁰ Bromhead P A, *Private Members' Bills*, p 173.

¹¹ Miers D R & Page A C, p 103, citing Richards, 'Private Members' Legislation', *The Commons Today*, 1981, p 151.

¹² PMBs now stay at the same level on the notice paper until debated and the order of introduction is determined by a random draw.

on certain issues. Many Members consider that the facilitation of debate provided by the 1993 changes have assisted the democratic process by enabling greater participation in legislative changes and, sometimes, obtaining results. If anything, it relieves feelings of frustration among, and has provided empowerment of, Private Members as there is a possibility of seeing ideas turned into law. Even if there is no success in terms of a Bill being passed, there is evidence that the process enables them to get concessions on issues relating to such proposals.¹³

Indeed, promoting a Bill gives a Private Member experience in development and consultation on legislative proposals that will be useful if they ever become a Minister or, even if they never make it beyond the back-bench, the chance to put forward an idea, have it debated, and maybe even passed.

In relation to the Commonwealth House of Representatives, it has been noted that once a Private Member has brought in a Bill, there is potential for that Member to be asked a question about it during Question Time in the House, a practice usually reserved for Ministers.¹⁴ This contributes to the examination and debate of issues that might not have otherwise been raised.

The comment has also been made that the provision for opportunities for the introduction of and debate on PMBs without the need to toe party lines serves as a valuable counterbalance to the ever-increasing dominance of the Executive and Government in the process of most aspects of Parliament. That is because it preserves the variety of activity which is good for the general vitality in the legislative process.¹⁵

Perhaps, however, a contrary view about PMBs could be raised here before proceeding further. That is –

*...[T]he Government of the day, because it will be responsible for administering any new Act ..., ought not be expected to have to take responsibility for administering any new Act that it had not itself decided to introduce. The obverse side of this ... is that it is wrong for the individual Member ... to introduce measure for the administration of which they will themselves, have no responsibility.*¹⁶

¹³ McNeil D, 'Can The Private Member Make A Difference?', *Canadian Parliamentary Review*, Winter 2001-02, pp 12-15, p 15.

¹⁴ Did you know? Private Members can lay down the law', *About the House: House of Representatives Bulletin*, No 3, May 2000, p14.

¹⁵ Bromhead P A, *Private Members' Bills*, p 177.

¹⁶ Bromhead P A, *Private Members' Bills*, p 3.

2 WHY DO SOME PRIVATE MEMBERS BILLS BECOME LAW?

Some PMBs do manage to not only achieve ‘success’ in the senses referred to above but also accomplish successful passage through Parliament. What features have been at work in a PMB attaining Royal assent?

It has been suggested that the single most important factor to the success of a PMB in receiving Royal assent is the attitude of the Government – unfavourable, neutral, or favourable. This is, essentially, a manifestation of a feature of modern Australian democracy, the dominance of the governing party over the legislative and executive arms of government.

If the attitude is unfavourable, a PMB is very likely to fail. Governments will oppose Bills that conflict with their policies.¹⁷ On the other hand, if the Government supports the legislation, it will generally assist its passage through the stages of debate, providing both drafting assistance and Government time for debate. The Government will also secure the finance needed, if any, to implement and administer the Bill. Note that the support can range from simple approval to enthusiastic endorsement and even to pushing the Bill further than the sponsoring Member may have envisaged. As will be seen later, a PMB introduced by Queensland Independent Member, Mr P Wellington MP, in March 2003 demonstrated a number of these features.

Apart from the procedural hurdles in getting the Bill through the various stages of the Parliamentary process, a Private Member must also secure effective support from lobby groups and interest groups outside Parliament.¹⁸

A notable feature of a number of PMBs that receive Royal assent examined in this Paper is that they were sponsored by Government back-benchers. Examples, to be considered later, are a 1992 Bill introduced by Mr Matt Foley MLA, a then back-bencher in the Goss Government in Queensland; Commonwealth legislation to overturn Northern Territory euthanasia laws; and a Bill introduced by a Tasmanian Health Minister as a PMB to liberalise abortion laws in that State. The last Bill also demonstrates another point – that sometimes (usually for Bills on moral issues) Government Ministers will introduce a Bill as a PMB in order to enable a free debate with a conscience vote at the end (a further example being the then Chief Minister of the Northern Territory’s euthanasia laws).

In the United Kingdom, the comment has been made that a number of PMBs that succeed are essentially Government Bills that the Government ran out of time to introduce. The Government Whip gives them to back-benchers who succeed in obtaining a high position in the House of

¹⁷ Miers D R & Page A C, pp 101-102.

¹⁸ Miers D R & Page A C, p 101.

Commons ballot system that determines priority in the use of time for debating PMBs.¹⁹ It is also interesting to note that in Alberta Canada, where Parliamentary procedures have been changed to facilitate the debate of PMBs, only those PMBs introduced by Government Members have passed into law.

At various times in certain of the Australian Parliaments this paper examines, there has been an upsurge not only in the proportion of PMBs introduced, but also passed into law. Such a trend may tend to reflect the composition and complexion of the particular Parliament at the time. For example, a feature of the Australian Capital Territory Legislative Assembly since achieving self-government in 1989 has been the number of minority Governments and Coalition Governments where the strength of Independent and minor party numbers has contributed to the introduction of 240 PMBs since 1993, of which 121 have become law. A similar observation applies to the South Australian House of Assembly during the periods 1997-1999 and the current session of Parliament.

The Government agenda in providing procedures (eg Sessional Orders) to facilitate the debate and finalisation of PMBs can also enhance their passage through Parliament. The current Sessional Orders in Queensland provide a procedure whereby PMBs must be debated after 90 days until finalised. The right provided is important but, as the Government sets the agenda, easily removed.

3 QUEENSLAND

The Queensland Electoral and Administrative Review Commission (EARC) *Report on the Review of the Office of the Parliamentary Counsel*, May 1991, noted that between 1980 and the time of reporting, no PMBs had been introduced into the Queensland Parliament, although there had been amendments proposed to a number of Government Bills.²⁰

EARC considered that PMBs do play a significant role in the democratic process –

*The facility for PMBs allows Opposition and individual Members to introduce legislative proposals that are considered to be in the public interest or which transcend political boundaries (eg conscience issues). PMBs may also serve to stimulate community debate on significant policy issues, even where an Opposition or individual Member perceives that the Bill is unlikely to receive Government or majority support.*²¹

The Fitzgerald Report noted the role of the Office of the Parliamentary Counsel (OPC) in preparing draft legislation and assisting Members with specific legislation and that, in Queensland, the OPC

¹⁹ Much of the information following is taken from a House of Commons Factsheet, 'Private Members' Bills procedure', Series L No 2, on UK Parliament site at http://www.parliament.uk/parliamentary_publications_and_archives/factsheets.cfm

²⁰ EARC, *Report on the Review of the Office of the Parliamentary Counsel*, May 1991, p 57.

²¹ EARC, 'Review of the Office of the Parliamentary Counsel', *Issues Paper No 7*, p 29.

was not established as an independent entity. Accordingly, it recommended that the role and function of the OPC should be reviewed to ensure its independence.²² Accordingly, it was recommended that EARC should engage in such a review as a matter of priority.

In accordance with the Fitzgerald recommendations, EARC conducted that review, the outcome of which was the abovementioned Report. The EARC Report, among other things, recommended that all Members of Parliament should have access to the OPC for drafting PMBs and amendments to Government legislation and that this should be provided for in a proposed *Legislative Standards Act*. It was proposed that Members should be able to ask the Parliamentary Counsel for drafting assistance and the request should be met as fully and expeditiously as possible, unless it was considered that the request would significantly disrupt the OPC's drafting program.²³

The Parliamentary Committee for Electoral and Administrative Review endorsed EARC's recommendation that assistance be given in the drafting of PMBs. However, it did not consider that this alone would increase the number of PMBs introduced. Accordingly, it was recommended that the then current Standing Orders dealing with PMBs be reviewed and new ones considered to enable Private Members a real opportunity to have their legislative proposal introduced and considered by the Parliament.²⁴

3.1 LEGISLATIVE STANDARDS ACT 1993

Section 10 of the *Legislative Standards Act 1993* (Qld) provides –

10(1) *A Member may request the Parliamentary Counsel to draft a Bill, an amendment of a Bill, or an instrument to be used in the Legislative Assembly.....*

(2) *The Parliamentary Counsel must comply with the request unless the Parliamentary Counsel considers that it would not be possible to comply with the request without significantly and adversely affecting the Government's legislative program.*

3.2 EXPLANATORY NOTES

Section 22(1) of the *Legislative Standards Act* requires only Ministers introducing Government Bills to provide *Explanatory Notes* to Members before the Bill is debated. The requirement does

²² Fitzgerald G E, *Report of a Commission of Inquiry Pursuant to Orders in Council – Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct*, July 1989, p 140.

²³ *Report on the Review of the Office of the Parliamentary Counsel*, Ch 5 paras 5.11-5.15, 5.23.

²⁴ Queensland, 'Office of the Parliamentary Counsel', *Report of the Parliamentary Committee for Electoral and Administrative Review*, 18 July 1991, para 3.5.4.

not apply to PMBs which tends to detract from the Legislative Assembly's Scrutiny of Legislation Committee's ability to effectively examine those Bills.

During the 49th Parliament, in particular, many Private Members produced their own *Explanatory Notes* on a voluntary basis, a practice which seems to have continued into the 50th Parliament.

A Bill intended to amend s 22(1) to apply to all Members' Bills was introduced in 1998 but lapsed with the dissolution of Parliament prior to the June 1998 election and was never re-introduced. The Scrutiny of Legislation Committee has, from time to time, recommended such an amendment to the Act and that was reiterated in its August 2001 *Report to Parliament on the Committee's Monitoring of the Operation of the Explanatory Notes System*. The Government's Response to the Report, tabled 3 January 2002, considered that this recommendation had merit.

3.3 SESSIONAL ORDERS

The Sessional Orders for the 50th Parliament provide –

11. If a Bill introduced by a Member, who is not a Minister of the Crown, has laid upon the table of the House for a period exceeding ninety days and has not passed all stages, that Bill will be brought on for debate on the following sitting Wednesday evening. The House will continue to debate that Bill on each following sitting Wednesday evening until consideration of that Bill has been finalised. On those Wednesdays, the House will break for dinner between 7.00pm and 8.30pm with the adjournment being moved at 11.00pm.

Notwithstanding anything contained in Standing Order 109 the maximum period for which a Member can speak on the second reading of the Bill, other than the mover, is 10 minutes.

The aforementioned Sessional Order was first introduced in the previous Parliament in a Motion moved by the then Leader of the House, Hon T Mackenroth MLA.²⁵ It had its genesis in a commitment made by the then Opposition Leader, Peter Beattie MLA, on 25 June 1998 to the Independent Member for Nicklin, Mr Peter Wellington MLA upon whom the Labor Party would depend for support to govern. An assurance was given that the new Beattie Government would allow adequate opportunities for all Members to not only introduce PMBs but to also have them debated until finalised.²⁶ The then existing Standing Orders did allow PMBs but did not provide a 'trigger' for the debating of them with the effect that they could languish on the Notice Paper due to the precedence accorded to Government business.

²⁵ Hon T M Mackenroth MLA, Leader of the House, *Queensland Parliamentary Debates*, 28 August 1998, pp 2116 ff. the Motion was agreed to the same day.

²⁶ Mr D Beanland MLA, quoting from a letter dated 25 June 1998 from Mr P Beattie MLA to Mr P Wellington MLA, 'Motion of Confidence in Government', *Queensland Parliamentary Debates*, 30 July 1998, pp 1490-1492.

In various speeches regarding the Sessional Order changes, Members, including Government Members, agreed that at a time when the Parliament was so finely balanced (ie in August 1998, the Government held 44 seats, the National Liberal Coalition 32 seats, Independents 2 seats, One Nation Party 11 seats), the role of the Private Member was very important.²⁷ Mr Horan MLA, the then Deputy Opposition Leader, was concerned that, on the Government's proposed 90 day timeframe, few PMBs would get through in each Parliamentary year.²⁸ The Opposition moved that PMBs be debated after 60 days but this motion was defeated.

Thus, it appears that the current Parliamentary procedures in Queensland provide for greater participation by *all* Members in the business of Parliament and greater involvement in the legislative process itself. In the current 50th Parliament, the Labor Government holds 66 of the 89 seats and is no longer reliant upon the support of Independent Members. The current Sessional Orders (SO 11) do continue to uphold the commitment to provide more time for PMBs but, given that the Government of the day controls the Parliamentary agenda, this situation could change in the future.

3.4 PRIVATE MEMBERS' BILLS STATISTICS - QUEENSLAND²⁹

In 1992, it was revealed that a search going as far back as 1880 could find no PMBs having been introduced before that time (apart from a 1931 amendment to an Act that successfully passed).³⁰

Despite the passing of the *Legislative Standards Act* in 1993, few PMBs were introduced. However, with the passing of the 1998 Motion and consequent changes to the Sessional Orders, the number increased dramatically such that 28 of the 240 Bills introduced in the 49th Parliament were PMBs. In particular, during 1999, 17% of all Bills introduced were those of Private Members.³¹ During the 50th Parliament (since 20/03/01), 21 PMBs have been introduced up to June 2003.

The following table provides an overview of the number of PMBs introduced and passed into law since 1992.

²⁷ Hon M J Foley MLA, Attorney-General and Minister for Justice and Minister for The Arts, 'Private Members' Bills', Notice of Motion, *Queensland Parliamentary Debates*, 27 August 1998, p 2117.

²⁸ Mr M Horan MLA, Deputy Opposition Leader, 'Private Members' Bills', 6 August 1998, p 1779.

²⁹ I am grateful for the assistance of Mr A Timperley of Queensland Parliament's Table Office for providing me with the statistics that appear in this section.

³⁰ M Foley MLA, Parliamentary Papers Bill 1992 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 21 May 1992, pp 5436-5439, p 5439, citing information from the Parliamentary Library and the Papers and Records Office.

³¹ Scrutiny of Legislation Committee, *Report to Parliament on the Committee's Monitoring of the Operation of the Explanatory Notes System*, p 39.

Bills Introduced and Passed by Calendar Year

	Bills Introduced	Bills Passed
1992	1	1
1993	1	0
1994	1	0
1995	4	0
1996	3	1
1997	1	0
1998	9	0
1999	18	0
2000	3	0
2001	7	0
2002	9	0
2003	5	1

Bills Introduced and Passed by Session of Parliament

	46 th Parliament 27/02/90 to 25/08/92	47 th Parliament 03/11/92 to 20/06/95	48 th Parliament 05/09/95 to 19/05/98	49 th Parliament 28/07/98 to 23/01/01	50 th Parliament 20/03/01 to date
Number of PMBs introduced (62)	1	3	9	28	21
Number of PMBs passed (3)	1	0	1	0	1

3.5 PRIVATE MEMBERS' BILLS THAT PASSED

The first Private Member's Bill to pass all stages was the **Parliamentary Papers Bill 1992**, introduced by a then Government back-bencher Mr M Foley MLA, when the Goss Labor Government was in power. It was passed on 18 June 1992, without amendment, as a result of cooperation among all sides. The legislation sought to give effect to the recommendations of a Select Committee of Privileges Report (of which Mr Foley was Chair). It concerned the law and practice relating to the privilege attaching to Parliament papers by clarifying the extent of Parliamentary privilege and the persons to whom it applies. In speaking in support of the Bill during the Second Reading, Dr Watson MLA, Deputy-Leader of the Liberal Party, stated that it was appropriate that the Bill was introduced as a Private Member's Bill because it was not party political but dealt with an issue that was of concern to all of the Members and support staff.³²

The second Bill to receive Royal assent was introduced by the then Labor Opposition Leader, Mr Peter Beattie MLA, on 12 November 1996 and passed all stages on that same day. The **Carruthers Inquiry Enabling Bill 1996 (Qld)** was presented at a time when the then National Party Government was reliant upon the support of an Independent Member. In this case, the Independent declared her support for the Bill. The Bill was a highly political one. The aim of the Bill was to allow for the resumption of an inquiry by the Criminal Justice Commission, without any political interference, whether or not Mr Carruthers QC returned to it. The Carruthers Inquiry was investigating an arrangement between the Police Union President and the Premier and Police Minister to determine if the agreement, pre-dating a crucial bi-election for the Government, amounted to bribery.³³ Mr Carruthers resigned from the inquiry after the then Borbidge Government initiated an investigation into Mr Carruthers' inquiry, indicting that he could no longer stay if thought to be biased. The Bill passed with the support of the Independent Member. The inquiry later resumed, although no longer chaired by Mr Carruthers, and the Government Members were eventually cleared of any wrongdoing.

The most recently successful Bill was the **Criminal Code (Palliative Care) Amendment Bill 2003**, introduced on 12 March 2003 by Independent Member, Mr Peter Wellington MP. During this Parliament, the Beattie Labor Government holds 66 of the 89 seats and the likelihood of such an achievement would appear quite remote. It is therefore intriguing to detect the features of this Bill that enabled it to pass into law.

The Bill sought to shield from criminal prosecution doctors (and certain other persons acting under doctor's orders) who administer palliative care to patients dying in pain where doing so unintentionally hastens the patient's death. The proposed new provision to be inserted into the Queensland *Criminal Code*, stated –

³² Dr Watson MLA, Parliamentary Papers Bill 1992 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, p 5912

³³ Mr Carruthers was also investigating activities of certain Opposition Labor Members.

A doctor, or a person providing care ordered by a doctor, is not criminally responsible for providing palliative care to another person if the person provides it in good faith and with reasonable care and skill, and its provision ... is reasonable, having regard to the person's state at the time and all the circumstances of the case, even if an incidental effect of providing the palliative care is to hasten the person's death.

It was made clear that the proposed amendment did not authorise euthanasia, nor would it enable the administration of palliative care without consent. The new provision reflects the current common law and modern medical practice.

At the outset of the Second Reading Debate, the Queensland Attorney-General indicated the Government's support for the Bill and policy underlying it. Mr Wellington had previously introduced a Terminally Ill Patients Bill 2002, which was withdrawn with the introduction of the Bill under discussion. The Government had indicated its intention not to support the earlier Bill and the Attorney-General and Mr Wellington worked together to ensure that the concerns arising from that Bill were addressed to ensure that the Bill in its current form could be supported by the Government.³⁴ The Attorney-General and the OPC assisted in the drafting of the Bill.³⁵ There was extensive consultation with stakeholders such as the Queensland Palliative Care Association, the QAMA, and terminally ill patients in developing the Bill. The Bill passed unopposed and received enthusiastic support from a number of Members across all party lines.

3.6 'UNSUCCESSFUL' PRIVATE MEMBERS' BILLS³⁶

Despite the proliferation of PMBs during the 49th Parliament, none received Royal assent. A considerable number were introduced by One Nation Party Members and dealt with issues that were unlikely to receive the support of Government Members, or sometimes even the Assembly in general (eg ownership of weapons; repeal of competition policy reforms).

Some PMBs were introduced by Opposition Members on essentially political issues that were possibly destined to fail from the start. Legislation to combat electoral fraud has been a common thread of at least 3 PMBs. The then Opposition Leader's **Electoral (Fraudulent Actions) Amendment Bill 2001** sought to make it an offence, punishable by imprisonment, for any person to fraudulently attempt to influence the outcome of an election. At the time, the governing Labor Party

³⁴ Hon R Welford MP, Attorney-General and Minister for Justice, Criminal Code (Palliative Care) Amendment Bill 2003 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 2 April 2003, p 1176.

³⁵ Mr P Wellington MP, Criminal Code (Palliative Care) Amendment Bill 2003 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 12 March 2003, pp 492-495, p 493.

³⁶ A number of the Bills discussed in this section have been discussed in Research Publications produced by the Research Publications and Resources Section of the Queensland Parliamentary Library. They can be found on the Queensland Parliament's website at <http://www.parliament.qld.gov.au>

was still recovering from the resignation of some Members after problems with the preselection process and a subsequent inquiry into possible electoral fraud. The Bill was referred to the Legal and Constitutional and Administrative Review Committee (LCARC) which narrowly recommended against implementing the Bill, essentially because of possible constitutional difficulties.³⁷ After some debate, the Bill was defeated in May 2002.³⁸ In the meantime, in March 2002, the Government introduced the Electoral and other Acts Amendment Bill which sought to deal with issues of electoral fraud, among other matters.

An interesting case is the fate of two **Freedom of Information Amendment Bills**. The first one was introduced in 1998 by Mr Beattie when he was Opposition Leader. The Bill was introduced during a period when the Opposition was accusing the Government of hiding Ministers' expenses behind the Cabinet exemption provisions of the *Freedom of Information Act 1992*. The proposed changes sought to water down the Cabinet exemption provision in that Act. When introducing the Bill, Mr Beattie accused the then National Party Premier of failing to deliver on promises to 'restore genuine freedom of information legislation'.³⁹ The Bill lapsed when Parliament was dissolved prior to the 1998 election. It was not, however, re-introduced by the new Beattie Government when it took office. The second Bill was introduced in 1999 by the then Opposition Leader, Mr Rob Borbidge, which was defeated on Second Reading. Mr Borbidge's Bill was the same Bill that had been introduced by Mr Beattie but had not been re-introduced as a Government Bill. The Government's objection to the Opposition Leader's Bill was based on the fact that soon after Mr Beattie's Bill was introduced, a Parliamentary Committee, LCARC, commenced a broad review of the *FOI Act* and to support the Bill at this stage would be to pre-empt the outcome of that review.⁴⁰

3.6.1 Bills Impacting on Government Policy

Some PMBs that have failed Second Reading could be argued to have had some impact on the legislative agenda of the Government. In May 2002, the then National Opposition Justice Spokesman, Mr Springborg MP, introduced a **Civil Forfeiture of the Proceeds of Crime Bill 2002**. For some time, the Labor Government had indicated that a civil forfeiture regime was on its

³⁷ Queensland Legislative Assembly, Legal and Constitutional and Administrative Review Committee, Electoral (Fraudulent Actions) Amendment Bill 2001 (Qld), *Report No 33*, March 2002.

³⁸ Electoral (Fraudulent Actions) Amendment Bill 2001 (Qld), Question on Second Reading, *Queensland Parliamentary Debates*, 8 May 2002, p 1342.

³⁹ Mr P Beattie MLA, Freedom of Information Amendment Bill 1998 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 4 March 1998, pp 118-119, p119.

⁴⁰ Hon M Foley, Attorney-General and Minister for Justice and Minister for the Arts, Freedom of Information Amendment Bill 1999 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 31 May 2000, pp 1496-1498.

agenda, a proposal strongly supported by the then Crime Commissioner and the Police Service. During Debate on the Bill, Mr Springborg noted that the current Attorney-General had said that he would be bringing a Bill to enable civil confiscation before Parliament in the future. However, Mr Springborg said, the Government had promised for over 3 years to do so and nothing had happened.⁴¹ Mr Springborg's Bill failed Second Reading. On 22 October 2002, the Government introduced the Civil Proceeds Confiscation Bill 2002. It provided for a civil forfeiture regime which was to operate alongside the existing, but improved, criminal regime and both systems were dealt with in the Government Bill.

During Debate on the Bill, Mr Springborg said that –

We are seeing a very worrying trend on the part of the government such that even though the Opposition is prepared to do a lot of the leg work insofar as putting together the Bills for the Parliament and the principle is broadly supported, the government will find a nit-picking reason – or maybe the government expands it to a principled reason – to oppose. The government does not give the Opposition any kudos but then introduces its own legislation a bit further down the track. I will concede that the Minister has gone a little broader in some aspects with regard to the conviction based regime ... but there are so many principles where it is similar.

...

*While there were some differences between the two Bills, the differences were not all that major. There were some differences with regards to processes... a lot was similar in substance.*⁴²

The **Transport (Compulsory BAC Testing) Amendment Bill 2002** was introduced by the then Deputy Opposition Leader, Mr Vaughan Johnson MP which failed Second Reading. It was, however, superseded by a Government Bill, the Transport Operations (Road Use Management) Amendment Bill (No 2) 2002, introduced 2 months after Mr Johnson's Bill was presented. The Government Bill covered the same issue of compulsory blood alcohol testing of unconscious persons admitted to hospital after a motor vehicle accident. While the Government supported the intention of the Private Member's Bill in its assault on drink driving, it noted that there were aspects of the Opposition's model that the Government could not support and which were not backed by findings of the Parliamentary Travelsafe Committee Report on which the Government's Bill was based.⁴³ For example, the Bill was broad enough to allow the testing of passengers who were not likely to

⁴¹ Mr L J Springborg MP, Civil Forfeiture of the Proceeds of Crime Bill 2002 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 7 August 2002, pp 2785-2786.

⁴² Mr L J Springborg MP, Criminal Proceeds Confiscation Bill 2002 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 27 November 2002, pp 4940-4941.

⁴³ Queensland Legislative Assembly, Parliamentary Travelsafe Committee, 'Compulsory BAC Testing: Inquiry into Whether Blood Alcohol Content (BAC) Testing of People who Attend a Hospital for Examination or Treatment as a Result of a Motor Vehicle Accident Should be Compulsory,' *Report No 22*, December 1997.

have been in charge of the vehicle and would impose liability on medical staff who fail to take a blood sample which could raise concern in the medical profession.⁴⁴ The Government legislation provided that blood samples be taken under police direction and from the unconscious driver only.

Again, during Debate, some Opposition Members asserted that the Transport Minister had been galvanised into action by the Private Member's Bill. For example, National Party Member, Mr Jeff Seeney MP, said –

*Within weeks [after the introduction of the PMB], following four years of inaction, [the Minister] was able to produce a Clayton's response. The bottom line is that he was embarrassed into action...*⁴⁵

Opposition Justice Spokesman, Mr Springborg, said that if there were issues of concern, the Government could have introduced amendments to the Private Member's Bill, which could have been accommodated, rather than a completely new Bill of its own.⁴⁶

3.6.2 Raising Community Awareness and Public Debate

There have also been a number of PMBs that have been reported on by the media and have stimulated debate on sensitive issues. Others, by their having been reported or discussed in Parliament, have raised awareness about certain important issues that tend to lie dormant until events cause them to surface.

One example is the **Animals Protection Amendment Bill 1999** introduced by a then One Nation Party Member, Mr Peter Prenzler MLA In March 1999. The Bill sought to significantly amend legislation passed in 1925 which had been found to be deficient in many ways. A matter which had also prompted Mr Prenzler to introduce the Bill was concern among dairy farmers about a cruelty action being brought against some farmers by the RSPCA. The Government acknowledged that the lack of accountability provisions for inspectors was a concern. At this time, the Beattie Government was engaged in broad stakeholder consultation with a view to introducing comprehensive new legislation to radically overhaul animal protection measures, hopefully by early 2000. It therefore could not support the PMB that sought only piecemeal reforms to enforcement powers.⁴⁷ As noted by the *Courier Mail*, successive Governments had promised new animal care legislation for over 15

⁴⁴ Hon S D Bredhauer MP, Minister for Transport and Minister for Main Roads, Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 31 July 2002, pp 2439-2440.

⁴⁵ Mr J Seeney MP, Second Reading Debate, p 2441.

⁴⁶ Mr L Springborg MP, Second Reading Debate, p 2444.

⁴⁷ Animals Protection Amendment Bill 1999 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 1 December 1999, pp 5782-5783.

years.⁴⁸ The promised Government legislation was introduced on 31 July 2001 (over 2 years after the PMB) following considerable consultation and development. Given the progress on the development of the Government Bill when Mr Prenzler's Bill was introduced, it cannot be said with certainty that the Government was 'stirred into action'. However, it provided an opportunity for Members to raise a number of issues about animal welfare and the ways in which measures are enforced and handled that would have assisted in informing the debate on the Government Bill when it was later introduced.

A further example of a Bill having educative value, if not legislative success, is the **Transplantation and Anatomy Amendment Bill 1998** introduced by the then One Nation Party Member Mr Ken Turner MLA. The Bill sought to give legal effect to the marking of the organ donor space on Queensland driver's licences, thereby authorising the use of that licence holder's organs for transplant purposes upon their death. This would remove the need to seek consent from the next-of-kin and thereby take that responsibility from grieving families.⁴⁹ The Bill was referred to LCARC which received over 50 submissions to its review. While LCARC recommended that measures be taken to improve donor rates, the Committee recommended against adopting the Bill on the basis that if a driver's licence marking could override the wishes of the next-of-kin, this might undermine the goodwill that currently permeates the concept of organ donation.⁵⁰ The vote on the Bill was divided but the Speaker cast his vote with the Noes, resulting in the Bill failing. Many Members who voted against the Bill supported its sentiment of improving organ donation numbers but accepted the views of the Committee that a number of Ministers should work together on a different approach and consider amending existing legislation to improve donor rates.⁵¹ If nothing else, the Bill raised the issue of organ donation with the reference to the Parliamentary Committee facilitating and informing further consideration of the whole issue by relevant Ministers.

4 OTHER JURISDICTIONS

In an effort to contain this paper, and to allow comparison with the Queensland Parliament, I have restricted the following discussion to PMBs introduced in the lower houses of the various Parliaments.

⁴⁸ Matthew Franklin, 'Prison and big fines in new animal cruelty law', *Courier Mail*, 31 July 2001, p 1.

⁴⁹ Mr K Turner MLA, Transplantation and Anatomy Act Amendment Bill 1998 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 10 November 1998, pp 2918-2919.

⁵⁰ Queensland Legislative Assembly, LCARC, 'Review of the Transplantation and Anatomy Amendment Bill 1998 (Qld)', *Report No 16*, July 1999.

⁵¹ Transplantation and Anatomy Amendment Bill 1998 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, p 3265.

4.1 NORTHERN TERRITORY

Standing Order 93 effectively provides that at least every 12 sitting days, precedence is to be given to general business over government business. This allows the Opposition and Independent Members to conduct Private Members' business and introduce Bills. It does not appear that there is a similar 'trigger' to require the debate of those Bills after a certain time as exists in the Queensland Sessional Orders. All Bills, apart from urgent Bills, must sit for at least one month before being debated: SO 178.

Since 1 January 1994, 41 PMBs have been introduced but, of those, only 3 have passed all stages.

	Bills Introduced	Bills Passed
1994	1	0
1995	4	2
1996	3	0
1997	4	0
1998	7	0
1999	3	0
2000	6	0
2001	2	0
2002	7	1
2003 (to date)	4 ⁵²	-

The PMBs that have passed into law were –

- Rights of the Terminally Ill Bill 1995
- Poisons and Dangerous Drugs Amendment Bill 1995
- Local Government Amendment Bill 2002.⁵³

⁵² These Bills on the Notice Paper as of June 2003.

⁵³ Information kindly provided by Mr Steven Stokes, Chamber Support, NT Parliament.

The **Rights of the Terminally Ill Bill 1995** was introduced on 22 February 1995 by the then Chief Minister, Marshall Perron, as a Private Member's Bill, the first by a Government leader. The Bill sought to legalise euthanasia in the Northern Territory and received nationwide media, political, and public attention. It is understood that the PMB avenue was taken by Mr Perron to ensure open debate free of party constraints, with a conscience vote at the end.⁵⁴ The Bill passed on a conscience vote by 13 votes to 12 and it commenced on 1 July 1996. It was later, and controversially, overturned by a Commonwealth Act relying on the Commonwealth Government's powers to legislate for the NT under the *Northern Territory (Self Government) Act 1978* (Cth). That Commonwealth legislation, was, ironically, introduced by Mr Kevin Andrews MP as a Private Member's Bill. Mr Perron's PMB is probably one of the most memorable of all PMBs passed in Australia to date. It sparked intense community, political, religious, medical, and legal debate and was the topic of a number of Parliamentary Committee inquiries.

4.2 WESTERN AUSTRALIA

The Western Australian Parliament has no specific procedures for dealing with PMBs. Under the Standing Orders, PMBs are introduced and progressed through all stages of debate in the same way as Government Bills but also face the limitation that they can be dealt with only in the time set aside for Private Members' business on Wednesdays between 4-7 pm. As pointed out by the Clerk Assistant (Procedure) and Sergeant-at-Arms of the Legislative Assembly of WA, this can mean that such Bills may become overlooked if precedence is given even to other Private Members' or Opposition business.⁵⁵

The following table shows the fate of PMBs since 1993.

	Bills Introduced⁵⁶	Bills Passed
1993-1994	19	0
1994-1995	16	0
1995-1996	20	0
1996	29	0
1997-1998	25	2

⁵⁴ David Nason, 'Territory to consider euthanasia Bill', *Australian* 1 February 1995, p 3.

⁵⁵ I am grateful to Mr Nigel Lake, Clerk Assistant (Procedure) and Sergeant-at-Arms of the WA Legislative Assembly for providing this information.

⁵⁶ Note that some Bills are mentioned more than once because some Bills lapsed with the prorogation of one session of Parliament and reintroduced at the next session.

1998-1999	28	0
1999-2000	24	1
2000-2001	19	0
2001-2002	12	1
2002-	13	-

Since 1993, 205 PMBs have been introduced. Of those, only 4 have made it into law. Those were

—

- Acts Amendment (Abortion) Bill 1998 (into the Legislative Council)
- Maritime Archaeology Amendment Bill 1997
- Nuclear Waste Storage (Prohibition) Act 1999
- Law Reform (Miscellaneous Provisions (Asbestos Diseases) Bill 2001.

The most memorable was the **Acts Amendment (Abortion) Bill 1998** that caught nationwide attention at the time. In February 1998, for the first time in 30 years, 2 doctors were charged under the WA *Criminal Code* with attempt to procure an abortion. The legal and medical professions were thrown into disarray and 2 women were admitted to hospital after trying to self-abort while other women were being forced to travel interstate as doctors and clinics stopped performing the procedure. Technically, the legal position was that terminations were legal only to preserve the woman's life or physical safety but they had been performed on apparently wider grounds for many years with no legal sanction. Doctors, concerned about the apparent change of policy on this issue by the Director of Public Prosecutions, urged the Court Government to act to make the law clearer.

In March 1998, an Opposition Member, the Hon Cheryl Davenport MLC, sponsored a Bill to decriminalise abortion and have it regulated under the *Health Act 1911* where informed consent of the woman would be the minimum requirement for performing a legal abortion. As her Bill came into being, Ms Davenport had discussions with the Hon Peter Foss, the Attorney-General. When introducing the Criminal Code (Abortion) Amendment Bill into the Legislative Council, Ms Davenport thanked the Attorney-General and his staff for their efforts and assistance in making the Bill a genuine attempt to be bipartisan.⁵⁷

⁵⁷ Hon C Davenport MLC, Criminal Code Amendment (Abortion) Bill 1998 (WA), 10 March 1998, Second Reading Speech, *WA Legislative Council Hansard*, pp 8-17.

On the same day that Ms Davenport introduced her Bill into the Council, the Leader of the House, Mr C Barnett MLA, introduced the Criminal Code Amendment Bill (the 'Foss Bill') into the House of Assembly which was stated to be 'not strictly a Government Bill and would allow a conscience vote by all Members'.⁵⁸ The Bill did not remove abortion completely from the *Criminal Code* but would permit it if procured in any of four specified situations, the minimum being informed consent.

An enormous amount of public campaigning and lobbying from both sides of the abortion debate ensued, with activists rallying outside Parliament while it considered the new proposals. In April 1998, Ms Davenport's Bill passed in the Council by a two thirds majority. However, to avoid an impasse between the two Houses, Ms Davenport negotiated with a number of Members who opposed the Bill and those who were unsure. After substantial amendments which more or less amalgamated the Davenport Bill and the Foss Bill to accommodate various concerns, the Bill was returned to the lower House.

On 22 May 1998, after a number of amendments, the Bill was passed. The situation in WA is that abortion remains in the Code, but it is longer an indictable offence (with a \$50,000 fine being the maximum penalty). An abortion can only be performed under the *Criminal Code* if it is justified. It is justified in any one of four circumstances set out in the *Health Act*, the minimum requirement being informed consent of the woman concerned. Ms Davenport was disappointed that the outcome was to leave abortion in the Code although doctors were relieved about the changes.

During the Debate, Mr Foss noted that very few people could look back on their Parliamentary careers and say they had made a difference but –

Hon Cheryl Davenport can do that. I know that some people have tried to say that it is my legislation. I assure them that it is Hon Cheryl Davenport's legislation and she has done a remarkable job with it. ...She has done it without party support; she has done it by gaining the Parliament's support. She should be congratulated for that.

The other PMBs that received Royal assent did not attract such wide and controversial attention. One, however, deserves brief mention. In September 1999, the Hon Dr Geoff Gallop MLA, the then Leader of the Opposition introduced the **Nuclear Waste Storage Facility (Prohibition) Bill 1999** to prevent the establishment of an international nuclear waste dump that was being proposed by a large international company at the time. While Dr Gallop acknowledged the Government's policy of opposing such an international site, he said that he was not confident about policy commitments that were not enshrined in legislation.⁵⁹ The Government supported the Bill but moved various amendments to close what it saw to be a number of loopholes in it and to strengthen its provisions. The Bill passed with Government support and incorporating Government amendments.

⁵⁸ Mr C Barnett MLA, Leader of the House, Criminal Code Amendment Bill 1998 (WA), Second Reading Speech, *Hansard Online*, 10 March 1998, pp 134-137, p 135.

⁵⁹ Dr G Gallop MLA, Nuclear Waste Storage Facility (Prohibition) Bill 1999 (WA), Second Reading Speech, *Hansard Online*, 18 September 1999, pp 885-888.

4.3 SOUTH AUSTRALIA

The South Australian House of Assembly does not have any specific Standing or Sessional Orders dealing with the introduction or progression of PMBs other than one (SO 80A) providing that 2 hours on Wednesdays must be set aside for Private Members' business.⁶⁰

The following table shows how PMBs introduced over the last 10 years have fared in the House.

	Bills Introduced (excluding those received from the LC)	Bills Passed
1992-1993	7	0
1993	6	0
1994	4	0
1994-1995	15	2
1995-1996	1	0
1996-1997	11	0
1997-1998	11	2
1998-1999	8	2
1999-2000	14	0
2000-2001	28	2

The Parliament sat for just one day (5 March 2002) in the first session of the 50th Parliament. The House is currently in its Second Session.

2002-2003	27	7 passed as of June 2003
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Since 1997, the PMBs that have passed into law are –

- Criminal Law (Sentencing – Victim Impact Statements) Amendment Bill 1997
- Freedom of Information (Public Opinion Polls) Amendment Bill 1997

⁶⁰ I am grateful to Mr David Pegram of the Bills and Papers Office of the SA Parliament for providing this information.

- Collections for Charitable Purposes (Definition of Charitable Purpose) Amendment Bill 1998
- Second-hand Vehicle Dealers (Compensation Fund) Amendment Bill 1998
- Netherby Kindergarten (Variation of Waite Trust) Act Repeal Bill 2000
- Constitution (Parliamentary Terms) Amendment Bill 2001
- Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Bill 2002
- Controlled Substances (Cannabis) Amendment Bill 2002
- Native Vegetation (Miscellaneous) Bill 2002
- Gaming Machines (Limitation on Exception to Freeze) Amendment Bill 2002
- Nuclear Waste Storage Facility (Prohibition) Amendment Bill 2003 (although was originally introduced as a Government Bill)
- Water Resources (Miscellaneous) Amendment Bill 2003
- Statutes Amendment (Equal Superannuation Entitlements for Same Sex Couples) Bill 2003
- Statutes Amendment (Notification of Superannuation Entitlement) Bill 2003.

The increase in the numbers of PMBs introduced and past since 1997 may be accounted for by the fact that following the October 1997 election, the Liberal Government did not have a clear majority to govern and relied upon the support of National, Independent Liberal, and Independent Members. Since the February 2002 election, the Labor Party is a minority Government. In the current session of Parliament, of the 7 PMBs passed, 5 were introduced by Liberal Party Members, 1 by a Labor (Government) Member and 1 by an Independent Member.⁶¹

4.4 TASMANIA

The current Sessional Orders in the Tasmanian Parliament provide that Private Members' business has priority from 3.30 to 6.00 pm on Wednesdays. Sessional Order 13 goes on to state that Private Members' business that has been on the Notice Paper for the period required by the Standing Orders is called on by the Leader of the Opposition, the Tasmanian Green and Government Whip respectively, in accordance with a specified weekly rotation (which alternately gives precedence to the Opposition then to the Greens). The Member calling on an item may, in

⁶¹ I thank Ms Jenni Newton-Farrelly in the SA Parliamentary Library for her assistance.

doing so, state that after the time for debate on that day, the matter be voted upon. This Sessional Order facilitates the debate and vote on PMBs to a greater extent than do procedures in most other jurisdictions (other than Queensland), although the time set aside for debate is only half an hour.

The following table shows the outcome of PMBs in the Legislative Assembly since 1993.⁶²

	Bills Introduced	Bills Passed
1993	9	0
1994	5	0
1995	11	0
1996	20	1
1997	26	2
1998	21	3
1999	4	3
2000	4	0
2001	13	3
2002	7	0
2003 (to date)	6	1

The 13 PMBs that have received Royal assent since 1994 are –

- Parliamentary Salaries and Allowances Amendment Bill 1996
- Criminal Code Amendment Bill 1997
- Constitution (Legislative Council) Special Provisions (No 2) Bill 1997
- State Policies and Projects Amendment Bill 1998
- Local Government Amendment Bill 1998
- Parliamentary Reform Bill 1998
- Criminal Code Amendment (Discipline) Bill 1999

⁶² I thank Mr Shane Donnelly, Clerk Assistant & Sergeant-at-Arms, House of Assembly Tasmanian Parliament for the following information.

- Education Amendment Bill 1999
- Freedom of Information (Cabinet Exemptions) Amendment Bill 1999
- Constitution (Doubts Removal) Bill 2001
- Criminal Code Amendment (Interfering with Witnesses) Bill 2001
- Criminal Code Amendment (No 2) Bill 2001
- Local Government (Rates and Charges) Remissions Amendment Bill 2003

The growth in PMBs introduced into the House of Assembly since the late 1990s appears to coincide with the changes to the Sessional Orders and with the succession of minority Governments that have relied on the support of the Tasmanian Greens and Independents. The Greens, in particular, have been reasonably prolific in their presentation of Bills. It will be noted, however, that the number of PMBs receiving Royal assent has not been remarkably different from other jurisdictions.

A noteworthy PMB in recent years is the **Criminal Code Amendment Bill 2001**. The Bill was prompted by anxiety in the medical profession when a medical student sought a police investigation of abortion practices at the Royal Hobart Hospital where the procedure had been performed for over 30 years. The legal position was, however, unclear. The Tasmanian Premier recalled Parliament on 19 December 2001 to allow Health Minister, the Hon Judy Jackson MHA, to introduce a Private Member's Bill to provide specifically for the circumstances in which abortions could be legally performed, thereby creating certainty. The Bill passed both Houses on 20 December 2001 on a conscience vote. It appears obvious that this Bill was essentially a Government Bill in all but name.

4.5 VICTORIA

The Standing Orders and Sessional Orders for the Victorian Legislative Assembly do not make any specific provision for PMBs and because Government business tends to take precedence (see Sessional Order 14), such Bills are rare. It is understood that Private Members do give notice of their intention to introduce a Bill reasonably often but leave is usually refused, resulting in that notice becoming a general business item and then languishing because of the priority given to Government business.⁶³

The following table indicates the fate of PMBs since 1993.

	Bills Introduced	Bills Passed
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⁶³ I am grateful to Ms Bridget Noonan, Acting Senior Parliamentary Officer, Legislative Assembly Procedure Office for providing me with this information.

1993	1	0
1994	0	0
1995	0	0
1996	0	0
1997	0	0
1998	0	0
1999	0	0
2000	2	1
2001	2	1
2002	1	0
2003	0	

The 54th Parliament (1999-2000) produced a number of PMBs, probably due to the different composition of the two Houses and the Government's position in the Assembly.

Of the 6 PMBs introduced into the Assembly, 2 passed all stages and were enacted. The first was **Petroleum Products (Terminal Gate Pricing) Bill 2000**, introduced by an Independent Member, Mr Russel Savage MP, in September 2000 with the aim of addressing petrol pricing issues. The Government supported the intention of the Bill but agreed to support it only with a number of amendments. The other Bill was the **Scotch College Common Funds Bill 2001**, introduced by the then Shadow Minister, Mr Robert Doyle MP, which proposed to authorise Scotch College to establish one or more common investment funds for the collective investment of trust moneys held by or for the benefit of the school. Mr Doyle noted that PMBs have been used previously to enable the establishment of common funds for other non-government schools, educational institutions and other bodies for educational or charitable purposes.⁶⁴

⁶⁴ Mr R Doyle, Scotch College Common Funds Bill 2001 (Vic), Second Reading Speech, *VicHansard Online* (House of Assembly), 28 November 2001, p 2033.

4.6 NEW SOUTH WALES

The Standing Orders for the NSW Parliament do not differentiate between Members and Ministers in reference to proceedings on public Bills except that only a Minister is able to declare a Bill to be an urgent Bill.⁶⁵

The following table shows the progress of PMBs through the Legislative Assembly since 1994.

	Bills Introduced	Bills Passed
1994	60	3
1995-1996	21	1
1996-1997	33	6
1997-1999	26	0
1999	1	0
2000-2002	23	0
2002-2003	30	1

11 of the 194 PMBs introduced have passed into law since 1994. Those are –

- Farm Debt Mediation Bill 1994
- Industrial Relations (Contracts of Carriage) Bill 1994
- Local Government (Boarding and Lodging Houses) Amendment Bill 1994
- Queanbeyan Showground (Variation of Purposes) Bill 1995
- Lane Cove National Park (Sugarloaf Point Additions) Bill 1996
- Parliamentary Precincts Bill 1997
- Public Servant Housing Authority (Dissolution) Bill 1996
- Traffic Amendment (Learner Driver Supervisor) Bill 1996
- Trustee Amendment Bill 1996
- Warnervale Airport (Restrictions) Bill 1996

⁶⁵ I am grateful to Mr Gary O'Rourke, Parliamentary Officer, Procedure Support, NSW Legislative Assembly for the following information.

- Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Bill 2002.

4.7 AUSTRALIAN CAPITAL TERRITORY

The Australian Capital Territory is an unusual jurisdiction for Australia in terms of PMBs. Since 1993, 240 PMBs have been introduced into the Legislative Assembly and 121 of those have passed into law.⁶⁶ Since obtaining self-government in 1989, there have been a number of minority Governments and some coalition Governments. There has been no strong governing party. At present, the Labor Government holds 8 out of 17 seats. The consequence is that the Opposition and other parties (such as Independents and Greens) have been able to combine their numbers to have their Bills passed into law.⁶⁷ This unusual situation which has been sustained for over a decade makes comparisons with other jurisdictions somewhat misleading.

There are no Standing Orders or Sessional Orders dealing specifically with the introduction and debate of PMBs and these undergo the same initiation and presentation process as Government Bills. No timeframe is provided for the resumption of debate for either type of legislation after its introduction.

The following table provides some idea of the vast numbers of PMBs that are dealt with in the Assembly.

	Bills Introduced	Bills Passed
1993	21	5
1994	18	12
1995	10	4
1996	21	6
1997	28	25
1998	31	8
1999	33	17
2000	26	16

⁶⁶ As at 8 May 2003.

⁶⁷ I am grateful for the advice of Mr Tom Duncan, Acting Clerk of the Legislative Assembly for the Australian Capital Territory.

2001	19	17
2001-2002	28	10
2003	5 (as at May 2003)	1

Some of the PMBs that have received Royal assent have dealt with significant issues. For example, an amendment to the *Crimes Act 1900* to create an offence of using the Internet to procure a child for sexual activity or expose them to pornography began life as a PMB. That Bill was introduced by Independent MLA, Mr Paul Osborne (a former police officer) on 9 August 2001. It passed, with amendments, amid Government support. Recent amendments to outlaw such activities under the Queensland *Criminal Code 1999* have been based on that ACT legislation.

Other significant legislation was in relation to reform of abortion laws which, until then was dependent upon common law interpretations. In 1998, the ACT passed the *Health Regulation (Maternal Health Information) Act 1998* amid some controversy. The legislation was introduced as a PMB by a ‘pro-life’ Independent Member. The Act appeared to restrict abortion for ACT women by imposing additional obligations including that they be provided with information about risks of abortion and risks of continuing with the pregnancy. Regulation required pamphlets containing pictures of fetuses at various stages of development to be shown to women and this aspect was one of the most controversial. The 1998 Act was opposed by many ACT residents and polling indicated that 65% of respondents favoured abortion on request. In December 2001, when the new Government came to power, Speaker Wayne Berry MLA introduced a PMB to repeal the 1998 Act and another Bill to repeal the abortion provisions of the *Crimes Act 1900*.

On 21 August 2002, both Bills were passed on a conscience vote by the narrowest of margins – 9 votes to 8. To enhance support for the two Bills, amendments were made to the *Medical Practitioners Act 1930* to ensure that abortion would only be carried out by medical practitioners in registered facilities. The latter legislation was also introduced as a PMB.

The comment could perhaps be made that if an ACT Private Member may be more likely than their interstate counterparts to get their Bills through, they may be more inclined to introduce legislation on controversial issues given that the vote will be on conscience rather than on party lines. As noted above, some have met with success.

4.8 COMMONWEALTH

The Standing Orders and Sessional Orders for the House of Representatives allow Private Members’ business to take precedence each sitting Monday (Sessional Orders 101 and 104). The procedure for bringing on PMBs is set out in SO 104A. Notices by Private Members of their intention to present a Bill stands referred to the Selection Committee and these have priority over other notices of the day. Once called on, the Member presents the Bill and may speak briefly in support of it. It is then to be read a first time and the motion for the Second Reading is set down on

the Notice Paper for the next sitting. Where the motion is agreed to by the House, further consideration of the Bill is accorded precedence over other Private Members' business and the Committee may allot times for consideration of the remaining stages of the Bill.⁶⁸ The Office of the Clerk of the House will usually draft PMBs.

Note that Sessional Order 104B allows the Clerk to remove a Private Member's Bill from the Notice Paper if it has not been re-accorded priority on any of the next eight sitting Mondays.

Of the PMBs presented in the House since 1901, only 7 have passed into law. Since 1993, that number has been 2.

	Bills Introduced	Bills Passed
1993	6	0
1994	3	0
1995	5	0
1996	8	1
1997	10	0
1998	8	0
1999	10	1
2000	14	0
2001	19	0
2002	14	0
2003	2	-

The first of 2 Bills that passed into law was the **Euthanasia Bill 1996** (referred to earlier) that was introduced by Mr Kevin Andrews MP, a Government Member, on 28 October 1996 to overturn the NT euthanasia laws, dealt with above. That Bill had the support of the Government. A comment was made that the Bill was a constitutional attack on a law validly passed by another Parliament and that there was no reason why other PMBs could not undo other laws of states and territories in a similar way.⁶⁹

⁶⁸ See also SO 331 regarding the process by which the Selection Committee arranges Private Members' business.

⁶⁹ Hon N Dondas MP, Euthanasia Bill 1996 (Cth), Second Reading Debate, *House Hansard*, 28 October 1996, p 1593.

The other Bill was the **Adelaide Airport Curfew Bill 1999** introduced by Mrs Chris Gallus MP on 22 March 1999 after it had previously lapsed at the dissolution of Parliament prior to the 1998 Federal Election. It had the support and concurrence of the Prime Minister which may have contributed to its successful passage.

The small number of Bills to have received Royal assent does not reveal the upsurge in the number of PMBs introduced in the last 5 years, particularly since 2000. On 13 March 2000, 4 PMBs were presented, an apparent record for any one sitting day.⁷⁰ As is the case in other jurisdictions PMBs have dealt with a diverse range of topics including euthanasia, sale of tobacco to minors, employment protection, trade practices, and constitutional reform.

If the success of a Bill can also be measured by its impact on the legislative process, then while few PMBs (and only 2 PMBs in the past decade) have become law, others have found their way into Government laws. An example of this was a Private Member's Bill dealing with uniform divorce laws that was later integrated into a Government matrimonial causes Bill that passed into law.⁷¹

The mandatory sentencing issue was also picked up in a Bill introduced in the Senate and later, by Mr Beazley in the House. The Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 2000 (a PMB) was introduced amid much media publicity and community debate. The Bill concerned abolition of mandatory sentencing laws in the Northern Territory. However, it ultimately lapsed and the NT Parliament addressed the issue with its own legislation.

It appears that the Senate has no specific Standing Orders relating to Private Senators' Bills.⁷² Since 1994, 107 Private Senator's Bills have been introduced. No Bills have passed both Houses.

4.9 NATIONAL STATISTICAL OVERVIEW

The following table indicates the number of PMBs that have been introduced and the numbers that have received Royal assent since 1994.⁷³ In view of the fact that some jurisdictional statistics cover financial years and others represent calendar years, comparisons were difficult to make on a year-by-year basis.

1993⁷⁴--2003

⁷⁰ 'Did you know? Private Members can lay down the law', p 14.

⁷¹ 'Did you know? Private Members can lay down the law', p 14.

⁷² I thank Ms Vicki Bradley of the House of Representatives Chamber Research Office for providing me with the above information and for this information passed to her by the Senate Table Office.

⁷³ Some jurisdictions have provided figures from 1994 onwards.

⁷⁴ Some 1994 figures are for 1993-1994 and will be indicated accordingly.

	PMBs Introduced	PMBS Passed
Cth	99	2
Qld ⁷⁵	62	3
NT ⁷⁶	41	3
WA ⁷⁷	205	4
SA	135	15
Tas	126	13
Vic	6	2
NSW ⁷⁸	194	11
ACT	240	143

5 CONCLUSION

If success of a PMB is judged in terms of its ability to achieve Royal assent, then such is very much determined by procedures of the Parliament that are usually controlled by the governing party. If such procedures facilitate the introduction of a PMB and provide a mechanism for it to be debated until finalised, it is more likely to become law. It appears that, of the Australian Parliaments, only the Tasmanian and Queensland Parliaments' procedures are such as to facilitate a PMB in becoming Act of Parliament. While in Tasmania, many PMBs have been introduced and a number passed, in Queensland, only 1 Bill has received assent since the new Sessional Order was introduced in 1998.

However, if 'success' can be measured in terms of influencing the workings of Parliament in general, it could be argued that PMBs provide an outlet for debate and airing of issues by Members not subject to constraints of party lines; for raising awareness of the public about important issues; stimulating community debate and testing public feeling about a matter; or for prompting Government action in the form of an inquiry or legislation. In cases where PMBs pass into law, they may be

⁷⁵ Since 1992.

⁷⁶ Figures provided are from 1 Jan 1994.

⁷⁷ Figures provided for financial years commencing 1993-1994.

⁷⁸ Figures provided are from 1994 session.

measures that serve a real need but are of such a controversial or politically sensitive nature as to inhibit the Government taking the initiative itself.

In the foregoing ways, it could be argued that PMBs do have a function in maintaining Parliament's importance in Australia's system of democratic government and demonstrate the representative and participatory aspects of the democratic process. It might be argued also, that PMBs fit within one aspect of the concept of a 'liberal democracy' in the sense of facilitating community access to the parliamentary and legislative process, despite the increasing Government dominance of the executive and the legislative arms of government.

Essentially, it could be suggested that PMBs do keep the legislative process more representative, vibrant, interesting and open to all Members, not just those on the Government front benches. They allow healthy and extended debate on issues that matter to constituents that might otherwise be prevented from coming to the fore because of the control of the Parliamentary agenda by the Government of the day.

