

The Role of Private Members' Bills

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1. Introduction

The intention of this article is to examine the role of Private Members' Bills (PMBs) in Australian parliaments. In particular, it will be considered whether PMBs contribute to the representative and participatory aspects of our system of government and whether they feature as part of a liberal democracy.

The term 'Private Member' is fairly imprecise. It generally refers to a back-bencher (but sometimes a Minister) acting in his or her individual capacity rather than as member representing the Government or Opposition.¹

The number of PMBs to pass all stages of Parliament and receive Royal assent has always been quite small, compared to those sponsored by the Government (i.e. 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. That has enabled the governing party of the day to dominate Parliament and thereby secure the finance needed for the Executive to operate. It means also that the Government controls the procedural agenda of Parliament. 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. However, Parliamentary practice has generally provided some opportunity for Private Members to introduce Bills.²

While Governments may dominate the parliamentary agenda and the legislation introduced, the opportunity for all Members to participate in debate on legislation and to raise important constituent issues may be seen as examples of 'representative' and 'participatory' democracy at work. It provides a means where

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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.

the community is able to have its concerns raised through their elected representatives — Members of Parliament — whether in the Government or not. If it is a feature of a liberal democracy that all people have the ability to participate in politics, this participation by Members and airing of constituent issues is arguably an aspect of such a system.³

To evaluate the role of PMBs in upholding representative democracy and the importance of Parliament, this article provides some Queensland case studies. It also makes comparisons between jurisdictions regarding the numbers of PMBs introduced and passed in lower Houses over the past decade and makes observations about trends, where relevant.⁴ This article focuses on the Queensland parliamentary process, being that with which the writer is most familiar. As the Queensland Parliament is unicameral, it follows that this article concentrates on the fate of PMBs in the lower House only. It is, of course, recognised that the existence of an upper House may introduce a further obstacle to the passage of PMBs, particularly where the Government has sufficient numbers to block the Bill in the upper House. The view expressed in this article is that all PMBs play a valuable part in enabling all Members of Parliament to participate in policy-making and in the legislative process, whether they obtain Royal assent or not.

1.1 Value of Private Members' Bills

Arguably, the success or otherwise of PMBs cannot be measured merely in terms of the number passed into law. Unsuccessful proposals have their value.⁵

Many constituents vote for a representative who may never become a Minister or even a Government Member. Unless there is the opportunity for that Member to introduce legislation and have it debated, those constituents may feel that their best interests are not being served and, ultimately, that the democratic process is being undermined.⁶ Some Parliaments, such as the Queensland Legislative Assembly, have responded to this 'participatory'/'representative' view of democracy by adopting procedures that facilitate the introduction of PMBs and finalisation of the debate on them.

The activities of Private Members in organising sufficient support for their legislation and the negotiation of procedural rules to enable them to be debated have

³ Emy H.V. and Hughes O.E., *Australian Politics: Realities in Conflict* (2nd edn), 1991, Melbourne, pp. 258–59.

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.

⁵ For example, Miers, D.R. and Page, A.C., *Private Members Legislation*, *Legislation* (2nd edn), London, 1990, pp. 98–103, p. 103.

⁶ Deshpande S.G., 'Removing Barriers to Private Members' Business', *Canadian Parliamentary Review*, Spring 1995, pp. 23–5, p. 23.

produced the comment that PMBs are ‘an expression of the pure function of the Legislature’.⁷

A PMB may deal with an issue that the Government is opposed to and might never have proposed itself. 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 matters that enhance public awareness.

PMBs may also prompt Government action that may not have been a high Government priority or may not have otherwise occurred. A Minister might be stirred into introducing legislation or initiating an inquiry into the matter raised by a PMB.

From time to time, the only aim in introducing a PMB might be to secure some media or public attention. The topic alone may attract media interest. Sometimes PMBs deal with new issues which are easy to understand and form an opinion on (eg enforcing the wearing of school uniforms, euthanasia), or matters on which there are strong feelings (for example, gun ownership, abortion, euthanasia).⁸

A PMB sometimes deals with social or moral issues that are so controversial and divisive (for example, euthanasia, abortion) that the Government would not wish to introduce it as a Government Bill. Even if the Government of the day agrees with a particular cause or issue, it may not want 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 is 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.⁹

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 thus have an effect on the morale and image of Parliament.¹⁰ Usually the vote on the PMB will be a conscience vote meaning that the debate tends not to be on party lines.

In Alberta, Canada, where the Standing Orders were amended in 1993 to increase the opportunity for the debate on PMBs,¹¹ some Members have commented that they have been able to introduce PMBs on issues that the Government seems reluctant to deal with, and to raise concerns and ideas. There is also some power to influence Ministers on certain issues. Many Members consider that the facilitation

⁷ Bromhead, P.A., *Britain’s Developing Constitution*, 1974, p. 137.

⁸ Bromhead, P.A., *Private Members’ Bills in the British Parliament*, 1956, p. 174.

⁹ Bromhead, P.A., *Private Members’ Bills*, p. 173.

¹⁰ Miers D.R. and Page A.C., p. 103, citing Richards, ‘Private Members’ Legislation’, *The Commons Today*, 1981, p. 151.

¹¹ PMBs now stay at the same level on the notice paper until debated and the order of introduction is determined by a random draw.

of debate provided by the 1993 amendments has 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 Private Members to get concessions on issues relating to proposals contained in the Bill.¹²

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

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.¹³ This contributes to the examination and debate of issues that might not have otherwise been raised.

It has been observed that providing 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 in most aspects of Parliament. That is because it preserves the variety of activity which is good for the general vitality in the legislative process.¹⁴

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.¹⁵

2 Why do Some Private Members Bills Become Law?

Some PMBs do manage not only to achieve 'success' in the ways referred to above, but to pass through Parliament. What features have been at work in a PMB attaining Royal assent? A matter which this article notes but puts to one side is that a PMB may also have to make its way through an upper House, a further hurdle to it

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

¹³ Did you know? Private Members can lay down the law', *About the House: House of Representatives Bulletin*, No. 3, May 2000, p 14.

¹⁴ Bromhead, P.A., *Private Members' Bills*, p. 177.

¹⁵ Bromhead, P.A., *Private Members' Bills*, p. 3.

ultimately becoming law — a matter which does not arise in Queensland and the two Territories. However, the variability in the statistics on PMBs that pass into law in all jurisdictions indicates that other factors may be at work in determining their fate.

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 of Government is unfavourable, a PMB is very likely to fail. Governments will oppose Bills that conflict with their policies.¹⁶ 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. As will be seen later, a PMB introduced by a Queensland Independent Member 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.¹⁷

A notable feature of many PMBs that enter the statute books 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, it has been observed that many successful PMBs are essentially Government Bills that the Government ran out of time to introduce. The Government Whip gives them to back-benchers who manage to secure a high position in the House of Commons ballot system that determines priority in the use of time for debating PMBs.¹⁸ It is also interesting that in Alberta Canada, where

¹⁶ Miers, D.R. and Page, A.C., pp. 101–102.

¹⁷ Miers, D.R. and Page, A.C., p. 101.

¹⁸ 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

Parliamentary procedures have been changed to facilitate the debate of PMBs, only Government Members' PMBs have passed into law.

At various times in some Australian Parliaments, there has been an upsurge not only in the proportion of PMBs introduced, but also passed to become law. Such a trend may tend to reflect the composition and complexion of the particular Parliament at the time. For example, since attaining self-government in 1989, the Australian Capital Territory Legislative Assembly has had a number of minority Governments and Coalition Governments. 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 2002–2003.

The Government agenda in providing procedures (for example, by Sessional Orders) to facilitate the debate and finalisation of PMBs can also enhance their passage. The current Sessional Orders in the Queensland Parliament provide that a PMB must be debated after 90 days have elapsed until it is finalised.

3 *Queensland*

The Queensland Electoral and Administrative Review Commission (EARC) *Report on the Review of the Office of the Parliamentary Counsel* noted that between 1980 and 1991 no PMBs had been introduced into the Queensland Parliament.¹⁹

EARC considered that

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.²⁰

Among other things, the EARC Report recommended that all Members of Parliament should be able to seek drafting assistance from the Office of the Parliamentary Counsel (OPC) for PMBs and amendments to Government legislation and that this should be provided for in a proposed *Legislative Standards Act*.²¹ This recommendation was endorsed by the Parliamentary Committee for Electoral and Administrative Review (PCEAR) although PCEAR did not consider

¹⁹ EARC, *Report on the Review of the Office of the Parliamentary Counsel*, May 1991, p. 57.

²⁰ EARC, 'Review of the Office of the Parliamentary Counsel', *Issues Paper No. 7*, p. 29.

²¹ *Report on the Review of the Office of the Parliamentary Counsel*, Ch. 5, paras 5.11–5.15, 5.23. See also 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 which recommended that EARC review the role and function of the OPC to ensure its independent status.

that this change alone would increase the number of PMBs introduced in Parliament. Accordingly, it recommended a review of the then current Standing Orders dealing with PMBs to enable Private Members a real opportunity to have their legislative proposals introduced and considered by the Parliament.²²

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

Only those Bills introduced by Ministers have to be accompanied by *Explanatory Notes*.²³ The requirement does 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 provided *Explanatory Notes* on a voluntary basis, a practice which seems to have continued. A Bill requiring that *Explanatory Notes* be provided with all Members' Bills lapsed with the dissolution of Parliament prior to the June 1998 election and was never re-introduced. The Scrutiny of Legislation Committee has recommended such an amendment which 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.

3.2 *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.

²² Queensland, 'Office of the Parliamentary Counsel', *Report of the Parliamentary Committee for Electoral and Administrative Review*, 18 July 1991, para 3.5.4.

²³ *Legislative Standards Act*, s. 22(1).

This Sessional Order was first introduced in the 49th Parliament in a Motion moved by the then Leader of the House, Hon. T. Mackenroth MLA.²⁴ It had its genesis in a commitment made by the then Opposition Leader, Peter Beattie MLA, on 25 June 1998 to an Independent Member whose support the Labor Party would need to govern.²⁵ An assurance was given that a 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 for the introduction of 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.

In various speeches regarding the Sessional Order changes, Members, including Government Members, agreed that at a time when the Parliament was so finely balanced (that is, 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

Thus, in Queensland the current Sessional Orders (SO 11) provide for greater participation and involvement by *all* Members in the legislative process and uphold the commitment to provide more time for PMBs.

3.3 *Private Members' Bills Statistics — Queensland*²⁸

It appears that between 1880 and 1992 no PMBs were introduced into the Queensland Legislative Assembly (apart from a 1931 amendment to an Act that passed).²⁹

The commencement of the *Legislative Standards Act 1993* did not result in a surge of PMBs. However, following the abovementioned 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 per cent of all Bills

²⁴ 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.

²⁵ Although this is no longer the case, the Beattie Government having won the two subsequent State elections by clear majority.

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. 1490–92.

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 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.

²⁹ M. Foley MLA, Parliamentary Papers Bill 1992 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 21 May 1992, pp. 5436–39, p. 5439, citing information from the Parliamentary Library and the Papers and Records Office.

introduced were PMBs.³⁰ During the 50th Parliament (since 20/03/01), 21 PMBs were introduced up to June 2003.

The following table provides an overview of the number of PMBs introduced and those which passed from 1992 to June 2003.

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 June 2003
Number of PMBs introduced (62)	1	3	9	28	21
Number of PMBs passed (3)	1	0	1	0	1

3.4 Private Members' Bills that Passed

The first Private Member's Bill to pass all stages was the Parliamentary Papers Bill 1992 (Qld), introduced by a then Government back-bencher Mr M. Foley MLA. It was passed 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 regarding the law and practice relating to the privilege attaching

³⁰ Scrutiny of Legislation Committee, *Report to Parliament on the Committee's Monitoring of the Operation of the Explanatory Notes System*, p. 39.

to Parliamentary papers. It clarified the extent of Parliamentary privilege and the persons to whom it applies. In speaking in support of the Bill, Dr Watson MLA, Deputy-Leader of the Liberal Party, stated that it was appropriate that the Bill was introduced as a PMB because it was not party political but dealt with an issue that was of concern to all Members and support staff.³¹

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. 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 by-election for the Government, amounted to bribery.³² Mr Carruthers resigned from the inquiry after the then Borbidge Government initiated an investigation into Mr Carruthers' inquiry, indicating that he could no longer stay if thought to be biased. The Bill passed with the support of the Independent Member.

The most recently successful Bill was the Criminal Code (Palliative Care) Amendment Bill 2003 (Qld), introduced on 12 March 2003 by Independent Member, Mr Peter Wellington MP. As the Beattie Labor Government held 66 of the 89 seats, it is therefore interesting to identify 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

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.

³¹ Dr Watson MLA, Parliamentary Papers Bill 1992 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, p. 5912

³² Mr Carruthers was also investigating activities of certain Opposition Labor Members.

At the outset of the Second Reading Debate, the Queensland Attorney-General indicated the Government's support for the Bill and the 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. After the Government had indicated its intention not to support the earlier Bill, the Attorney-General and Mr Wellington worked together to ensure that the concerns arising from that Bill were addressed to ensure that the new Bill could be supported by the Government.³³ The Attorney-General and the OPC assisted with drafting the Bill.³⁴ There was extensive consultation with stakeholders such as the Queensland Palliative Care Association, the QAMA, and terminally ill patients during its development. The Bill passed unopposed and received enthusiastic support from a number of Members across all party lines.

3.5 'Unsuccessful' Private Members' Bills³⁵

Despite the proliferation of PMBs during the 49th Queensland 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, the Assembly in general (for example, ownership of weapons; repeal of competition policy reforms).

Some PMBs were introduced by Opposition Members on essentially political issues that were probably 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 (Qld) 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 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.³⁶ After some debate, the Bill was defeated in May 2002.³⁷ In the meantime, in March 2002, the Government

³³ 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.

³⁴ Mr P. Wellington MP, Criminal Code (Palliative Care) Amendment Bill 2003 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 12 March 2003, pp. 492–95, p. 493.

³⁵ 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>

³⁶ Queensland Legislative Assembly, Legal and Constitutional and Administrative Review Committee, Electoral (Fraudulent Actions) Amendment Bill 2001 (Qld), Report No. 33, March 2002.

³⁷ Electoral (Fraudulent Actions) Amendment Bill 2001 (Qld), Question on Second Reading, *Queensland Parliamentary Debates*, 8 May 2002, p. 1342.

introduced the Electoral and Other Acts Amendment Bill which, among other things, sought to deal with issues of electoral fraud.

An interesting study 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 amid Opposition accusations that the Government was hiding Ministers' expenses behind the Cabinet exemption provisions of the *Freedom of Information Act* 1992. The proposed changes sought to water down that Cabinet exemption provision. 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'.³⁸ 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 Freedom of Information (Amendment) Bill was introduced in 1999 by the then Opposition Leader, Mr Rob Borbidge, which was defeated on the Second Reading. Mr Borbidge's Bill was the same as that which had been introduced by Mr Beattie which had lapsed. The Government did not support the Opposition Leader's Bill on the basis that the Parliamentary Committee, LCARC, had begun a broad review of the *FOI Act*. It considered that supporting the Bill would pre-empt the outcome.³⁹

Bills Impacting on Government Policy

Some PMBs that have failed at the Second Reading could be argued to have had some impact on the legislative agenda of the Government. In May 2002, the then Opposition Justice Spokesman, Mr Springborg MP, introduced a Civil Forfeiture of the Proceeds of Crime Bill 2002 (Qld). During debate on the Bill, Mr Springborg noted that the Attorney-General had said that he would be bringing a Bill to enable civil confiscation before Parliament in the future but that the Government had promised this legislation for over 3 years and nothing had happened.⁴⁰ Mr Springborg's Bill failed at the Second Reading. On 22 October 2002, the Government introduced the Civil Proceeds Confiscation Bill 2002 (Qld) which provided for a civil forfeiture regime to operate alongside the existing, but improved, criminal confiscation scheme.

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

³⁸ Mr P. Beattie MLA, Freedom of Information Amendment Bill 1998 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 4 March 1998, pp. 118–19, p. 119.

³⁹ Hon. M. Foley MLA, 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. 1496–98.

⁴⁰ 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. 2785–86.

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.⁴¹

The Transport (Compulsory BAC Testing) Amendment Bill 2002 (Qld) was introduced by the then Deputy Opposition Leader, Mr Vaughan Johnson MP which failed at the Second Reading. It was, however, superseded by a Government Bill, the Transport Operations (Road Use Management) Amendment Bill (No 2) 2002 (Qld), 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 could not support aspects of it which were not backed by findings of the Parliamentary Travelsafe Committee Report (on which the Government's Bill was based).⁴² For example, the PMB was broad enough to allow the testing of passengers who were not likely to have been in charge of the vehicle and would impose liability on medical staff who failed to take a blood sample.⁴³ The Government legislation provided for blood samples to 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 . . .'⁴⁴

Opposition Justice Spokesman, Mr Springborg, said that if there were issues of concern, the Government could have introduced amendments to the Private

⁴¹ Mr L.J. Springborg MP, Criminal Proceeds Confiscation Bill 2002 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 27 November 2002, pp. 4940–41.

⁴² 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.

⁴³ 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. 2439–40.

⁴⁴ Mr J. Seeney MP, *Second Reading Debate*, p. 2441.

Member's Bill, which could have been accommodated, rather than bringing in a completely new Bill of its own.⁴⁵

3.5.1 *Raising Community Awareness and Public Debate*

Some PMBs have received media attention and stimulated debate on sensitive issues. Others, by virtue of having been reported in the media or discussed in Parliament, have raised awareness about certain important issues.

An example of a Bill having educative value, if not legislative success, is the Transplantation and Anatomy Amendment Bill 1998 (Qld) 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.⁴⁶ 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, it recommended against adopting the Bill on the basis that a driver's licence marking could override the wishes of the next-of-kin and undermine the goodwill that currently permeates the concept of organ donation.⁴⁷ 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.⁴⁸ 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.

A further illustration is provided by the circumstances surrounding the progress of the Animals Protection Amendment Bill 1999 (Qld) introduced by a then One Nation Party Member, Mr Peter Prenzler MLA in March 1999. The Government was, at that time, engaged in broad stakeholder consultation with a view to introducing comprehensive new animal protection legislation and could not support the PMB that sought only piecemeal reforms to enforcement powers.⁴⁹ Despite the failure of the PMB at the second reading, it nevertheless provided an opportunity for Members to raise a number of issues about animal welfare and enforcement that would have informed the debate on the Government Bill when it was later introduced.

⁴⁵ Mr L. Springborg MP, *Second Reading Debate*, p. 2444.

⁴⁶ Mr K. Turner MLA, Transplantation and Anatomy Act Amendment Bill 1998 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, 10 November 1998, pp. 2918–19.

⁴⁷ Queensland Legislative Assembly, LCARC, 'Review of the Transplantation and Anatomy Amendment Bill 1998 (Qld)', Report No. 16, July 1999.

⁴⁸ *Transplantation and Anatomy Amendment Bill 1998 (Qld)*, Second Reading Debate, *Queensland Parliamentary Debates*, p. 3265.

⁴⁹ Animals Protection Amendment Bill 1999 (Qld), Second Reading Debate, *Queensland Parliamentary Debates*, 1 December 1999, pp. 5782–83.

4 Other Jurisdictions

In an effort to contain this article, 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.

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 and finalisation of those Bills after a certain time as exists in the Queensland Parliamentary procedures. All Bills, apart from urgent Bills, must sit for at least one month before being debated: SO 178.

From 1 January 1994 to June 2003, 41 PMBs were introduced but, of those, only 3 passed all stages.⁵⁰

	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 June)	4 ⁵¹	-

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 2002.⁵²

⁵⁰ There is only one legislative chamber in the Northern Territory.

⁵¹ These Bills on the Notice Paper as of June 2003.

⁵² Information kindly provided by Mr Steven Stokes, Chamber Support, NT Parliament.

The Rights of the Terminally Ill Bill 1995 (NT) was introduced on 22 February 1995 as a PMB by the then Chief Minister, Marshall Perron, the first PMB 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 Mr Perron pursued the PMB avenue to ensure open debate on the Bill free of party constraints, with a conscience vote at the end.⁵³ 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 as a PMB. 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 House of Assembly 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. Thus, PMBs may be overlooked if precedence is given to Government business or even to other Private Members' business.⁵⁴

The following table shows the fate of PMBs from 1993 to June 2003.

	Bills Introduced ⁵⁵	Bills Passed
1993–1994	19	0
1994–1995	16	0
1995–1996	20	0
1996	29	0
1997–1998	25	2
1998–1999	28	0
1999–2000	24	1
2000–2001	19	0
2001–2002	12	1
2002–	13	-

⁵³ David Nason, 'Territory to consider euthanasia Bill', *Australian*, 1 February 1995, p. 3.

⁵⁴ I am grateful to Mr Nigel Lake, Clerk Assistant (Procedure) and Sergeant-at-Arms of the WA House of Assembly for providing this information.

⁵⁵ 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.

205 PMBs were introduced in that period. Of those, only 4 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 (WA) 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 women were being forced to travel interstate as doctors and clinics stopped performing the procedure. Two women were admitted to hospital after trying to self-abort. The technical legal position was that terminations were legal only to preserve the woman's life or physical safety but, in practice, they seem to have occurred on wider grounds for many years with no legal sanction. Doctors, concerned about the apparent change of policy 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.⁵⁶

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 he said was 'not strictly a Government Bill and would allow a conscience vote by all Members'.⁵⁷ This Bill did not remove abortion completely from the *Criminal Code* but allowed it 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

⁵⁶ Hon. C. Davenport MLC, Criminal Code Amendment (Abortion) Bill 1998 (WA), Second Reading Speech, *WA Legislative Council Hansard*, 10 March 1998, pp. 8–17.

⁵⁷ Mr C. Barnett MLA, Leader of the House, Criminal Code Amendment Bill 1998 (WA), Second Reading Speech, *Hansard Online*, 10 March 1998, pp. 134–37, p. 135.

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. Under the resulting legislation, abortion is no longer an indictable offence in WA (with a \$50,000 fine being the maximum penalty) but it remains in the Criminal Code. An abortion can only be performed under the Code if it is justified, which is defined as being any one of four circumstances set out in the *Health Act*, the minimum requirement being informed consent. Ms Davenport was disappointed that abortion was left in the Code although doctors were relieved that the changes had created certainty.

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 (WA) to prevent the establishment of an international nuclear waste dumpsite that was being proposed by a large international company. While Dr Gallop acknowledged the Government's policy of opposing such an international site, he was not confident about policy commitments that were not enshrined in legislation.⁵⁸ The Bill passed with Government support with Government amendments to close what it saw to be a number of loopholes and to strengthen its provisions.

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.⁵⁹

⁵⁸ Dr G. Gallop MLA, Nuclear Waste Storage Facility (Prohibition) Bill 1999 (WA), Second Reading Speech, *Hansard Online*, 18 September 1999, pp. 885–88.

⁵⁹ I am grateful to Mr David Pegram of the Bills and Papers Office of the SA Parliament for providing this information.

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.⁶⁰

2002–2003 (to June 2003)	27	7
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From 1997 to June 2003, 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
- 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

⁶⁰ As of June 2003.

- Nuclear Waste Storage Facility (Prohibition) Amendment Bill 2003 (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 passed since 1997 may be because after the October 1997 election, the Liberal Government did not have a clear majority and relied upon the support of National, Independent Liberal, and Independent Members to govern. Following the February 2002 election, the Labor Party was a minority Government. In the session of Parliament up to June 2003, 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 states 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 Greens 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 state that after the time for debate on that day, the matter is to be voted upon. This Sessional Order facilitates the debate on and finalisation of 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 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.

The following table shows the outcome of PMBs in the Legislative Assembly from 1993 to June 2003.⁶²

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

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

	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 June)	6	1

The 13 PMBs that have received Royal up to June 2003 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
- 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 (Tas). 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, and create 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 SO 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 between 1993 and June 2003.

	Bills Introduced	Bills Passed
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 (to June)	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.

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

Of the 6 PMBs introduced into the Assembly, 2 have passed all stages. The first was Petroleum Products (Terminal Gate Pricing) Bill 2000 (Vic), introduced by an Independent Member, Mr Russel Savage MP, in September 2000 with the aim of addressing petrol pricing issues. The Government supported the Bill in principle but insisted on a number of amendments before it could be passed. The other Bill was the Scotch College Common Funds Bill 2001 (Vic), introduced by the then Shadow Minister, Mr Robert Doyle MP. 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

4.6 *New South Wales*

The Standing Orders for the NSW Parliament do not differentiate between Members and Ministers in reference to proceedings on Bills except that only a Minister is able to declare a Bill to be an urgent Bill.⁶⁵ However, during the 50th Parliament, procedures were introduced to facilitate debate on, and finalisation of, PMBs.

The following table shows the progress of PMBs through the Legislative Assembly from 1994 to June 2003.

	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 (to June)	30	1

11 of the 194 PMBs introduced have passed into law during that period. 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

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

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

- Public Servant Housing Authority (Dissolution) Bill 1996
- Traffic Amendment (Learner Driver Supervisor) Bill 1996
- Trustee Amendment Bill 1996
- Warnervale Airport (Restrictions) Bill 1996
- Environmental Planning and Assessment Amendment (Illegal Backpacker Accommodation) Bill 2002.

4.7 Australian Capital Territory

The fortune of PMBs in Australian Capital Territory Legislative Assembly displays some unusual features. Since 1993, 240 PMBs have been introduced into the Legislative Assembly (the ACT having only one house) and 121 of those have passed.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 to have their Bills passed into law.⁶⁷ This unusual situation has been sustained for over a decade.

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

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.

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 a child to pornography began life as a PMB. That Bill was introduced by an Independent MLA on 9 August 2001 and passed, with amendments, with Government support. Recent amendments introduced by the Beattie Government to outlaw such activities under the Queensland *Criminal Code 1999* were based on that ACT legislation.

Another noteworthy PMB concerned abortion law reform. In 1998 the ACT Assembly 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. For example, it became a requirement that a woman seeking termination be provided with information about risks of abortion and risks of continuing with the pregnancy and that she be shown pamphlets containing pictures of fetuses at various stages of development. The 1998 Act was opposed by many ACT residents and polling indicated that 65 per cent 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 legislation introducing the amendments was also a PMB.

If Private Members in the ACT are more likely than their interstate counterparts to get their Bills through, there is potential for PMBs to deal with controversial issues. This development has been observed above.

4.8 Commonwealth

The Standing Orders and Sessional Orders for the House of Representatives allow Private Members’ business to take precedence each sitting Monday (SO 101 and SO 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 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 (to June)	2	-

The first of 2 Bills that passed into law was the Euthanasia Bill 1996 (Cth) (referred to earlier) introduced by 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

The other Bill was the Adelaide Airport Curfew Bill 1999 (Cth) introduced by Mrs Chris Gallus 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

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.

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 although few PMBs (and only 2 in the past decade) have become law, others have found their way into Government laws. An example is a PMB dealing with uniform divorce laws that was later integrated into Government matrimonial causes legislation.⁷¹

The mandatory sentencing issue was also picked up in a Bill introduced in the Senate and later, by the then Opposition Leader, Mr Beazley, in the House. The Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 2000 (Cth) concerned abolition of mandatory sentencing laws in the Northern Territory. The Bill aroused media publicity and community debate. However, it ultimately lapsed and the NT Parliament addressed the issue by introducing 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 next table indicates the number of PMBs that have been introduced and the numbers that have received Royal assent since 1994.⁷³ As some jurisdictional statistics cover financial years while others cover calendar years, comparisons were difficult to make on a year-by-year basis.

5 Conclusion

If the success of a PMB is judged in terms of its ability to achieve Royal assent, then that success will be determined by Parliamentary procedures. If Standing Orders or Sessional Orders permit the introduction of a PMB and provide a mechanism for it to be debated until finalised, it is more likely to become law. Parliamentary procedures are usually controlled by the governing party. The finalisation of PMBs seems best facilitated by the current procedures of the Tasmanian and Queensland Parliaments. 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.

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 information passed to her by the Senate Table Office.

⁷³ Some jurisdictions have provided figures from 1994 onwards.

1993⁷⁴ to 2003⁷⁵

	PMBs Introduced	PMBS Passed
Commonwealth	99	2
Queensland ⁷⁶	62	3
Northern Territory ⁷⁷	41	3
Western Australia ⁷⁸	205	4
South Australia	135	15
Tasmania	126	13
Victoria	6	2
New South Wales ⁷⁹	194	11
Australian Capital Territory	240	143

However, if 'success' can be measured in terms of influencing the workings of Parliament in general, it could be argued that many PMBs have accomplished that aim. The 'success' may be that the PMB has provided an outlet for debate and for Members to air issues without the constraints of party lines. A PMB might also raise public awareness important issues, stimulate community debate, and test public feeling about a matter before the Government takes any action. It might also prompt a Government to act by holding an inquiry or initiating legislation. PMBs that become law may contain measures that serve a real need but are of such a controversial or politically sensitive nature that the Government may be inhibited in taking the initiative itself.

Therefore, it could be argued that PMBs do have a function in maintaining Parliament's importance in the Australian 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.

Arguably, 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 and might not otherwise come to the fore. ▲

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

⁷⁵ To May/June 2003.

⁷⁶ Since 1992.

⁷⁷ Figures provided are from 1 Jan 1994.

⁷⁸ Figures provided for financial years commencing 1993–1994.

⁷⁹ Figures provided are from 1994 session.