

Radically Revising the Rules?: Victoria's Legislative Council 2003–06[#]

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Victoria's 55th Parliament was opened on 25 February 2003. Its membership was dominated by a Labor Party which had been returned with an overwhelming majority in the Legislative Assembly and, for the first time other than a short period in 1985, with a majority (25 of 44 seats) in the Upper House, the Legislative Council. On the day after Parliament's Opening, the new Leader of the Government in the Council, John Lenders, moved a motion encompassing 35 new Sessional Orders. These Sessional Orders were significant, not simply due to their number, but because they constituted the most far-reaching modifications of the Council's procedures in its history. A House that had been notable for its lack of regulation of proceedings (relative to other Australian legislatures) was to suddenly experience the codification of controls over a wide range of its proceedings. Unsurprisingly, the Government's reforms proved contentious and were opposed by both the Opposition (Liberal Party) and the third party in the House, The Nationals. The non-government parties asserted that the proposed Sessional Orders were unnecessary, overly prescriptive and designed to stifle debate and undermine their capacity to scrutinise the Government and its legislation.¹ Nevertheless, the reforms proceeded and were augmented with further procedural modifications in each subsequent year of the 55th Parliament which was dissolved in October 2006.

By reshaping the manner in which business was done in the Legislative Council, the new Sessional Orders provided a potential basis for longer term cultural reform in a

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¹ Victoria, *Legislative Council Debates (LCD)*, vol. 457, 26 February 2003, pp. 46-9, 52-3.

House that the Labor Party had traditionally regarded with hostility and suspicion.² These procedural reforms were implemented alongside the major reforms of the *Constitution (Parliamentary Reform) Act 2003* which radically altered the Council's role, powers and structure.³ The importance to the Government of the revised Sessional Orders was reflected in the Governor's speech at the Opening of Parliament when reference was made to the move in order to modernise the Victorian Parliament's workings by adopting practices more in line with the Federal Parliament.⁴ As the Leader of the Government observed the following day, 'Yesterday, for the first time I can recall, the Governor's speech mentioned Sessional Orders.'⁵

John Lenders asserted that the Sessional Orders answered the need for rules and procedures that were relevant to the 21st century and could create an Upper House that was a more effective House of Review. Clearly, these rules also had to be consistent with the Government's own political agenda for the Legislative Council. How did John Lenders envisage the rules achieving these changes? He argued that the revised Sessional Orders would increase the time available for the House to scrutinise legislation and, thus, perform its review function; provide backbenchers with greater opportunities to participate in the legislative process and to fulfil their roles as community representatives; ensure more reasonable working hours to enable Members to contribute to proceedings in a more focussed, effective manner; and enhance certainty associated with the House's proceedings to enable it to operate in a more predictable and business-like fashion.⁶

Over four years have passed since these aspirations for the revised Sessional Orders were articulated. Looking back over the course of the 55th Parliament, to what extent did the Government's aspirations come to fruition? Using the Leader of the Government's own criteria, to what extent did the Legislative Council become a more effective House of Review? What were some of the factors that appear to

² The Legislative Council had developed an elitist, conservative reputation from its inception in 1856. This had been founded on factors such as: property qualifications for Members and voters (which were not fully abolished until 1950); the Council's blocking of Supply on ten occasions up to 1952; and the electoral system used in Council elections which had repeatedly produced non-Labor majorities.

³ Amongst many changes, this Act: removed the Council's power to block Supply; introduced fixed four year terms for both Houses (Legislative Councillors were previously elected for two terms of the Assembly); established mechanisms for settling deadlocks between the Houses concerning non-appropriation bills; and introduced proportional representation for Legislative Council elections (beginning in 2006) with the House's membership being reduced from 44 to 40 Members due to the creation of eight, five Member electoral regions.

⁴ Victoria, *LCD*, vol. 457, 25 February 2003, p. 6.

⁵ *Ibid.*, 26 February 2003, p. 38.

⁶ *Ibid.*, pp. 38-46.

have shaped these outcomes? These issues will be examined in the remainder of this paper.

Increased time to scrutinise legislation

When speaking in support of his motion introducing the new Sessional Orders, the Leader of the Government identified several provisions he considered would provide the House with more time for detailed scrutiny of legislation; the first concerned the number of sitting days. Sessional Order 1 made three day sitting weeks (Tuesdays to Thursdays) part of the House's normal routine. This was in contrast with earlier parliaments when shorter sitting weeks were relatively common, particularly during the early stages of a sitting period. For instance, during the 54th Parliament (3 November 1999 to 31 October 2002) the Council sat for two or less days in 24 of the 53 sitting weeks (45%). During the 55th Parliament, the comparable figures were 6 out of 64 (9.4%), with 5 of the 6 occasions occurring in 2003 and 2004.

The inclusion in the Sessional Orders of provisions for a Government Business Program, in which the Government could nominate Bills or other business that had to be completed during a sitting week, was also anticipated to increase the overall number of sitting days. This was via new Sessional Orders facilitating Friday sittings which could be devoted solely to dealing with unfinished business from the Government's Program. As it transpired, three day sittings became such a routine for the House that Friday sittings were rarely required. There were only 4 such sittings between 2003 and 2006, which was almost identical to the three held during the three years of the previous Parliament.

The average number of sitting days per sitting period (ie. Autumn and Spring Sittings) during the 55th Parliament have been compared with earlier parliaments in the following table:

Parliament	Average sitting days per sitting period*
55 th (2003-06)	24.6
54 th (1999-02)	22.4
53 rd (1996-99)	15.5
52 nd (1992-96)	20.2
51 st (1988-92)	21.6

* These figures exclude any sitting period interrupted due to the dissolution of Parliament for a general election

As can be seen from these figures, the Legislative Council sat more regularly during the 55th Parliament than in the previous fifteen years. However, it should be noted that this was not a product solely of the new Sessional Orders. The key factor was the Government's commitment since it was first elected in 1999 to an increased number of parliamentary sitting days with fifty per year being the stated aim.⁷ Nevertheless, the increase under the same Government from 22.4 days in the 54th Parliament to 24.6 in the 55th Parliament suggested that the Sessional Orders had been a factor in the increase.

It should also be noted that although the number of sitting days increased, this had almost no effect on the average length of those days. The average length of sitting days in the 54th Parliament, 9 hours and 52 minutes, increased by only 2 minutes during the 55th Parliament. This was despite one of the many reforms introduced under the Council's Sessional Orders being a revised commencement time for all sitting days, other than Tuesdays, of 9.30 a.m. rather than 10.00 a.m. (which aligned the Council with the Legislative Assembly's commencement times).

Another device within the amended Sessional Orders that the Government argued would increase the time available for scrutinising legislation was the incorporation of second reading speeches into *Hansard*. This procedure provided for Bills originating in the Legislative Assembly (the overwhelming majority of Bills) to be incorporated without a second reading speech being read, although Ministers were able to make introductory comments on the Bill's contents, including a statement on any amendments made in the other House. Bills originating in the Council could also be incorporated, but only by leave (no dissenting voice).

Prior to the 55th Parliament, Ministers' second reading speeches frequently took between five and ten minutes; on occasions they took longer. After the application of the new procedures, the incorporation of second reading speeches became standard practice and undoubtedly saved the House considerable time. Whether this helped facilitate additional scrutiny of legislation was less clear and will be touched on shortly.

The Leader of the Government also placed great emphasis on the potential for individual time limits on Members during second reading debates to avoid filibustering and, thus, to increase the House's opportunities to engage in more productive processes, such as the Committee stage of Bills. John Lenders reminded the House that second reading debates were intended to cover each Bill's broad principles, with the Committee stage available for detailed examination of its contents. On this basis, he could see no reason to allow Members unlimited time, sometimes hours each, to participate in such debates.⁸

⁷ See Governor's speech at Opening of 54th Parliament, Victoria, *LCD*, vol. 444, 3 November 1999, p. 3.

⁸ Victoria, *LCD*, vol. 457, 26 February 2003, pp. 41–2.

Under the revised Sessional Orders, a time limit of sixty minutes was imposed on lead Government and Opposition speakers and 45 minutes on the lead speakers of the third party, The Nationals. The next twelve speakers were limited to fifteen minutes, the next fifteen speakers to ten minutes and remaining speakers to five minutes. John Lenders suggested that, not only would these time limits prevent filibustering, they would expand opportunities for backbenchers to speak in debates rather than have their allocation consumed by verbose contributions from earlier speakers.

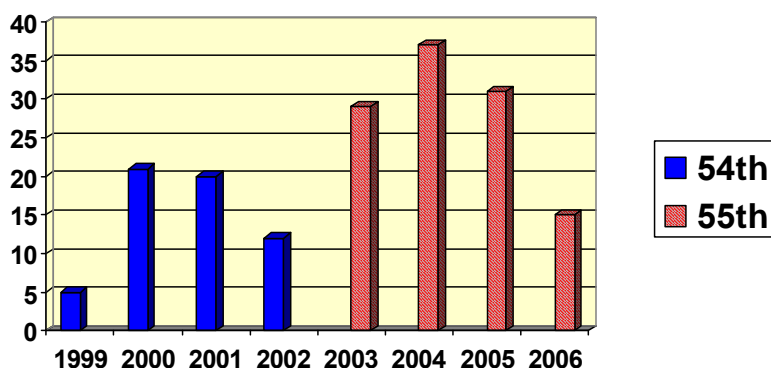
In practice, time limits did reduce the overall length of second reading debates, but not substantially. One of the reasons for this was that, although lengthy contributions were certainly made on occasions during the previous Parliament (1999 to 2002), there does not appear to have been a great deal of evidence of filibustering. During this earlier Parliament, an average of 103 minutes was devoted to second reading debates on the 310 Bills which reached that point in the Council's proceedings. The comparable figure during 2003 to 2006 was 96 minutes for each of 417 relevant Bills. One should take into account that such figures would also have been influenced by other factors, such as the degree of contentiousness of Bills during a given period and the Opposition's subsequent behaviour. Nevertheless, time limits on Members' second reading speeches did not appear to have the impact one might have expected. This is notable, particularly when one considers that, in the previous Parliament, the Liberal and National parties had enjoyed a combined 30 seats out of the Council's 44 seats. Thus, the Government had far less control over proceedings in the previous Parliament, including the length of second reading debates and the number of speakers (the issue of backbench participation will be explored shortly).

The Government envisaged that the cumulative affect of measures such as additional sitting days, the incorporation of Ministers' second reading speeches and time limits in second reading debates would be an increase in the Council's opportunities and available time to scrutinise legislation while in Committee of the whole.⁹ Certainly, in terms of the number of Bills considered in Committee, the Government's prediction was accurate. During the previous Parliament, only 58 out of 316 Bills introduced into the Council (18.3%) were considered in Committee, despite the Opposition having a majority which could block legislation or force amended Bills back to the Assembly. In contrast, in the 55th Parliament, 113 of 414 Bills (27.3%) reached the same stage. This contrast is illustrated in the following table which outlines the number of Bills considered in Committee on a yearly basis.

Taking these figures into account, when first considered it is a little surprising that a different outcome is reached when one considers the length of time the Council actually devoted to the Committee stage on a per Bill basis. During the 54th Parliament, the Council spent an average of 59 minutes in Committee of the whole

⁹ See Deputy Leader of the Government's comments, *ibid.*, p. 62.

examining each Bill. In the 55th Parliament, the equivalent period was a little under 53 minutes per Bill. This can be explained, at least partly, by the tendency of certain Ministers, particularly in the early stages of the 54th Parliament, to seek regular advice from the Advisers' Box. The President at the time became so concerned with the prolonged breaks in proceedings this was creating, that he issued a statement in which he advised that such breaks should be limited in future to one minute.¹⁰



When one moves on to considering the time spent in Committee as a proportion of the House's total proceedings, the Committee stage did expand during the 55th Parliament. During 2003 to 2006, Committee proceedings represented 5.3% (6% for the first 2 of those years) of the House's total sitting time: in 1999 to 2002, the figure was only 4.2%.

Thus, although the 54th Parliament spent more time on average examining each Bill in Committee than occurred in 2003 to 2006, the 55th Parliament referred a higher proportion of its Bills to a Committee of the whole and this process constituted a greater proportion of the House's sitting time. Although there were many factors that could have influenced these changes, the revised Sessional Orders are likely to have been one of these.

Enhanced role for backbenchers

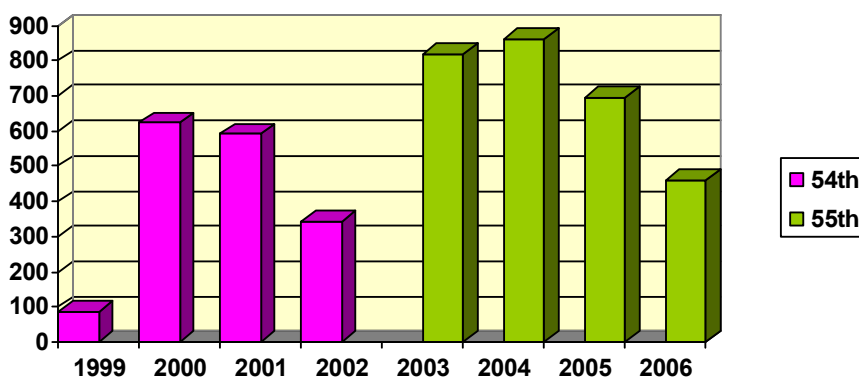
When introducing the revised Sessional Orders in 2003, the Leader of the Government identified three means by which these new procedures would enhance backbenchers' participation in the House's business and, consequently, strengthen the Council's effectiveness as a legislative and representative institution. The first of these related to second reading debates and John Lenders' observation concerning

¹⁰ Victoria, *LCD*, vol. 447, 30 May 2000, pp. 1409–10.

The tyranny of time in this place ... people talk for too long and go beyond what is succinct ... backbench Members of their own party get cut off ... We are endeavouring to empower Members who are not necessarily Ministers or shadow Ministers ...¹¹

The Legislative Council's experience during the 55th Parliament strongly supported John Lenders' prediction that the new Sessional Orders would enhance Members' opportunities to participate in second reading debates. This is reflected in the following graphic:

Total number of speakers during the second reading debate for each year



The most useful comparison to be made here is between the years 2000 and 2001 against 2003 to 2005, as 1999, 2002 and 2006 were truncated sitting years due to general elections.

If one then considers the total number of second reading speeches made during the 54th Parliament, divided by the total number of Bills dealt with, and follow the same process for the 55th Parliament, the respective averages per Bill were 5.2 and 6.8. Thus, there was an increase of 30.7% in the average number of participants in each second reading debate after the introduction of the revised Sessional Orders in 2003¹². This was, of course, achieved within the context of strict time limits, in

¹¹ Victoria, *LCD*, vol. 457, 26 February 2003, p. 43.

¹² This change was even more marked in the first two years of the 55th Parliament when the average was 7.44. It is likely that this was due to the type of legislation introduced during the early stages of the Government's control of the Upper House, such as the *Constitution (Parliamentary Reform) Act 2003* (see footnote 3)

which more Members participated in debates but certainly, on occasions, for less time than they wished.

The Government also pointed to ninety second Members' Statements (a procedure first introduced in 2002 as part of Opposition initiated reforms to the Sessional Orders) as a method of improving backbench participation in the parliamentary process. Under the revised Sessional Orders, no party was permitted more than 50% of Members' Statements each week, regardless of their numerical strength in the Chamber. The maximum number of Statements was fifteen each sitting day (excluding Fridays), with each Member limited to one per week.¹³ Under the previous Sessional Orders, Members' Statements had been restricted to fifteen minutes on Wednesdays and Thursdays. Given this increase in the days and time allocated for this procedure, and that Members' Statements were predominantly made by backbenchers,¹⁴ the House's revised practices certainly expanded opportunities for backbench participation, if only for ninety seconds per week.

When one considers the third area in which the Government foreshadowed improvements in the House's functioning with the potential to benefit backbenchers, conclusions are more difficult to draw. The revised Sessional Orders altered the Adjournment debate's conduct by introducing similar rules to those that would apply during Members' Statements in relation to each party (no more than 50% of all matters raised each week), debates (maximum of fifteen matters per day) and individual Members (one per week). In practice, this resulted in a maximum of 37 Adjournment matters being raised each sitting week due to the exclusion, in a 44 Member House, of Ministers (six) and the President.

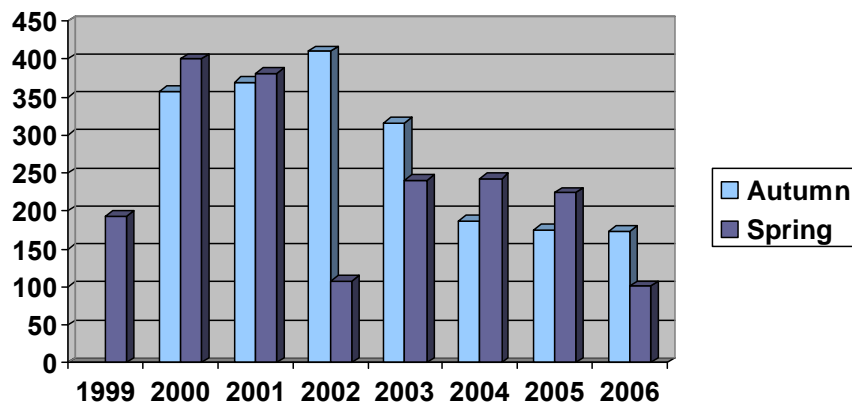
Unlike Members' Statements, the revised procedures decreased opportunities for backbenchers to contribute to the parliamentary process. In terms of the number of participants, the Adjournment debate had been largely unregulated other than excluding Members from raising more than one matter each day. The revised Sessional Orders resulted in a significant reduction in the number of Adjournment matters raised, compared to the previous Parliament. This is illustrated in the following graphic which outlines the number of Adjournment matters during each sitting period in the 54th Parliament and 55th Parliaments.

It should be noted, however, that it was always obvious to the Government that this type of decrease would occur. Where the Government asserted that the changes would be beneficial was in the quality of Adjournment matters, not in their number. John Lenders predicted that Adjournment matters would be dealt with far more seriously with a limit of fifteen each day, as opposed to the past when the debate had been 'a vehicle for every single Member to ... apply pressure on the Minister,

¹³ Members could assign their entitlement to a colleague.

¹⁴ Frontbenchers from the non-government parties, but Ministers only rarely, participated in Members' Statements.

to filibuster and become part of the crowd scene.¹⁵ Whether the Government leader was proved correct is questionable; certainly there was no obvious evidence of it. On balance, it seems likely that this change in the Sessional Orders was unhelpful in terms of Members' capacity to participate in the parliamentary process and to keep the Government accountable.



	1999	2000	2001	2002	2003	2004	2005	2006
Autumn	-	357	370	410	316	187	176	174
Spring	193	400	382	108	241	243	224	101 ¹⁶

Reasonable working hours

The Leader of the Government believed a further benefit likely to flow from the application of the revised Sessional Orders related to what he termed 'life balance' and the need for more reasonable working hours. These, he argued, would allow Members more contact with their families and decrease the likelihood of legislation being scrutinised in the early hours of the morning when Members were exhausted and thinking less clearly. The new Sessional Orders prescribed that the House would commence the daily Adjournment debate at 10.00 p.m. on Tuesdays and Wednesdays (and Thursdays if it was still sitting at that time) unless a minister moved a motion for the sitting to be continued. Mr Lenders predicted that the House would rise by 11.00 p.m. each day.¹⁷

¹⁵ Victoria, *LCD*, vol. 457, 26 February 2003, pp. 43–4.

¹⁶ The Spring Sittings of 1999 and 2002 were both shortened due to State general elections.

¹⁷ Victoria, *LCD*, vol. 457, 26 February 2003, pp. 44–5.

The Government ensured that this prediction was accurate and, by doing so, may have laid the groundwork for a longer term cultural change in the House. For example, in the years 2003 and 2004, only 5 sitting days out of 98 continued beyond 11.00 p.m. (only one of these doing so after midnight). In 2005 and 2006, there was no instance of a post-11 p.m. sitting. In contrast, 50 sitting days out of 136 during the previous Parliament (36%) continued after 11.00 p.m. with 21 of these extending past midnight. Although one must attach the usual codicils to these figures (concerning the differing composition of the House and Bills under consideration in the two parliaments), the sitting patterns were significantly different. If one accepts that Members work less effectively late at night, after a very lengthy sitting day (which does not seem too radical an idea), the House's new practices in relation to sitting hours placed Members in a stronger position to do their work efficiently.

A more predictable and business-like House

A central theme underlying the Government's arguments in support of the new Sessional Orders was its desire to transform the Council into a more modern, predictable, business-like House of Review. John Lenders argued that parliamentarians, and those in the community with an interest in particular legislation being considered, needed to plan their time, whereas the Council's practices had been 'incredibly random' leading to situations where people had little idea when a Bill was likely to be debated.¹⁸ Clearly, the Government also sought greater control over the House's processes in order to transact its business in a more orderly fashion without undue delays. For its part, the Opposition argued that the Government's procedural reforms amounted to increased Executive dominance over the Legislature through decreasing the non-government parties' capacity to scrutinise government administration and legislation.¹⁹

The experience of the Legislative Council during 2003 to 2006 suggested that, although a range of measures introduced via the Sessional Orders had regulated the House's processes more closely and, to a degree, increased Executive control of the Legislature, these measures did not necessarily result in the outcomes anticipated by the Opposition. While the House's proceedings were more predictable, there was less evidence to support the assertion that this resulted in a significant diminution in the Opposition's contribution to the parliamentary process. This assessment is, of course, made in the context of a Parliament in which the Government's majority in both Houses already ensured significant limits on the Opposition's influence.

¹⁸ Ibid, p. 41.

¹⁹ Ibid, pp. 46–51.

Government Business Program

One of the means by which the Government enhanced its capacity to control the House's proceedings and make these more predictable, was through the inclusion in the Sessional Orders of a Government Business Program. As noted previously, this Program allowed the Government to nominate Bills or other business that had to be completed by the end of a sitting week (although it did not prevent other Bills and business also being considered). Interestingly, the Government employed this procedural mechanism fairly infrequently during the 55th Parliament. In 2003, a Government Business Program was introduced intermittently and applied on only 7 of the 17 sitting weeks that year. The one year when such a Program was used regularly was 2004, with only 2 of 16 sitting weeks being free of this regulation. This changed significantly in 2005 when only 4 Government Business Programs applied during 17 sitting weeks. By 2006, the figure was 2 of 13 sitting weeks and these were both in the final week of sitting periods.

The Government did not explain the reason for such sparing use of a formal program in 2005 and 2006. It seems likely that it related both to the Opposition's preparedness to accommodate the Government's legislative timetable and to the nature and number of Bills being introduced in the lead up to a general election. The absence of a Program from so many sitting weeks in each year other than 2004 seemed to support the argument of the Leader of the Opposition, Philip Davis, that the Government's aims could be accomplished through agreement rather than regulation:

for 150 years this House has been able to conduct its business without ... a Government Business Program ... yet it has still been able to ... deal with all of the legislation for which the government of the day has sought the Parliament's imprimatur.²⁰

On those occasions that a Government Business Program was introduced, it provided the House with a fair degree of certainty concerning the legislation that had to be dealt with prior to the conclusion of a sitting week (there were only 4 sitting weeks when the Program was amended to include additional Bills or motions). However, the Sessional Orders provided less certainty about the point at which this process would be drawn to a close (assuming that there was still business outstanding). There were several scenarios that could apply:

- (a) at 4.30 p.m.²¹ on Thursdays, the Government could apply what was described as a 'soft guillotine' in which the Chair moved the remaining questions to finalise consideration of any matters remaining on its Program. This Sessional Order had the potential to regulate the House's proceedings fairly tightly, as occurred in the Legislative Assembly which had virtually the same procedure and applied it regularly. The Government took quite a different approach in the

²⁰ Ibid, p. 49.

²¹ 4.00 p.m. under the Sessional Orders of 2003.

Council: of the 14 sitting weeks between 2003 and 2006 in which the Government Business Program remained unfinished at the appointed time, on only one occasion did the Government choose to continue the sitting rather than apply the 'soft guillotine'.²² Although the Government may have argued that this reflected its flexibility and willingness to recognise the Council as a separate House which operated quite differently from the Assembly, one might question the purpose in establishing a procedural mechanism it seemed so reluctant to use. The Government's approach also confirmed that, regardless of the powers to tightly regulate the House that were provided under the Sessional Orders, it had to take other considerations into account before implementing these (such as its promises when first elected in 1999, of which the Opposition was only too willing to remind it, to 'provide open and accountable government' and 'improve the democratic operation of the Parliament').²³

- (b) The Government could move for the extension of a Thursday sitting until 10.00 p.m. (when the House went on the Adjournment) and, if necessary, continue it past that time. On 8 of the 14 occasions identified in (a), the Government Business Program was completed prior to 10.00 p.m. On another occasion, the sitting was further extended past 10.00 p.m. to finalise the remaining business. The implications of this proceeding will be discussed later in this paper.
- (c) If the Government Business Program was not finalised on Thursday evening, there was a Friday sitting to deal solely with the remaining business. There were only four such sittings in 2003 to 2006. On each occasion, debate continued until 4.00 p.m. On one of those occasions, the Government further extended debate by moving for the suspension of the relevant Sessional Orders, with debate being finalised approximately ten minutes later. On the other three occasions, the House was in Committee when proceedings were interrupted pursuant to Sessional Orders at 4.00 p.m.; as a result, consideration of the Bill was truncated.

Thus, out of a total of 63 sitting weeks during the 55th Parliament, there were only 3 weeks in which a Government Business Program resulted in a premature end to consideration of a Bill. This was due to both the built-in flexibility in the Sessional Orders in relation to putting the questions to finalise consideration of the Program and to the Government's own reluctance to use its 'guillotine' to limit the House's scrutiny of Bills.

The 'gag'

The closure motion or 'gag' was another example of a procedural mechanism included in the revised Sessional Orders in 2003 which could have placed additional restrictions on the House's consideration of Bills yet was rarely applied. Although the Council's Standing Orders had incorporated a closure motion since

²² See Victoria, *LCD*, vol. 468, 27 October 2005, pp. 1834-5.

²³ See Governor's speech at Opening of 54th Parliament, op. cit.

1926, the revised Sessional Orders included a ‘gag’ specifically related to proceedings in Committee of the whole. This allowed the Chair to accept from a minister, at any time, a motion ‘That the question be now put’ provided that the Chair was satisfied that the debate on a clause or amendment was ‘repetitious or frivolous’. This contrasted with the Standing Orders, where such a motion required the support of six other Members and could be moved only after a question has been proposed. The Leader of the Opposition, Philip Davis, described the new procedure as ‘most extraordinary’ and proceeded to complain:

For it to be presumed that ministers, as competent or incompetent as they may be, should have the right to impose a gag on the Opposition, so that examination of a clause in Committee should not continue, is outrageous.²⁴

In practice, this new procedure was used only once in approximately 98 hours of debate in Committee and, thus, it appears to have had very little affect indeed.

Time limits

The time limits imposed on individual speakers by the revised Sessional Orders, that were discussed earlier in this paper, made the House more predictable in terms of the length of debate. It was no longer possible for a participant, other than each party’s lead speaker, to contribute to a debate for longer than fifteen minutes (and in some cases less). Thus, if the parties decided that ten Members would contribute to a particular debate, the maximum length of that debate was known and a reasonably accurate estimate could usually be made concerning the actual length. In the past, such estimates were far more fluid.

The revised Sessional Orders for the 55th Parliament also imposed time limits on many other aspects of the House’s proceedings, which was in marked contrast to most of the Council’s history when one of its distinguishing features, when compared to other Australian legislatures, was the lack of time limits. Included amongst these time restrictions were those associated with a fifteen minute period for the giving of Notices of Motion and Notices of intention to make a statement on a report or paper tabled in the Council (added in 2004); some condolence motions;²⁵ ministerial statements (added in 2004); debates concerning the introduction of Government Business Programs, amendments to Government Business Programs and procedural motions; and inaugural speeches, budget speeches and the Address-in-Reply.

These innovations were in addition to various time limits introduced during the previous Parliament including: limits during Question Time of four minutes for answering an initial question and one minute for asking an initial question or for

²⁴ Victoria, *LCD*, vol. 457, 26 February 2003, p. 48.

²⁵ No time limits applied for a condolence motion concerning a current Member, past Governor, Premier, Presiding Officer or Minister, or a person with ‘previous distinguished service in Victoria’.

asking or answering a supplementary question; ninety seconds for each Member's Statement; three minutes for raising each matter during the Adjournment debate; and an overall maximum of sixty minutes for debate on reports and papers, with each Member restricted to ten minutes (reduced to five minutes for the 55th Parliament).²⁶

On the surface, the introduction of such an array of time limits was radical and comprehensive and established a significant level of certainty and predictability in the Legislative Council's operations. This was the type of certainty that governments normally seek when they wish to use Parliament as an instrument to process their business while still providing backbenchers reasonable opportunities to be heard. However, the Government's control of the Legislative Council was tempered, to some extent, by the inherent difficulties associated with regulating proceedings and, particularly, with the problem that, no matter how many practices and procedures were codified, a rule could not be created to cover every situation.²⁷ Although this did not prevent the Government from suspending or revising the Sessional Orders to meet these situations, it could be argued that proceedings became undesirably 'messy' as a consequence. Although these responses were part of the Government's effort to achieve the difficult balance between predictability and flexibility, they did partially undermine the Government's aim of having orderly, controlled proceedings. Some instances of this occurring in 2003 (which were the forerunner of further examples in subsequent years) included the following.

On 25 March 2003, the Government moved a motion to suspend the revised Sessional Orders (introduced just a few weeks before) to the extent necessary to allow for increased time limits during the second reading debate on the Constitution (Parliamentary Reform) Bill. With considerable justification, John Lenders stated that this was due to the Bill's 'critical' importance to the Government.²⁸

The Government again moved for the suspension of Sessional Orders on 11 June 2003 to enable four additional Members' Statements to be made on the final sitting day of the Autumn Sittings. As there were only two sitting days in that week, the limit under the Sessional Orders of fifteen Members' Statements per day would otherwise have prevented some Members wishing to make a statement from doing so.²⁹

²⁶ These debates concerned 'Statements on Reports and Papers'. During the 54th Parliament, debates were on 'Motions to take note of reports and other papers' with Sessional Orders determining an order of precedence for debates, with motions concerning reports of the Auditor-General being given priority ahead of reports of parliamentary committees and then any other reports or papers. This order of precedence no longer applied.

²⁷ A point made by the leader of the National Party, Peter Hall, when the revised Sessional Orders were first proposed. See Victoria, *LCD*, vol. 457, 26 February 2003, p. 53.

²⁸ Victoria, *LCD*, vol. 457, 25 March 2003, p. 419.

²⁹ *Ibid.*, vol. 458, 11 June 2003, p. 2189.

On 16 September 2003, relevant Sessional Orders were suspended to facilitate the removal of time limits for debate on a condolence motion concerning a recently retired Member of the Council. Thirteen Members wished to speak on the motion; however, had the revised Sessional Orders been applied, the total time for debate would have been limited to fifteen minutes.³⁰

As noted previously, the Government had to move for the suspension of relevant Sessional Orders twice to accommodate the finalisation of the Government Business Program on 27 November 2003. In the first instance, this occurred to enable a Thursday sitting to continue beyond 10.00 p.m. A second motion was then required to enable the Chair to put all relevant questions at 10.45 p.m. for the purpose of bringing the Government Business Program to a conclusion.³¹

There was an ongoing need to introduce additional modifications to the Sessional Orders at the commencement of sittings in each subsequent year of the 55th Parliament. Although some of these reforms were minor or merely technical,³² or codified the House's usual practices, others represented attempts to further regulate the House.

For the first time in the Council's history, formal procedures applied to Ministerial Statements. Although these could be made without leave at any time during Government Business, provided there was no question before the Chair, the minister was now obliged to provide a copy of the Statement to the President, and party leaders, a minimum of two hours prior to it being made. Most significantly, time limits applied, with ministers and lead speakers of other parties being restricted to twenty minutes and the total debate to two hours.

New procedures applied when an answer to a question on notice was not provided within 30 days, which limited debate on a motion regarding the minister's failure to provide an answer or explanation, to Wednesdays during General Business or Thursdays during 'Statements on reports and papers'. These procedures overrode the Standing Orders which accorded precedence to such motions on the next day of meeting.

The Government also introduced additional Sessional Orders to ensure that the existing Sessional Orders would operate more in accordance with its requirements. Several of these added flexibility to procedures which were considered overly rigid and, consequently, somewhat inefficient.

There was a shift from 4.00 p.m. to 4.30 p.m. on Thursdays for the interruption of the House's business by the President to propose the Adjournment. This additional

³⁰ Ibid, vol. 459, 16 September 2003, p. 7.

³¹ Ibid., vol. 460, 27 November 2003, pp. 1936, 1959.

³² In one instance a new Sessional Order facilitated the establishment of a Legislation Committee on a trial basis. See Victoria, *LCD*, vol. 469, 8 February 2006, pp. 63–83.

thirty minutes was intended to provide sufficient time for the Assembly to dispose of any remaining business under its Government Business Program at, or shortly after, 4.00 p.m. and to deliver related messages to the Council. Any Bills could then be read a first time prior to the Council going on the Adjournment.

The Chair was provided with the discretionary power to extend proceedings by up to ten minutes (at 10.00 p.m. on Tuesdays and Wednesdays and 4.30 p.m. on Thursdays) if this would allow a speech on the second reading to be completed within the allocated time. The Chair could also decline to call the next speaker if a speech concluded within three minutes of the fixed time for the interruption of business.

In order to complete the Government Business Program, the President could announce the receipt of any messages from the Assembly and any Bills could be read a first time with their second reading made an order of the day for the next day of meeting, prior to any question being put for the House's Adjournment*.

To circumvent rigidities imposed by the revised Sessional Orders in relation to the Government Business Program, a minister could move at any time, and without leave, a motion to set the day and time of the Council's next meeting provided that there was no question before the Chair*.

Formal time limits during General Business were imposed in 2005, not just for individual Members or on the total length of debate, but for each party (70 minutes for the party of the mover of the motion; 60 minutes for the Government party; and 45 minutes for the other non-Government party). The allocation of such times had previously been negotiated informally between the party Whips.

The Government argued that such modifications to the Sessional Orders were part of an ongoing process in which the Government demonstrated responsiveness as part of its commitment to improving the House's workings.³³ Nevertheless, by adopting such a prescriptive approach in which the Government's own Sessional Orders were regularly amended and/or suspended to accommodate weaknesses within those rules, the Government may have created a rod for its own back.

Conclusion

Although the Legislative Council's revised Sessional Orders produced mixed results during the 55th Parliament, on balance the House's experiences were supportive of the Government's forecasts concerning its procedural changes.

* Included in Legislative Council Sessional Orders in 2005.

³³ For example, see John Lenders' comments when moving for the adoption of further amendments to the Sessional Orders in 2005. Victoria, *LCD*, vol. 465, 22 March 2005, pp. 97–9.

Certain outcomes were somewhat surprising, such as the ‘radical’ move to strict time limits on individual contributions to second reading debates producing only a 6.8% reduction in the average length of each debate. However, this was more explicable in the light of figures confirming the Government’s prediction of a significant increase in the number of participants in second reading debates. The Government was also proved correct on matters such as the development of the Committee of the whole stage (significant both in terms of the number of Bills examined and as a proportion of the House’s overall work) and the shift towards more reasonable working hours for Members and staff.³⁴ The Government appears to have been a little less successful in making the House more predictable and business-like. Although the revised Sessional Orders achieved this to some degree, by making proceedings more highly regulated, the predictability produced was weakened by factors such as the inherent difficulties in being so prescriptive. This prescriptive approach produced complexities as situations arose which, in themselves, created a certain amount of unpredictability.

The dire consequences forecast by some opponents of the revised Sessional Orders did not happen. As a consequence, by the conclusion of the 55th Parliament, both government and non-government parties appeared to view the changes as less radical and, in some cases, more positive, than first anticipated. On this basis, it seemed that the groundwork had been laid for the retention of many of these procedures in future parliaments. Thus, along with the major constitutional reforms that were implemented during the 55th Parliament, it was also a memorable parliament for its broad, although perhaps not entirely radical, procedural reforms.

Postscript

The State election in November 2006 was the first occasion that the Legislative Council was elected under its new structure and proportional representation electoral system. This altered the complexion and dynamics of the House with the Government falling just short of a majority, with 19 seats in what was now a 40 Member House. New Sessional Orders soon followed, a number of which resulted in the suspension of procedures which were reviewed in this paper. For example, the majority of time limits were removed, as was the use of a Government Business Program. In addition, non-government parties were provided with the opportunity to extend General Business on a Wednesday past the usual limit of 3 hours. Nevertheless, some of the innovations of the 55th Parliament were retained, including: standard 3 day sitting weeks with an automatic adjournment at 10 p.m.; some of the time limits; the rules associated with 90 second Members’ Statements; and the incorporation of second reading speeches.

³⁴ As John Lenders noted, these working hours could not yet be termed ‘family friendly’. See Victoria, *LCD*, vol. 457, 26 February 2003, pp. 38–9.

Developments in the early months of the 56th Parliament were a reminder of at least two things. Firstly, that politics is about the numbers and if, as in this case, non-government parties hold a majority, they are likely to modify the rules to increase their capacity to 'flex their muscles' and try to bring the government to account. Secondly, despite the wide-ranging nature of the procedural reforms introduced between 2003 and 2006, cultural change in an institution such as the Legislative Council is an ongoing and gradual process. ▲