

Being Mauled in the ‘Bear Pit’!!!
Opportunities For and the Effectiveness Of
Opposition and Independent Members
in the Legislative Assembly of New South Wales

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Abstract

This paper assesses the view that the Executive’s dominance of a lower house renders the Opposition powerless. It examines the effectiveness of the Opposition and Independent members in scrutinising government proposals and legislation, questioning the Executive and criticising its administration in the Legislative Assembly of New South Wales. In particular it examines whether minority government increases the opportunities for, and effectiveness of, those members not supporting the Government. Comparison is made between the 50th Parliament (1991–1995), where non-aligned Independent members held the balance of power and subsequent Parliaments where the governing party has held a majority of seats in the Legislative Assembly.

Introduction

Since the 1890s the New South Wales Legislative Assembly has colloquially been known as the ‘Bear Pit’, a reference to the confrontational style of debate in the Legislative Assembly. As Hogan notes ‘the “bear pit”, is a reference to the abusive language, personal invective, and occasional physical assault that have characterised the conduct of parliamentary business at various times.’¹ It is also

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¹ Hogan, Michael, ‘Cartoonists and Political Cynicism’ in *The Drawing Board: An Australian Review of Public Affairs* 2(1), July 2001, pp. 27–50, at p. 40.

purported that this long-standing description of the Legislative Assembly as an arena of fierce political debate reflects the 'winner takes all' approach that characterises New South Wales politics.²

This 'winner takes all' approach is enforced by the rigidity of the party system that exists in New South Wales and the majority governments that are, almost invariably, formed by virtue of it. Many commentators have argued that the rigidity of the party system subverts parliamentary government by leaving control in the hands of the Executive Government and makes the Opposition in a lower House powerless.³

That the Opposition lacks power in lower houses appears to go against the traditional notions of responsible government, which in theory is where the Executive is answerable to the Parliament and in turn the Parliament is answerable to the people through the electoral process.⁴ However, as noted by Gaudron, Gummow and Hayne JJ in *Egan v Willis*⁵ responsible government in contemporary times 'reflects the significant role of modern political parties, one of which, in the ordinary course "controls" the legislative chamber or, in a bicameral system, at least the lower house.'

In the Legislative Assembly of New South Wales, the basis of the Government's control over the business of the House is standing order 110 (as amended by sessional order), which provides that government business has precedence at all sittings except 'General Business Days'. This control of business by the Government is complemented by its ability to suspend standing and sessional orders to control business in ways other than specified in the standing orders of the House.

However, it is argued that Opposition parties are still provided with many opportunities to influence proceedings in Parliament even when the Government has control of business. As noted in *Erskine May's Parliamentary Practice*:

... there is a sense in which all government time is equally Opposition time.
Opposition parties' use of the numerous opportunities available influences the way

² Smith, Rodney, NSW public sector expanded text supporting the National Integrity System Assessment (NISA) Draft Report, *Chaos or Coherence: Strengths, Challenges and Opportunities for Australia's National Integrity Systems*, November 2004, p. 5 available at <http://www.griffith.edu.au/centre/kceljag/nisa/nswexpandedtext.pdf> accessed 15 February 2005.

³ See for instance, Evans, Harry, 'Party Government: The Australian Disease and Australian Cures', in *Legislative Studies* 7(2), Autumn 1993, pp. 17–23 and Chalmers, Jim, and Davis, Glyn, *Power: Relations between the Parliament and the Executive*, Research Paper No. 14 2000–01, Department of the Parliamentary Library, Australian Parliament, p. 3.

⁴ Jaensch, Dean, *The Australian Politics Guide*, 1996, South Melbourne, Macmillan Education Australia, p. 197.

⁵ *Egan v Willis* (1998) 195 CLR 424 at 449.

in which the proceedings of the House in government time are conducted and is thus of the first importance in the distribution of the time available for business in any session.⁶

Having the ability to influence the business of the House and to utilise the procedures available in the House is important for those members not supporting the Government to be able to exert some control over the Executive. As Reid and Forrest note:

For most parliamentarians their ability to control the Executive Government depends upon the opportunities they have to use the authority of their house or of the position they hold in it to pass legislation or to drive home their enquiries in questioning or criticising executive ministers and their officials.⁷

This paper assesses the view that the Executive's dominance of a lower house renders the Opposition powerless. It examines the effectiveness of the Opposition and Independent members in scrutinising government proposals and legislation, questioning the Executive and criticising its administration in the Legislative Assembly of New South Wales. In particular it examines whether minority government increases the opportunities for, and effectiveness of, those members not supporting the Government.

Comparison is made between the 50th Parliament (1991–1995), where non-aligned Independent members held the balance of power and subsequent Parliaments where the governing party has held a majority of seats in the Legislative Assembly.

General Government Legislation

The Opposition in the Lower House is important for ensuring that policies and proposals brought before the House are critically considered. As Griffith and Ryle argue:

The Opposition must ... look critically at all policies and proposals brought before the House by the Government and then oppose and, if possible, delay or even prevent the implementation of those proposals it considers undesirable.⁸

Part of this critical consideration is ensuring that all legislation receives due process. In order to perform this role effectively the Opposition must be provided with opportunities for deliberation and to propose opposing points of view. The Standing Orders of the House set out the timeframe in which legislation is to be

⁶ McKay, Sir William (ed.), *Erskine May's Treatise on the law, privileges, proceedings, and usage of Parliament*, 23rd edition, 2004, p. 318.

⁷ Reid, G.S. and Forrest, Martyn, *Australia's Commonwealth Parliament 1901–1988: Ten Perspectives*, 1989, pp. 343–4.

⁸ Griffith J.A.G, and Ryle, Michael with M.A.J. Wheeler-Booth, *Parliament: Functions, Practice and Procedures*, 1989, p. 338.

passed by the House. Standing Order 198 of the Legislative Assembly provides that following the Minister's second reading speech debate is to resume five clear days ahead, providing all members with adequate time to consider legislation. However, in recent times when the government has had a large majority in the House, this timeframe has not been adhered to and, on numerous occasions Bills have been passed through all stages in one sitting, as illustrated in the following table:

Parliament	Average number of bills passed in one sitting after standing orders have been suspended to provide for this
50 th (1991–1995) Minority Government	4.75
51 st (1995–1998) Majority Government	7.5
52 nd (1999–2002) Majority Government	7.25
53 rd (2003–2007) Majority Government	19

This could mean that legislation is not receiving the due process and scrutiny warranted because the Opposition and Independent members do not have time to prepare themselves for an informed debate of the issues involved. Quick passage of legislation may not provide adequate time to scrutinise legislative proposals. However, many important issues are discussed in the House in response to questions or in the media prior to being introduced. For example, the *Special Commissions of Inquiry (James Hardie Records) Amendment Bill 2004*, dealing with the asbestos-related disease liability of the company, had been the subject of questions in the House and much media attention prior to its being passed through all stages by both Houses on the same day. This arguably provides the Opposition with time to prepare for the debate of such legislation.

Furthermore, some significant pieces of legislation may be released as an exposure draft to enable public discussion and consultation about the proposed legislation. For instance, the *Health Legislation Amendment (Complaints) Bill* was tabled as an exposure draft on 14 September 2004 and the Minister for Health invited public comment on the proposed legislation.⁹ Following a period of consultation the bill was introduced in the Legislative Assembly on 26 October 2004. This process arguably provides the Opposition with an ample time to consider the legislation even if the Government decides to take it through the House in only one sitting.

In addition to having limited time to prepare for debate, those members not supporting the Government also have limited opportunities to amend legislation before the House. From an analysis of the legislation considered in the Committee

⁹ Legislative Assembly of New South Wales 2004, p. 10863.

of the whole stage i.e. the stage where legislation is given detailed consideration and amendments can be proposed, it is evident that more legislation is considered in the Committee stage in a 'hung' Parliament in comparison with a majority Parliament. During the 50th Parliament approximately 32% of all bills passed were considered in the Committee of the Whole stage. This fell to 25% during the 51st Parliament (1995–1999) and to 16% for the 52nd Parliament (1999–2003).

It is also evident that Opposition and Independent members have more influence in amending proposed legislation in a lower house without a government majority. For example during 1994 the Opposition/Independent members were successful in having their amendments adopted during the committee stage in as many instances as the Government members. However by 2002 90% of amendments adopted came from Government members and only a small number of amendments proposed by the Opposition/Independents were adopted. This lack of power by the Opposition to amend proposed legislation has been criticised by members of the Opposition. For example, Michael Richardson MP, Liberal Member for The Hills noted that the quick passage of legislation through the Legislative Assembly including the fact that amendments proposed by the Opposition are not seriously considered is subversive of the rights of a member. He commented:

I am disappointed at the Minister's response. If the Government wants further time to consider the Opposition amendments it would be appropriate to adjourn the debate at this stage, consider the amendments, undertake the consultation that the Minister has promised and then come back to the Chamber. It would not waste our time. If the Government then supports the amendments they can be passed in this Chamber and the Government can debate whatever it wants to in the other House. The lower House is the House that represents the people. We all have individual electorates to which we are beholden. That is particularly true of country members, who are most affected by this bill.

It would be a complete abrogation of our responsibility and their responsibility to their constituents if we were simply to take the Government on trust over these amendments and leave consideration of the amendments to the upper House. If the amendments are passed in the upper House they will have to come back here for further consideration and ratification. That involves an awful lot of duplication. The most sensible course of action for the Government unquestionably would be to adjourn the debate. The debate can be resumed next week and the Government can come back with a firm position on the amendments. It should tell us where it stands on these important issues that affect its constituents.¹⁰

This limited opportunity to oppose and amend legislation is also reflected in the attitudes of the members in the House. For example, in recent times members of the Opposition will note that more detailed consideration to legislation will be given in the Legislative Council, where the Government does not have a majority and hence

¹⁰ New South Wales Legislative Assembly, Parliamentary Debates, 20/10/2004, pp. 11687–8.

the power to take legislation through as it deems appropriate.¹¹ Peter Debnam MP, the Liberal Member for Vacluse commented in relation to the *Law Enforcement (Power and Responsibilities) Amendment (In-Car Video Systems) Bill* on 7 December 2004:

I am pleased to have the opportunity to speak to this bill, which the Opposition will not oppose in this House. However, we will continue to review it, consult with interested parties and raise any concerns about it in the other place in the remaining days of these parliamentary sittings.¹²

Private Members' Bills

In addition to being able to scrutinise legislation introduced by the Government, Opposition and Independent members can suggest improvements to legislation by initiating their own legislation. These take the form of private members' bills.

Reforms introduced during the 50th 'hung' Parliament provided for broader opportunities for private members to raise issues or initiate legislation with the introduction of a 'General Business Day' each sitting week. This procedure was introduced by way of a sessional order and was adopted by the House as a standing order when new Standing Orders were adopted in 1994.

To complement this procedure a further sessional order was introduced that provided an opportunity for the House, on the motion of a private member, to jump the resumption of the debate on any private member's bill to the head of the queue for consideration that day. This procedure has been incorporated into the standing orders of the House.

Overall the new procedures adopted during the 50th Parliament provided an expedient means for the consideration of private members' bills. However, the effectiveness of the new Assembly procedure was limited by the lack of a similar procedure in the Legislative Council (only 15 bills out of 112 introduced in the Legislative Assembly under this procedure were passed by the Parliament). During this period Opposition and Independent members introduced about 84% of the private members' bills into the Assembly with only seven out of sixty eight passing the Parliament. In comparison, half of the private members' bills that were introduced by Government backbenchers and passed by the Assembly were subsequently passed by the Parliament. This was because when private members' bills of Government members reached the Council a Minister took over its carriage and it was dealt with as government business.

¹¹ It should be noted that the Legislative Council does have provision to enable a bill of an urgent nature to be passed through all stages in one sitting with the consent of the House. See Standing Order 138 of the Legislative Council.

¹² New South Wales Legislative Assembly, Parliamentary Debates, 07/12/2004, p. 13421.

The following table provides a summary of the private members' public bills that have been passed by the Parliament since 1991.

Parliament	Number of private members' bills introduced	Number passed – Government members' bills	Number passed – Opposition members' bills	Number passed – Independent members' bills
50 th Parliament 1991–1995	112	8	4	3
51 st Parliament 1995–1999	85	5	2	1
52 nd Parliament 1999–2003	86	2 (introduced in LC and taken up by Government in LA)	1	3
53 rd Parliament 2003–2007	32	0	0	0

It is evident that few private members' bills are passed by the Parliament regardless of whether there is a majority Government or not. While the bills introduced by members supporting the Government appear to be more successful, those passed by the Parliament are not significantly higher than those introduced by Opposition/Independent members, and during the 52nd Parliament were lower. Given this, private members' bills do provide private members of all persuasions with some opportunities to initiate legislation and the reforms that were brought in during the hung Parliament continue to exist in a House with a Government majority.

Examination of Expenditure and Public Accounts — Appropriation Bills and Budget Debate

Under the provisions of the *Constitution Act 1902* (NSW) all bills appropriating public money must originate in the Legislative Assembly. Section 5 provides:

The Legislature shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare, and good government of New South Wales in all cases whatsoever:

Provided that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly.

Section 5A of the Act ensures that any legislation appropriating money for the 'ordinary annual services of the Government' can be assented to regardless of whether the Legislative Council agrees with it or not. It provides:

(1) If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty's pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

(2) The Legislative Council shall be taken to have failed to pass any such Bill, if the Bill is not returned to the Legislative Assembly within one month after its transmission to the Legislative Council and the Session continues during such period.

(3) If a Bill which appropriates revenue or moneys for the ordinary annual services of the Government becomes an Act under the provisions of this section, any provision in such Act dealing with any matter other than such appropriation shall be of no effect.

Given this, the Opposition in the Lower House has an important role in examining the Government's expenditure and the public accounts. The budget debate is an important part of examining the Government's expenditure as it allows members to criticise the Government's proposed expenditure for the upcoming year. The average time spent on the budget debate has been fairly consistent throughout the 50th, 51st and 52nd Parliaments. However, for the two budgets that have been brought down during the period of the 53rd Parliament under examination, the Appropriation Bills have been introduced late in June and only a limited amount of time has been spent debating them prior to their passage through the House. In fact in both 2003 and 2004 the Leader of the Opposition and the Leader of the Nationals were the only members of the Legislative Assembly who spoke on the Appropriation and cognate bills prior to their passage through the House. This action shows that the majority party can leave the passage of the annual appropriation bills until the last minute and not provide the Opposition with adequate time to scrutinise the legislation prior to its passage. It is common for the Government not to give the Opposition copies of the Appropriations Bills in advance of the debate.

It should be noted that in recent years the House has made provision for a 'take note' debate to occur on the annual appropriation bills so that those members who had not spoken in the second reading debate were able to speak on the bills. However, this 'take note' debate is perfunctory as it is done after the bills have already been passed through the Parliament.

Estimates committees also provide a mechanism for the Opposition to examine the Government's expenditure. Standing Order 284 provides that a Minister *may* move to establish Estimates Committees by the Legislative Assembly. There is however no requirement for the House to appoint such committees and the House has not

appointed estimates committees since the 50th Parliament, with the results that there are few real opportunities for members of the Opposition in the Assembly to question Ministers as to their proposed expenditure in the upcoming financial year. The Legislative Council has established estimates committees but the members of the Legislative Assembly cannot participate in these proceedings. Furthermore, these estimates committees are somewhat ineffectual given that the proceedings are held after the Parliament has already approved the annual appropriations and also because of the limited power given to the Upper House in relation to appropriation bills under the provisions of the *Constitution Act 1902* (NSW).

Examination of Delegated Legislation

Delegated legislation is 'legislation made not directly by an Act of Parliament, but under the authority of an Act of the Parliament.'¹³ The Parliament is able to examine and control delegated legislation through the disallowance procedure.¹⁴

Part 6 of the *Interpretation Act 1987* (NSW) provides for the making and disallowance of statutory rules. Under the provisions of the Act statutory rules must be tabled in each House within 14 sitting days of being made and either House of the Parliament may disallow the whole or a portion of a statutory rule. This is done by the House passing a resolution. Notice of a motion to disallow a statutory rule must be given within 15 sitting days of the statutory rule being tabled in the House. If a notice of motion to disallow a rule is given, the period during which the rule may be disallowed in that House extends until that notice of motion is disposed of one way or another.

The importance of the disallowance procedure is evident in the procedures that have been adopted in relation to it. Standing Order 125 of the Legislative Assembly accords any notice for disallowance precedence, which ensures debate is brought on and not delayed by the Governing party. The Government could delay the debate on a disallowance motion by using its number to suspend standing and sessional orders but this does not occur. In a majority House, there is no reason to delay the debate, as the numbers will ensure any motion for disallowance is negated on division.

Almost all motions for disallowance come from Opposition or Independent members. The following table lists the number of motions moved for disallowance and the number that were passed by the Legislative Assembly during the 50th and subsequent Parliaments.

Parliament	Motions for disallowance moved	Motions for disallowance passed
50 th Parliament (1991–1995)	14	8

¹³ Harris, Ian (ed.), *House of Representatives Practice*, 2001, 4th edition, p. 392.

¹⁴ *Ibid*, p. 393.

51 st Parliament (1995–1999)	9	0
52 nd Parliament (1999–2003)	3	0
53 rd Parliament (2003–current)	2	0

Clearly, the Opposition is only successful having a disallowance motion agreed to in a hung Parliament. The number of motions initiated by the Opposition has become fewer, due no doubt to the Opposition's awareness that without having the numbers in the House such motions will fail. As noted, a disallowance motion can be moved in either House. Given that there is no government majority in the Legislative Council, the Opposition may leave it to their colleagues in that House to move disallowance motions where such motions have a greater chance of succeeding.

Overall the disallowance procedure is completely ineffective as a mechanism to be used by the Opposition in a House in which the Government has a majority. Nonetheless, as noted by Griffith and Ryle the procedure provides opportunities for the Opposition to debate matters that might otherwise never be brought before the House.¹⁵

Seeking Information On and Clarification Of Government Policy — Questions

Questions are an important mechanism for the Opposition to elicit information and clarify the policies of the Government. As *House of Representatives Practice* notes:

It is fundamental in the concept of responsible government that the Executive Government be accountable to the Parliament. The capacity of the House of Representatives to call the Government to account depends, in large measure, on its knowledge and understanding of the Government's policies and activities. Questions without notice and on notice play an important part in this quest for information.¹⁶

The effectiveness of questions, both with and without notice, is questionable. Traditionally the purpose of questions is to 'obtain information or press for action.'¹⁷ However as one commentator has noted this ideal is hard to achieve in reality:

We have seen that 'obtaining information' is not always effective. Government give half-answers or refuse to answer particular questions at all. 'Pressing for action' is also not always effective: an MP may find writing to a Minister or lobbying in some other, more private, way has better results.¹⁸

¹⁵ Griffith J.A.G, and Ryle, Michael with M.A.J. Wheeler-Booth, *op. cit.*, p. 350.

¹⁶ Harris, *op. cit.*, p. 515.

¹⁷ McKay, *op. cit.*, p. 345.

¹⁸ Silk, Paul, *How Parliament Works*, 1987, p. 197.

Questions Without Notice

Under the Standing Orders of the Legislative Assembly, the period for questions without notice, or what is more commonly known as 'Question Time', is to be for a duration of 45 minutes or until 10 questions have been answered, whichever is the latter. The standing orders also provide that the Leader of the Opposition is entitled to be called first and Ministers seeking to provide additional information to questions previously answered can do so at the conclusion of question time.¹⁹

Question time is used by the Government to highlight proposals, new initiatives and proposed legislation. This is achieved by Government members asking questions that have invariably been pre-arranged or what have become known as 'Dorothy-Dixers'.²⁰ The provision of information on new Government proposals, both policies and legislation, is not strictly within accordance with the rules of the House. Whilst there is nothing in the standing orders prohibiting a Minister for making announcements of government policy in response to a question, other procedures are in place for such announcements. Ministers are afforded an opportunity to make Ministerial Statements and this is the time when new policies should be announced. The procedure provides the opportunity for the Opposition to respond to the statement which may be a reason that Ministers would rather incorporate the information as part of an answer.

The standing orders do however provide that members should not anticipate debate,²¹ which if interpreted strictly, includes providing information about legislation that has been given notice of. In practice members are able to ask a question which seeks to elicit facts about legislation that is to be considered by the House at a later stage. Speakers have ruled that Ministers are able to provide information about a bill in response to a question so that members will be better informed when the debate on the bill takes place.²²

A distinction then has been made between 'anticipating' debate and the need to be better informed in order to be able to debate a piece of legislation.

The Opposition is able to use question time to highlight deficiencies in government and the failures of its policies. Strategies employed to achieve this end include asking multiple questions on a single issue throughout question time or over a series of question periods. For example, the Government was involved in controversy in

¹⁹ Standing Order 140 of the Legislative Assembly.

²⁰ The name is derived from a newspaper columnist who published answers to questions that were presented as coming from readers, but were actually written by the journalist herself. See *Collins Australian dictionary of political terms*, 1994, p. 60.

²¹ Standing order 86

²² See for example rulings of Speaker Rozzoli, PD 0909/1993, p. 2976 and Speaker Aquilina, PD 22/02/2005, p. 13961.

mid 2004 over the closure of a designer outlets centre at Liverpool, which became known as the 'Orange Grove' affair. The Leader of the Opposition asked multiple questions on the matter over 5 consecutive question periods and questions were asked during question time on later occasions. The issue developed political 'legs' and was pursued in the media. As a result there was extensive criticism of the Government over the issue.

The Opposition also uses a tactic of raising points of order to interrupt the flow of an answer if the Government is using the time to attack the Opposition or is failing to answer the question asked. Other strategies may also be employed by the Opposition to draw the media's attention away from the Government. For instance, in 2004 the Leader of the Opposition was removed from the Chamber following his refusal to obey the Chair and the Opposition members walked out on question time in support of their Leader.

There is little difference between the responses provided by Ministers during the hung Parliament and those Parliaments in which the Government has a majority. The Chair will not direct a Minister to answer a question and in some instances a short answer or even a simple 'yes', 'no', or 'I don't know' will be the response to a question posed by the Opposition. It should be noted that short answers are not as common as they were in the past with Ministers now using question time as a mechanism to gain media attention and highlight why the government should remain in office. To this end Ministers often evade questions and use the time to criticise the Opposition.

Whilst, the effectiveness of question time to obtain information and press for action is limited, it is the most opportune time for the Opposition to gain media attention because the media follow question time with some enthusiasm.

Questions with Notice

Opposition and Independent members submit the large majority of questions with notice. Given this, questions with notice are not used by the Government to make statements in relation to policies and initiatives in the same way as Question Time. Furthermore, questions with notice may be even less effective given that there is no media attention given to the *Question and Answers Paper*.

Whilst the effectiveness of questions with notice may be questionable, reforms introduced during the 50th Parliament, when the Independents held the balance of power, went some way to making them somewhat more effective than what they had been in the past.

These reforms included the adoption of a sessional order in 1992 in relation to written questions. The sessional order provided that members could lodge up to five questions on notice during a sitting week, with the Leader of the Opposition being

permitted to lodge twelve. It also required Ministers to lodge answers to questions within fifteen sitting days after the question was first published and Ministers who did not answer within this timeframe would have to explain to the House why.²³ This sessional order was varied slightly in subsequent sessions by allowing members to lodge 3 questions each sitting day and the Leader of the Opposition to submit 4 questions and to provide 35 calendar days for Ministers to answer questions asked. This varied sessional order was adopted in the Standing Orders in 1994.²⁴

Prior to the adoption of the sessional order there was no limit on the number of questions on notice that members could ask on any particular day and there was no provision for the time frame in which the question had to be answered. This arguably has to be an improvement even if the answers provided are less than exhaustive.

Overall, questions, both with and without notice, advance political argument and achieve publicity for both the Government and Opposition. As such they are an important mechanism that can be employed by members. However, the effectiveness of questions is debatable and as such should not be overrated.

Other Opportunities for Opposition and Independent Members to Criticise the Executive

A number of motions can be used by Opposition and Independent members to criticise Ministers and their administration, the most important of which are motions of no confidence and censure motions. Their importance is evident in the procedures that have been adopted in relation to them. For instance, such motions are accorded precedence over other business and both the mover and member referred to are provided with unspecified time periods to speak. In addition, under the standing orders that govern such motions (i.e. standing orders 122, 123 and 124) the closure motion 'that the question be now put', which effectively closes the debate, cannot be moved.²⁵ General Business motions also provide Opposition and Independent members with an opportunity to reflect on the Government of the day.

²³ Legislative Assembly of New South Wales, *Votes and Proceedings*, 20/02/1992, p. 23.

²⁴ Legislative Assembly of New South Wales, *Votes and Proceedings*, 01/03/1994, pp. 32–3

²⁵ It should be noted that under the current sessional orders the closure can apply in relation to motions of no confidence. However, given the numbers in the House this curbing of debate could arguably be ensuring the House uses its time effectively as the motion will be negated despite the length of the debate.

No Confidence Motions

Standing Order 122 provides for motions of no confidence in the Government. The standing order is complemented by section 24B of the *Constitution Act 1902* (NSW), which provides that the Legislative Assembly may be dissolved by the Governor if:

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

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

This section has its origins in legislation providing for fixed term Parliaments, which was introduced during the 50th Parliament as part of a package of reforms introduced by the non-aligned Independent members. It was inserted in the *Constitution Act 1902* (NSW) in 1995. Since this amendment there has been only one motion of no confidence in the Government moved. This occurred on 8 September 1998 when the then Leader of the Opposition gave notice of a motion of no confidence in the Government in relation to mismanagement of Sydney's water crisis. The House suspended its standing orders to allow the motion to be moved the same day and following a number of days debate the motion was subsequently defeated due to the Government having the numbers in the House.²⁶

Standing Order 123 of the House provides for motions of no confidence in the Premier or a Minister to be moved. As the following table shows there is no significant difference in the number of no confidence motions moved during the 50th 'hung' Parliament and the majority Parliaments. More importantly all no confidence motions moved have been negated on division regardless of whether the governing party has had the numbers in the House or not. This may be due in part to the fact that during the 50th Parliament the non-aligned Independent members had an agreement with the Liberal/Coalition Government whereby they agreed to vote with the Government on motions of no confidence except where matters of corruption or maladministration were involved.²⁷

²⁶ Legislative Assembly of New South Wales, *Votes and Proceedings*, 08/09/1998, pp. 827–31.

²⁷ Greiner, The Hon. N.F., Hatton John, Moore, Clover and Macdonald, Dr Peter *Memorandum of Understanding Between the Hon. N.F. Greiner MP, Premier for and on behalf of the Liberal/National Party Government (The Government) and Mr John Hatton*

Parliament	Motions of no confidence in Premier/Minister moved	Motions of no confidence in Premier/Minister passed
50 th Parliament (1991 – 1995)	4	0
51 st Parliament (1995 – 1999)	4 (of which one was amended to become a motion of censure)	0
52 nd Parliament (1999 – 2003)	4	0
53 rd Parliament (2003 – current)	2	0

Censure Motions

Standing Order 124 provides for censure motions against members. Censure motions are essentially making a statement of disapproval as to some action that a member has done. The following table notes the number of censure motions moved against Ministers since 1991.

Parliament	Censure motions moved against Premier/Minister	Censure motions against Premier/Minister that have been passed
50 th Parliament (1991–1995)	6	5 (the one that was negated was done so on the casting vote of the Speaker)
51 st Parliament (1995–1999)	15	0
52 nd Parliament (1999–2003)	3	0
53 rd Parliament (2003–current)	0	0

This table shows that in those Parliaments where the Government has held a majority, all censure motions in Ministers have been negated. However, almost all censure motions moved against Ministers during the 50th Parliament, when the Government did not have a majority, were successful. This contrasts with the fact that not one motion of no confidence in a Minister was passed during the 50th Parliament despite the numbers in the House. As noted, this may be due to the fact that the non-aligned Independent members voted with the Government on no confidence motions or it may be due to the fact that a no confidence motion is considered to be more serious than a motion, which essentially seeks to express disapproval with some action taken by a Minister.

Given this, it is clear that opposition and Independent members have more power in the Parliament to move successful censure motions noting their dissatisfaction with the actions of a Minister during a hung Parliament.

General Business Motion

General Business motions provide all members with an opportunity to raise issues of concern in the House. Members must give notice of their motion at a prior sitting and can use the notice process as a way to highlight deficiencies in government administration in a succinct manner. In accordance with the Routine of Business members are able to move General Business motions from 11:30 am until 1:00 pm on General Business Days (Thursdays). These motions can criticise the actions of the government in relation to specific policies or legislation. General Business motions are predominantly given by Opposition and Independent Members.

A majority Government is able to use its numbers to move amendments to these motions, which often change a motion from one condemning an action taken by the Government to one praising the Government.²⁸ A majority Government is also able to suspend standing and sessional orders to provide for Government Business to take precedence on general business days. The following table shows how easy it is for a majority government to defer general business.

Parliament	Number of times standing orders suspended to provide for government business to have precedence of general business
50 th Parliament (1991–1995)	1
51 st Parliament (1995–1999)	15 (this includes a suspension that provided for government business to have precedence of general business for the remainder of the Spring sittings in 1998) ²⁹
52 nd Parliament (1999–2003)	13
53 rd Parliament (2003–current)	8

In contrast during the 50th, hung Parliament, the standing orders were often suspended to enable certain general business to take precedence.³⁰

²⁸ See for example, Legislative Assembly of New South Wales, *Parliamentary Debates*, 18/03/2004, pp. 7572–83.

²⁹ See the Legislative Assembly of New South Wales, *Votes and Proceedings*, 13/10/1998, p. 919.

³⁰ See for example, Legislative Assembly of New South Wales, *Votes and Proceedings*, 06/03/1992, p. 97; 10/04/1992, p. 233; and 30/06/1992, p. 374.

Conclusion

The Executive's dominance of the proceedings in the lower house has now become the accepted norm and, as previously noted, the High Court has even argued that it is part of contemporary notions of responsible government. Furthermore, this power the Executive exercises in a lower house of Parliament is utilised by all governments, regardless of their partisan persuasion. It could be argued that this dominance is acceptable given that the Government is formed by the party that holds a majority of seats in the lower house and that the people have elected the Government to govern. Furthermore, it could also be argued that a Government needs to be able to count on a majority in the lower House to govern effectively. Schmitz notes that there is general acceptance of a Government's right to govern and that so long as the Opposition is able to use the procedures of the House to criticise the Government and scrutinise its actions this dominance is an acceptable feature of responsible government. He states:

... in our modern liberal-democratic society is the hallowed principle that government must rest on the consent of the governed – which means, *inter alia*, that the minority accepts the right of the majority to make decisions, provided that there is reciprocal respect for the minority's right to dissent from these decisions and to promote alternative policies. With the advent of representative and responsible parliamentary government, the distinction between 'government' and 'opposition' has become more formalized and routinized, but the underlying principles have not changed.³¹

The standing orders and procedures of the House still enable the Opposition and Independent members to debate legislation and other motions on general business days. The procedures also provide Opposition and Independent members with opportunities to introduce bills, to question Ministers and to move motions of no confidence and censure. However, the effectiveness of these opportunities to hold the Executive to account in Parliament is limited in many respects in a House with a Government majority. A majority Government is able to control proceedings in the House through its numbers and this control extends to limiting opportunities for non-Government members to amend legislation and for members to have their legislation passed. In addition, by having the numbers a majority Government is able to ensure that any motions of censure or no confidence moved against its Ministers are negated.

This Executive dominance is arguably reducing the importance of the parliament in holding the Executive to account. Many commentators argue that the importance of Parliament is waning and that Parliament, particularly a lower house, is merely a tool of administrative convenience that the governing party use to legitimise their actions.³² However, the importance of Parliament should not be diminished purely

³¹ Schmitz, Gerald, *The Opposition in a Parliamentary System*, Parliamentary Research Branch, Library of Parliament, Canadian Parliament, December 1988, p. 2.

³² *Ibid.*, p. 17.

because those members that do not support the Government have limited opportunities to hold the Executive into account due to the Government's control of the House. The Executive's dominance could arguably result in more efficient use of time and it has even been suggested that the Executive's dominance provides stability and policy coherence.³³ Furthermore, the Parliament, particularly the lower house, continues to provide an avenue for representing the people and remains a forum of debate, even if the Government is able to control the proceedings. ▲

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³³ Chalmers and Davis, *op. cit.*, p. 21.

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