

Who Controls Time Controls Parliament: The Case for Shared Control of Parliamentary Time in the Dewan Rakyat

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Abstract

Over the past seven years, there have been rapid and commendable reforms to the practices and procedures of the Dewan Rakyat. These reforms have strengthened and expanded the oversight role of the Dewan Rakyat and the representative function of its MPs, while creating better opportunities for public participation and inclusion in the parliamentary process. However, the rules and procedures governing the Dewan Rakyat's law-making function continue to follow traditional Westminster practice. One structural impediment to further progress in strengthening the Dewan Rakyat is control over the allocation and distribution of parliamentary time. This paper presents a comparative analysis of how parliamentary time and agenda are set in the Dewan Rakyat, specifically in terms of non-government or private members' business, drawing comparisons to the practices and procedures in the United Kingdom, Australia, Germany, and Scotland. This paper concludes with recommendations on measures that can be implemented in the short term to improve the role of the Dewan Rakyat and its members in the setting, prioritising, and allocation of parliamentary time.

Keywords: parliamentary time, agenda control, executive-legislative relations, non-government business time, Dewan Rakyat

Introduction

Deliberations on the subject of how parliamentary time and agenda should be controlled and managed can be distilled down to a single yet complex question: to what extent should it be the government, and to

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what extent should it be the prevailing majority in the legislature, that decides what MPs are able to do and discuss, and when?¹

Extrapolating from this, it is argued that three fundamental questions should be addressed in designing a system to regulate the control of parliamentary time:

- who should have decision-making control or veto power in determining the length of parliamentary sittings and the arrangement of the parliamentary agenda;
- how should time slots for specific parliamentary procedures and items of business be protected to guarantee they are accorded time for deliberation in the legislative body; and
- who (if any) should have the authority to trigger or veto the decision-making capacity of the legislative body with regard to sitting times and programming of its agenda.²

These questions are interlinked and impacted by internal and external dynamics, such as the accepted customs and practices of the legislative body in question; the *de facto* and *de jure* independence of its presiding and management officers; and the influence of intra- and inter-party dynamics on the decision-makers and managers of parliamentary business.³

The traditional Westminster parliamentary model grants significant control of parliamentary time to the government. This control is typically reinforced through parliamentary rules and conventions. Central to the traditional model is a codified order of business, or schedule of programming, with a fixed sequence for the disposal of items of business that is often pegged to fixed time slots. It is the norm for government business to be prioritised in the parliamentary agenda or order of business, meaning that other items may be delayed or not proceeded with if the

1 Paraphrased from Meg Russell and Akash Paun, *The House Rules? International lessons for enhancing the autonomy of the House of Commons* (The Constitution Unit, University College London 2007) 9, which studied the control of parliamentary time and agenda in the UK House of Commons, in light of the controversies over the curtailment of the UK House of Commons' powers over Brexit disputes and COVID-19 pandemic management.

2 M Balakrishnan, *Unlocking the Powers of the Dewan Rakyat: The rule revisions needed now* (BERSIH, Kuala Lumpur 2023) 9 <https://bersih.org/download/unlocking-the-powers-of-the-dewan-rakyat/> accessed 31 December 2024.

3 *Ibid.*

government is intent on completing its own business within a particular meeting or parliamentary session. Furthermore, restrictions are usually imposed that impede other parliamentary actors from initiating changes to the parliamentary calendar and agenda.

The prioritisation of government business is ostensibly to provide the government with the time and space to deliver its manifesto agenda. A government will have a programme of legislation that it plans to present for each parliamentary session. Although the government dominates the parliamentary calendar, time remains a premium even in full-time parliaments. In the UK, for example, the government normally seeks to introduce approximately 30 bills per session,⁴ but usually receives twice as many bids for legislative slots as are available.⁵

However, the downside of extensive government control over parliamentary time is that private members of a House of Parliament, both on the government backbench and in the parliamentary opposition, are presented with few opportunities to test their policy alternatives in the House and by extension within the public discourse. Equally limited are opportunities for private members to set the parliamentary agenda by initiating debate on issues of public administration or to raise matters of public importance that the government fails or refuses to raise.

Enabling government control in order to expedite the consideration of government business in parliament can achieve the vital goal of timely delivery and implementation of essential policies, funding, and programmes, particularly in times of national emergencies. However, such dominant control can also be used to curtail robust deliberation and rigorous scrutiny of government policies and legislation.

These considerations have led modern parliaments to diversify control over the parliamentary calendar and to institute measures to ring-fence time for private members' motions and bills. These measures do not necessarily have an adverse impact on the government's ability to deliver on its policy agenda and legislative programme, as other measures can be devised to accelerate or streamline the process of considering and approving government business. For example, in the

4 United Kingdom Cabinet Office, *Guide to Making Legislation* (Cabinet Office, London 2017) 8; L Powell, 'The Government's Legislative Programme 2024' Statement by Leader of the House of Commons (Statement UIN HCWS1) (House of Commons, 2024) <https://questions-statements.parliament.uk/written-statements/detail/2024-07-18/hcws1> accessed 31 December 2024.

5 United Kingdom Cabinet Office, *Guide to Making Legislation* (Cabinet Office, London 2022).

UK, successive governments have committed to publishing more bills in draft for pre-legislative scrutiny by the House of Commons,⁶ which allows for parliamentary scrutiny of draft legislation outside of the formal plenary agenda.

The management of parliamentary time in Malaysia continues to follow the traditional Westminster model. Parliamentary time in the Dewan Rakyat, whether measured in macro terms of session lengths or number of sitting days per year, or in micro terms such as the sequencing of the daily order of business or timeframes to move a bill through the House, is principally influenced by the executive branch, not by the members of the House. The Speaker of the House plays a pivotal role in marshalling the interests of the government on the one hand and the interests of private members on the other. However, while he has some directive power over the daily order of business, it is less extensive than in other modern Westminster parliaments.

This paper presents a study of the methods by which parliamentary time is set, prioritised, and allocated in the Dewan Rakyat, utilising content analysis of the rules, procedures and practices of the Dewan Rakyat. The specific focus areas are:

- the control of the parliamentary calendar and agenda; and
- the methods of allocating and programming time for private members' business.

Applying a comparative analysis framework, this paper also reviews and summarises parliamentary time control mechanisms in several jurisdictions, namely the United Kingdom (UK), Australia, Germany,

6 The practice and developing convention in the UK is that all bills will be published in draft prior to formal introduction, unless there is good reason not to publish the bill in draft. Draft bills are published as command papers in Parliament, and undergo a review and feedback process by the relevant departmental select committee (or in some cases, an ad-hoc committee set up for the purpose), before the bills are finalised for formal presentation in the House. It is not a certainty that a departmental select committee will accept a draft bill for pre-legislative scrutiny. The committees are given about three to four months to carry out their pre-legislative scrutiny and report their recommendations. Enough time is also set aside to ensure any necessary changes to the bill can be made by Government before its planned date of introduction. It is for the Government to decide whether or not to accept the committee's recommendations for amendment of the draft bill: United Kingdom Cabinet Office (n 5) 157-63.

and Scotland with the objective of demonstrating different modalities on the topic. This paper concludes with recommendations on some of the measures that can be implemented in the short term to improve the Dewan Rakyat's (and its members') role in the setting, prioritisation, and allocation of parliamentary time.

Regulating parliamentary time and agenda in the Malaysian Dewan Rakyat

Controlling the parliamentary calendar and agenda

In Malaysia, the Executive has significant constitutional and legal discretion over when Parliament is convened. Executive control extends to the process of summoning and proroguing Parliament,⁷ determining the dates of each parliamentary meeting, and controlling the agenda of the House.⁸ While His Majesty the Yang di-Pertuan Agong (YDPA) has formal constitutional power to summon and prorogue Parliament, His Majesty is bound by the advice of the Prime Minister and Cabinet.⁹ The YDPA does not have power over the day-to-day running of Parliament. Neither the Constitution nor the standing orders impose a minimum number of annual or sessional sitting days on either House of Parliament. Constitutionally, however, a delay of no longer than six months is permitted between the last sitting date of one session and the date appointed for the first meeting of the next session.¹⁰

The gaps in the constitutional and legal provisions allow for significant variance in the annual number of sitting days of the Dewan Rakyat over time. **Figure 1** below compares the number of annual sitting days of the Dewan Rakyat over a 25-year period (2000-2024).

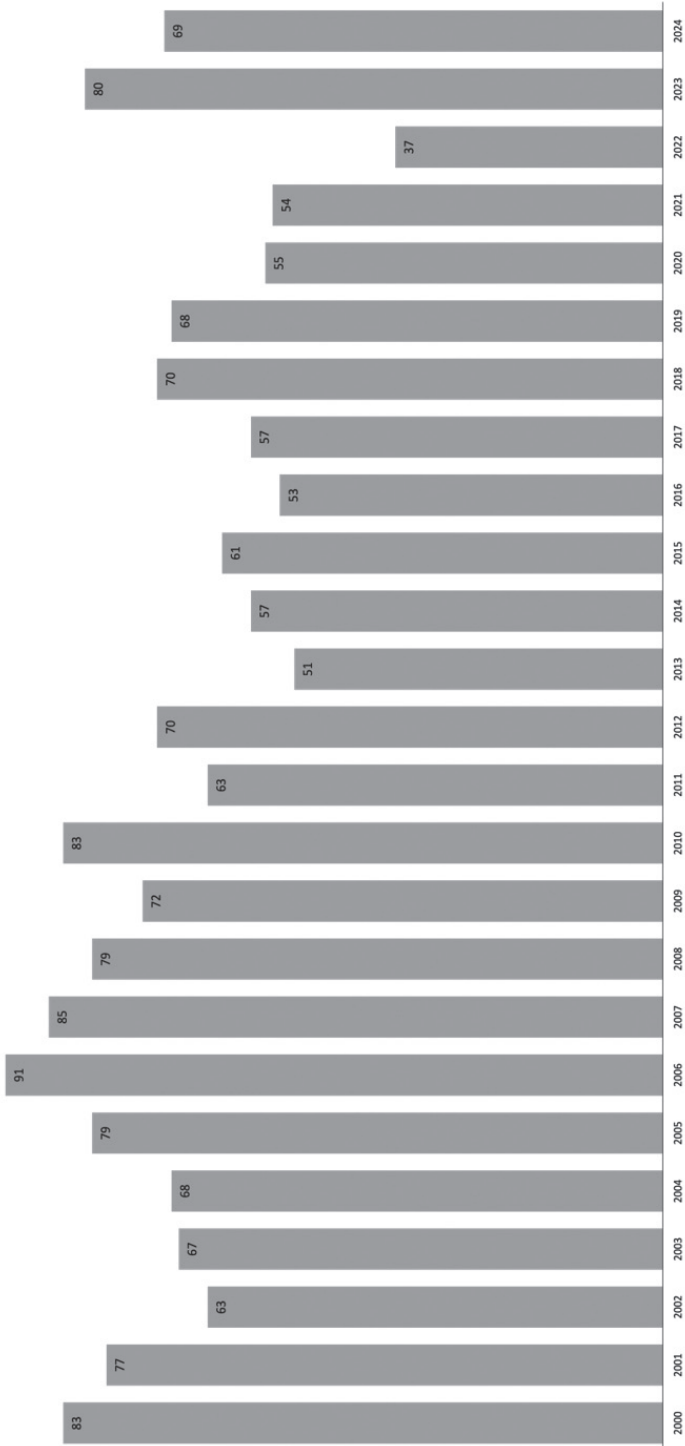
7 Malaysia, *Federal Constitution*, art 55 read together with art 40.

8 *Standing Orders of the Dewan Rakyat*, SOs 11, 14 and 15.

9 *Federal Constitution* (n 1) arts 55(1) and 55(2) read together with art 40.

10 *Federal Constitution of Malaysia* (n 7) Art 55(1).

Figure 1: Number of annual sitting days of the Dewan Rakyat, 2000 – 2024



Source: Dewan Rakyat data from Hansard and Order Paper records in www.parlimen.gov.my, analysed and tabulated by the author.
The election years in Malaysia during this period were 2004, 2008, 2013, 2018 and 2022.

Table 1 below extrapolates the data from **Figure 1** to measure the rolling average of annual sitting days in the Dewan Rakyat across different political party administrations. The annual sitting days varied significantly between administrations, ranging from a high of 80.4 to a low of 48.7, compared to the 25-year annual average of 67.7 days. However, the impact of external factors such as the COVID-19 pandemic, which peaked between 2020 and 2022, should be noted. Nevertheless, the variance in the average number of sitting days between administrations (**Table 1**) and from year to year (**Figure 1**) points to a lack of uniformity and consistency in the scheduling of parliamentary business, which impacts the provision of reliable and regular opportunities for MPs to fulfil their parliamentary functions.

Table 1: Average sitting days per year in the Dewan Rakyat, under different political party administrations

Years	2000-24	2000-03	2004-08	2009-12	2013-17	2018-19	2020-22	2023-24
Administration led by*		Barisan Nasional, Mahathir Mohamad	Barisan Nasional, Abdullah Ahmad Badawi	Barisan Nasional, Najib Razak	Barisan Nasional, Najib Razak	Pakatan Harapan, Mahathir Mohamad	Perikatan Nasional & Muafakat Nasional, Muhyiddin Yassin (2020-2021) and Ismail Sabri (2022)	Pakatan Harapan & Unity Government, Anwar Ibrahim
Average annual sitting days	67.7	72.5	80.4	72.0	55.8	69.0	48.7	74.5

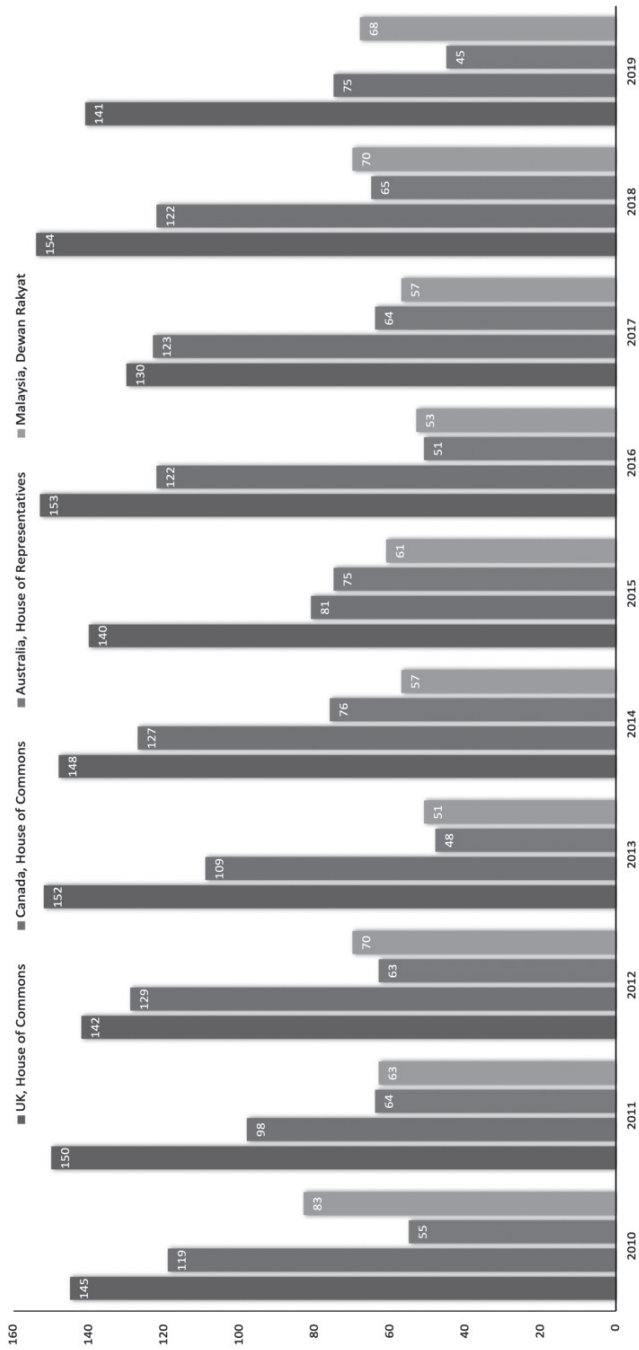
Source: Dewan Rakyat data from Figure 1, analysed and tabulated by the author

**Where an election or change of Prime Minister occurred during a calendar year, that year is allocated to the winning political party coalition that was in power for the majority period of that calendar year.*

Figure 2 provides a 10-year (2010-2019) comparison of the annual number of sitting days of the Dewan Rakyat with other jurisdictions. In contrast to the Dewan Rakyat, the Houses of Commons of both the UK and Canada sit for longer periods and demonstrate greater consistency in the number of annual sitting days (unless the parliamentary calendar is disrupted by a general election). Similarly, the Australian House of Representatives sits for a slightly longer period (also subject to general election disruptions), even though the Australian Federal Government and Parliament have a narrower executive and legislative jurisdiction compared to the Malaysian Federal Government and Parliament.¹¹

11 This is partly due to the fact that the sub-national states and territories in Australia retain more territorial sovereignty and autonomy than the states and regions of Malaysia. See: R L Watts, *Comparing Federal Systems* (3rd edn, McGill-Queens. University Press 2008) (Montreal).

Figure 2: Comparison of parliamentary sitting days in the UK House of Commons, Canadian House of Commons, Australian House of Representatives and Malaysian Dewan Rakyat, 2010-2019



Source:

UK: Data from the House of Commons UK, analysed and tabulated by the author.

Canada: Data from the House of Commons Canada, analysed and tabulated by the author.

Australia: Data from the Australian House of Representatives Chamber Research Office, analysed and tabulated by the author.

Malaysia: Parliamentary records from the Dewan Rakyat Malaysia in www.parlimen.gov.my, analysed and tabulated by the author.

With regard to the setting of the parliamentary agenda, government business is prioritised within the fixed arrangement of business under the standing orders. While the Dewan Rakyat Speaker retains some authority to determine the time allocated for business,¹² there appears to be no entrenched practice of consultation between government and opposition leaders on upcoming parliamentary schedules and items of business. Instead, consultations between parliamentary party leaders and the Speaker on scheduling and timetabling issues appear to be *ad hoc* and bilateral.¹³

Time for private members business

Unlike other parliamentary procedures, such as parliamentary questions and Special Chamber proceedings, the Dewan Rakyat's rules do not set aside a fixed time in the parliamentary schedule for private members business, nor have informal practices evolved in that regard. On the other hand, the current Standing Orders impose many challenges on private members who wish to bring forward business, for example:¹⁴

- There is a general minimum 14-day notice requirement for private members' motions, a more extensive requirement compared to motions submitted by Ministers. A Minister's motion requires seven days' notice, but a Minister may also submit a motion with one day's notice if the Speaker is satisfied that it is in the public interest to do so – a right that is not extended to other members of the House.¹⁵
- For urgent motions on defined matters of public importance,¹⁶ while it may be submitted with only 24-hours' notice, by default all such motions are dealt with in the Special Chamber of the

12 Standing Orders of the Dewan Rakyat, SO 14(1); MA Md Yusof and SS Faruqi, 'The Speaker's Position and Functions' in MA Md Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat of Malaysia* (Sweet & Maxwell 2020) 153–54.

13 M Balakrishnan, 'Parliamentary Questions and Debates' in MA Md Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat of Malaysia* (Sweet & Maxwell 2020) 269–73.

14 M Balakrishnan, *A Framework for a Shadow Cabinet in Malaysia* (Bersih 2021) <https://www.bersih.org/download/bersih-policy-research-a-framework-for-shadow-cabinet-in-malaysia/> accessed 31 December 2024, 20–21.

15 Standing Orders of the Dewan Rakyat, SO 27(3).

16 Ibid, SO 18.

Dewan Rakyat and are not put to a vote.¹⁷ Therefore, a member who wishes to use this procedure to initiate a debate and vote in the whole House will need to convince the Speaker to exercise her/his discretion to allow the motion to be brought to the plenary.

- There are rules in the Standing Orders that theoretically may be used to adjourn an ongoing debate, proceed with business out of the regular order, or suspend the operation of prohibitive standing orders so that private members' motions or bills may be called up for debate and a vote.¹⁸ However, presiding officers and the government frontbench have rarely, if ever, entertained these rules as a method of allowing private members to interrupt government business and present their motions and bills.

Impact

How parliamentary time is structured is a fundamental determinant of whether parliamentary business can be carried out effectively and efficiently. If the balance of executive-legislative power to control of parliamentary time is not reset, it is likely that the Dewan Rakyat's current efforts to expand its powers and strengthen its performance will hit a structural ceiling. In the last seven years, there have been periods of rapid and commendable developments in the scope and pace of efforts to strengthen the oversight role of the Dewan Rakyat and the representative function of its MPs. For example, parliamentary question time now includes an informal slot for Prime Minister's Question Time. Special Chamber proceedings have expanded in length, frequency, and opportunities, such that more MPs are able to engage in more interactive discussions with Ministers. Parliamentary Special Select Committees (PSSCs) have found their footing and are carving a place in the policy and oversight landscape. Threading through the work of the Dewan Rakyat on almost all fronts is an increased level of direct civil society involvement with MPs through the utilisation of parliamentary processes.¹⁹

However, change is less salient in the vital spaces where the Dewan Rakyat's law-making function is supposed to be exercised, and there

17 MA Md Yusof, 'Motions' in MA Md Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Sweet & Maxwell 2020) 336.

18 Standing Orders of the Dewan Rakyat, SOs 26(1) (c), (d), (f) and (m), and SO 90(2).

19 M Balakrishnan, 'Civil society is having an impact on parliament' *The Edge Malaysia Special Report* (Kuala Lumpur, The Edge Malaysia, 11 September 2023) SR27.

is still a distance to go to meet best practice benchmarks. For example, there is a need for:

- standard, reasonable timeframes for the deliberation of bills;
- the scheduling, setting aside of time and resources, and formalisation of committee deliberation of regular bills and money bills; and
- the scheduling and setting aside of time for private members' bills and motions to be presented, debated, and voted on in the main Chamber.

These areas for improvement directly relate to the issue of control over parliamentary time and agenda.

In addition, a failure to tackle these structural obstacles risks leaving the Dewan Rakyat unprepared to deal with current post-election realities: it is argued that the Malaysian political system is moving away from dominant-party or two-party competition to a fluid multiparty system.²⁰ Stronger parliamentary processes are instrumental in ensuring that the political bargains struck between different blocs are implemented or mediated.²¹

Finally, the delay in modernising the rules and practices regarding control of the parliamentary calendar and agenda will make it difficult for the Dewan Rakyat to catch up and keep pace with many of its global counterparts, despite the great strides the Dewan Rakyat has made in recent years. In that regard, the next section of this paper summarises parliamentary time control mechanisms in several modern parliamentary systems.

Ownership of time in the UK House of Commons

Controlling the parliamentary calendar and agenda

The parliamentary calendar of the UK House of Commons is set by the Government. The Leader of the House of Commons (usually a Minister) announces the sitting days for each session in advance. However, adjournments of the House require the approval of the House through

20 CH Wong, 'Malaysia's Political System: End of Permanent Coalitions?' (2021) 76 *RSIS Commentary* <https://www.rsis.edu.sg/rsis-publication/rsis-malaysias-political-system-end-of-permanent-coalitions/> accessed 31 December 2024.

21 A André, S Depauw and S Martin, 'Trust is Good, Control is Better: Multiparty and Legislative Organization' (2016) 69(1) *Political Research Quarterly* 108.

a vote on a motion tabled by the Government.²² A study of 26 European democracies revealed that the UK was one of only two countries in Europe (the other being Greece) yet to give their parliaments a vote on ending a sitting or to allow ordinary members of parliament to recall Parliament. The majority of countries permit parliamentary actors – whether the presiding officer or a certain proportion of members – to trigger a recall.²³

Unlike some other parliaments, the House of Commons does not have an all-party business committee tasked with determining and timetabling the daily or weekly agenda of the House. Conventionally, on the Thursday of each week, the Leader of the House makes a statement about the government business scheduled for the upcoming week. The statement is framed as a formal response to a question from their opposition counterpart. Prior to the statement, the agenda would have been discussed within government, followed by some limited consultation with the Whips of other parties through what is phrased as “the usual channels”. These channels are informal and do not include backbench MPs.²⁴ During the presentation of the agenda, members can question the Leader of the House on the schedule, but they have no formal means to alter it.²⁵

The Speaker retains some control over the daily agenda of a sitting. The Speaker, in consultation with the Deputy Speakers and House officials, may decide on Members’ applications for urgent questions or debates under Standing Order 24. If allowed, these are scheduled prior to the usual commencement of government business.²⁶

Government control in the House of Commons extends beyond the presentation of the government’s weekly business statement. Only ministers can bring “guillotine motions” with the certainty of being decided,²⁷ or “programme motions” to timetable bills after Second

22 United Kingdom Cabinet Office, *Guide to Parliamentary Work* (London, Cabinet Office, 2018) 4.

23 T Fleming and P Schleitter, ‘Prorogation: Comparative Context and Scope for Reform’ (2021) 74(4) *Parliamentary Affairs* 964, cited in M Russell and D Gover, *Taking Back Control: Why the House of Commons Should Govern Its Own Time*, The Constitution Unit (London, University College London, 2021) 54.

24 M Russell and D Gover, *Taking Back Control: Why the House of Commons Should Govern Its Own Time* (n 23) 12.

25 *Ibid.*

26 United Kingdom Cabinet Office, *Guide to Parliamentary Work* (n 22) 9–10.

27 United Kingdom House of Commons, *Standing Orders: Public Business 2024*, SO 83.

Reading,²⁸ or motions to extend the debate time for specific items on any given day.²⁹ Furthermore, only ministers can trigger a recall of the House after it has adjourned, though the Speaker makes the final decision.³⁰

However, while backbenchers and opposition MPs may not play a significant role in influencing the daily agenda and scheduling, it is important to note that as a matter of formal rules and procedures, ordinarily no more than a third of time in the House is available for government legislation.³¹ This is partly due to the ring-fencing of parliamentary time for House and private members' business.

Time for private members' business

While the standing orders of the UK House of Commons give precedence to government business at each sitting, through rules and customs, parliamentary time is set aside for opposition business (20 days), backbench business (between 27-35 days) and Private Members' Bills (PMBs) (13 Fridays).³² Each of these types of business allows MPs to bring decisions to a vote in the House, in some cases by division (i.e., a recorded vote).³³

The 20 days set aside for opposition business (known as "opposition day debates") are further divided into: 17 days for the official opposition and the remaining 3 days formally allocated to the second-largest opposition party,³⁴ which, in practice, tends to share the time with smaller parties. The opposition, specifically the opposition frontbench, decides the topics for debate. Opposition day debates are typically used to highlight and debate the opposition's policy priorities or to raise matters that might embarrass the government.³⁵

28 Ibid, SO 83A.

29 Ibid, SO 15.

30 Ibid, SO 13; M Russell and D Gover, *Taking Back Control: Why the House of Commons Should Govern Its Own Time* (n 23) 6.

31 United Kingdom Cabinet Office, *Guide to Parliamentary Work* (n 22) 10.

32 United Kingdom House of Commons (n 27), SO 14; D Natzler and M Hutton (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (25th edn, 2019) para 18.11 <https://erskinemay.parliament.uk/> accessed 31 December 2024.

33 M Russell and D Gover, *Taking Back Control: Why the House of Commons Should Govern Its Own Time* (n 23).

34 United Kingdom House of Commons (n 27), SO 14(2)–(3).

35 M Russell and D Gover, *Taking Back Control: Why the House of Commons Should Govern Its Own Time* (n 23).

A similar arrangement exists for 27 backbench business days,³⁶ but with more explicit limits on the type of business that can be brought to the House during these times.³⁷ Unlike opposition day debates, control over the agenda for backbench business debates is not handed directly to parties but to the cross-party Backbench Business Committee.³⁸ Both government and opposition frontbenchers are excluded from the Committee,³⁹ though government officials may be invited to attend discussions.⁴⁰ Representatives from smaller backbench parties or independent MPs may also be invited to participate in meetings, but not to take part in decision-making.⁴¹ An MP who wishes to raise a matter during these debates must apply to the Backbench Business Committee, which selects topics for the agenda based on criteria that includes whether the item of business has cross-party support.⁴²

The 13 Friday sittings, which are required to be set aside each year for private members' business,⁴³ are predominantly for Private Members' Bills (PMBs). However, petitions, Urgent Questions, points of order to the Speaker, and government statements are also brought forward,⁴⁴ particularly from the eighth to thirteenth Friday sitting. These sittings are formalised by a motion proposed by the Government and agreed by the House.⁴⁵ With a five-hour sitting between 9:30 a.m. to 2:30 p.m., this amounts to approximately 65 hours.⁴⁶ Theoretically, the government can allocate additional time for private members' business outside of Fridays, but it is a rare occurrence.⁴⁷

36 Of the 35 days allotted for backbench business in the UK House of Commons, at least 27 must be allotted for proceedings in the main chamber of the House; the remaining days may be utilised in proceedings in Westminster Hall. United Kingdom House of Commons, *Standing Orders: Public Business 2024*, SOs 14(4)–(5).

37 United Kingdom House of Commons (n 27) SO 14(4)–(6).

38 Ibid, SOs 14(7), 152J(1), 152J(8).

39 Ibid, SO 152J(5).

40 Ibid, SO 152J(6).

41 Ibid, SO 152J(7).

42 Hansard Society, *Guide to Private Members' Bills* (London, Hansard Society, 2019) <https://www.hansardsociety.org.uk/publications/guides/what-is-a-private-members-bill> accessed 31 December 2024.

43 United Kingdom House of Commons (n 27) SO 14(8).

44 Hansard Society (n 42).

45 United Kingdom Cabinet Office, *Guide to Parliamentary Work* (n 22) 4.

46 Hansard Society (n 42).

47 Ibid.

Ownership of time in the Australian House of Representatives

Controlling the parliamentary calendar and agenda

In keeping with Westminster convention, government business in the Australian House of Representatives takes precedence over other business of the House, except where the rules provide for non-government business to take precedence.⁴⁸ However, a consultative arrangement has existed since 1951 whereby consultations take place between the Leader of the House, the Chief Government Whip and the Manager of Opposition Business (who is a member of the shadow cabinet) on the daily programming of the House.⁴⁹ Although a weekly programme is published, the weekly agenda is not announced in the chamber prior to publication, and members of the House are not given an opportunity to comment on or debate the agenda.⁵⁰

Estimates suggest that approximately 55% of the House's time is taken up by government business,⁵¹ while a third or more of the time is spent on matters raised by private members, parliamentary committee business, and other non-government matters.⁵²

Time for private members' business

A concerted effort to improve private members' access to parliamentary time in the Australian House of Representatives was initiated in 1988, with further improvements instituted in the years since.⁵³

Currently, time is reserved on each sitting Monday for non-government business in both the main chamber and the secondary Federation Chamber (see **Box 1**).⁵⁴ This non-government business encompasses committee business, such as the presentation of committee reports

48 Parliament of Australia House of Representatives, *Standing Orders* (Canberra, Department of the House of Representatives, 2022) SO 35.

49 D Elder (ed), *House of Representatives Practice* (7th edn, Canberra, Department of the House of Representatives, 2018) 58. Notwithstanding the longstanding consultative arrangement, the Leader of the House retains final responsibility and authority over programming.

50 Russell and Paun (n 1).

51 Elder (n 49) 45.

52 Parliament of Australia House of Representatives, *Infosheet 6: Opportunities for Private Members* (Canberra, Department of the House of Representatives, 2022) 1.

53 Elder (n 49).

54 Parliament of Australia House of Representatives (n 48) SO 41.

BOX 1

Non-government business time in the Australian House of Representatives is allocated on sitting Mondays:

- in the main Chamber of the House, from 10.00 a.m. (following time for Petitions) until 12.00 p.m.; and
- in the Federation Chamber, from 11.00 a.m. to 1.30 p.m. and from 4.45 p.m. to 7.30 p.m.

Source: Australia House of Representatives Standing Orders, Standing Orders 34 & 192

and private members' business. The programming of the agenda for non-government business enables parity in the allocation of time. On the occasions when the House does not meet on a Monday of a sitting week, special arrangements are made to allow for some items normally dealt with under non-government business time to be considered later in the House's schedule.⁵⁵

Despite the setting aside of non-government business time in the rules, such time may still be taken over by government business through the assertion of government precedence under the standing orders. However, it appears that private members' business time has been cut short for government business only in the most unusual circumstances, and when this has occurred, the practice has been to seek cross-party agreement.⁵⁶

Programming of private members' business time

The Selection Committee decides the programming and selection of non-government business, namely committee business and private members' business. The Committee comprises the Speaker as Chair (or in her/his absence, the Deputy Speaker), the Chief Government Whip or her/his nominee, the Chief Opposition Whip or her/his nominee, six government members, three opposition members and two non-aligned members.⁵⁷ In practice, most of the party appointed members are junior whips.⁵⁸

The Selection Committee normally meets on the Tuesday of the preceding week before to consider the timetable for non-government

55 Elder (n 49) 574.

56 Ibid.

57 Parliament of Australia House of Representatives (n 48) SO 222(b).

58 Russell and Paun (n 1), 41.

business on Mondays. The Selection Committee also determines the items of private members' business, committee business and delegation business that are to be referred to the Federation Chamber, or that are to be returned to the House for disposal.

The Committee determines the order of consideration of items of business, the time allotted for each item, and the speaking time allotted for each Member.⁵⁹ The Committee's decision-making process is guided by a set of principles (see **Box 2**) and in practice, decisions are made by consensus.⁶⁰

The Selection Committee is required to give priority to notices of intention to present Private Members' Bills (PMBs) over other notices and orders of the day.⁶¹ PMBs that have been approved by the House at second reading are prioritised for consideration of the remaining stages of the bill.⁶² Subject to these requirements, the sequencing of private members' notices normally alternates between government and non-government (opposition) members.⁶³

The Selection Committee then presents its determinations to the House for adoption, after which the timetable is published in the Notice Paper ahead of the Monday sitting. The Committee's report is treated as adopted upon presentation without further debate.⁶⁴ Similarly, the Selection Committee's determination on matters to be referred to the Federation Chamber, once it is reported to the House, is deemed a referral by the House.⁶⁵

During non-government business, the Clerk will call up matters as they appear on the Notice Paper agreed upon by the Selection Committee. However, the usual practice is that private members' motions and bills that are debated during non-government business will not be put to a vote on the same day. Instead, before a vote is called, the debate will be adjourned, typically to the next Monday sitting. Following longstanding practice, the vote on that item of private members' business will then be called up during government business time, and to give this effect, several standing orders must be temporarily suspended.⁶⁶

59 Parliament of Australia House of Representatives, n 48, SO 222; Elder (n 49) 579.

60 Russell and Paun (n 1) 41.

61 Parliament of Australia House of Representatives (n 48) SO 41(b).

62 Ibid SO 41(d).

63 Ibid SO 41(e).

64 Ibid SO 222(e).

65 Ibid SOs 183 and 222.

66 Elder (n 49) 578-80.

BOX 2

In 2010, a set of principles were adopted by the Australian House of Representatives with regard to the selection and programming of private member's business:

1. In formulating the priority to be given to items of private members' business the Selection Committee shall have regard to:
 - (a) the importance of the subject;
 - (b) the current level of interest in the subject;
 - (c) the extent of the current discussion on the subject both in the Parliament and elsewhere;
 - (d) the extent to which the subject comes within the responsibility of the Commonwealth Parliament;
 - (e) the probability of the subject being brought before the House by other means within a reasonable time; and
 - (f) whether the subject is the same, or substantially the same, as another item of business which has been debated or on which the House has already made a decision in the same period of sittings and, if so, whether new circumstances exist.
2. The Committee shall accord priority to private members' business:
 - (a) with regard to the numbers of Members affiliated with each party in the House;
 - (b) in a way which ensures that a particular Member or the Members who comprise the Opposition Executive do not predominate as the movers of the items selected;
 - (c) in a way which seeks to ensure balance is achieved over each period of sittings;
 - (d) in a manner that ensures appropriate participation by non-aligned Members.
3. When a private member has the responsibility for the carriage of a bill transmitted from the Senate for concurrence, the bill shall be accorded priority following the question for the second reading being put to the House in the same way as a Private Member's Bill originating in the House is accorded priority by standing order 41.
4. Priority shall not be accorded to any item of private members' business if the matter should be dealt with by the House in another, more appropriate, form of proceeding.
5. The general principles set out above shall be observed by the Selection Committee but nothing in the general principles shall be taken to prevent the Selection Committee departing from those general principles in order to meet circumstances, which, in its opinion, are unusual or special.
6. These general principles shall continue in effect until altered by the House following a report from this or a future Selection Committee.

Source: Australia House of Representatives, H.R. Deb. (21.10.2010) 1158-9, as reproduced in Elder, n 49, 575

It is possible for urgent motions to be given priority over the agreed agenda.⁶⁷ It is also possible for a Member whose motion or notice is listed on the Notice Paper to withdraw it or request an alternate date.⁶⁸

Sharing control of time: German Bundestag and Scottish Parliament

In contrast to the systems in the UK House of Commons and the Australian House of Representatives – which still maintain some elements of the traditional Westminster model that gives government significant control over parliamentary time – the following two models from the German Bundestag and the Scottish Parliament present a paradigm shift in shared control of parliamentary time.

The German Bundestag

In Germany, Article 39(3) of the Basic Law⁶⁹ empowers the Bundestag to decide when its sessions are convened and adjourned, with the President of the Bundestag (the Presiding Officer) holding a reserve power to fix a date when the parliament is unable to do so.⁷⁰

Parliamentary time in the Bundestag is divided not along government and non-government lines, but is instead allocated along party lines by a bipartisan committee called the Council of Elders. The Council comprises the Bundestag's President, Vice Presidents, and 23 members appointed by the parliamentary parties. Seats on the Council are shared out proportionately between the parliamentary party groups (which are limited to a party or a group of parties holding at least 5% of the total seats in the Bundestag).⁷¹ The government (as distinct from the governing party) does not have a formal say in the Council's decision-making, though a junior minister usually attends its meetings.⁷²

In practice, the Council is chiefly composed of party whips, and the proposed programme is drawn up by the secretariat of the largest party. Informal pre-meetings between party whips are held to reach an agreement on as many of the items on the business agenda as possible,

67 Ibid 577.

68 Parliament of Australia House of Representatives (n 48) SO 113; Ibid 577.

69 German Bundestag, *Basic Law for the Federal Republic of Germany* (translated) (Berlin, German Bundestag, 2020).

70 German Bundestag, *Rules of Procedure of the German Bundestag and Rules of Procedure of the Mediation Committee* (Berlin, Deutscher Bundestag, 2022) Rule 21.

71 *Rules of Procedure of the German Bundestag* (n 70) Rule 6.

72 Russell and Paun (n 1).

before the agenda is discussed and endorsed by the full Council. There is an unwritten but strict convention that agenda time is to be distributed proportionately between the parties, and each party can use its allotted time as it chooses.⁷³

The programme must be formally presented and approved by the chamber of the Bundestag. Any member can raise an objection by moving an amendment to the agenda prior to the first item of business, and such amendments are voted on. However, challenges to the agenda are rare. Therefore, in practice, there is no formal vote on the agenda in the chamber; the agenda is deemed to be approved so long as no objections are raised before the first item of business is called.⁷⁴

In short, the government has to use its party's or coalition's allocation of time to bring forward the government's programme. However, the rules empower the government to assert some privileges over the agenda, such as the right to make statements about policy or present reports at any time.⁷⁵

Meanwhile, opposition time is guaranteed through the proportional sharing of agenda time, thus ensuring its weekly availability. Non-government parties may use their allotted time to propose legislation, initiate debates, or debate committee reports.⁷⁶

However, the proportional distribution of time and the autonomy of each party to determine its agenda time as it chooses may mean that individual members must apply through their party to propose bills.⁷⁷ Nonetheless, a cross-party group comprising at least 5% of the total number of Bundestag members can submit an item to the Council for entry in the agenda.⁷⁸

The Scottish Parliament

The Scottish parliament sits for a single session which lasts the entire length of the parliamentary term between elections and each session is further divided into "parliamentary years".⁷⁹ Aside from the parliament's

⁷³ Ibid.

⁷⁴ *Rules of Procedure of the German Bundestag* (n 70) Rule 20; Russell and Paun (n 1).

⁷⁵ Russell and Paun (n 1).

⁷⁶ Ibid; Russell and Gover (n 23).

⁷⁷ Russell and Paun (n 1).

⁷⁸ *Rules of Procedure of the German Bundestag* (n 70) Rule 20.3; Russell and Gover (n 23).

⁷⁹ Scottish Parliament, *Standing Orders of the Scottish Parliament* (Edinburgh, Scottish Parliament, 2024, Rules 2.1.1-2.1.2).

first meeting day following a general election, subsequent meeting dates and times are determined by a parliamentary resolution through a motion proposed by the bipartisan Parliamentary Bureau (see below), with the Presiding Officer holding a reserved power to fix dates if the parliament is unable to.⁸⁰

In terms of the management of parliamentary time, both government business and non-government business are managed together, with all business going through the Parliamentary Bureau for scheduling approval. The Bureau is formally tasked with approving the agenda and making alterations to the daily orders of business.⁸¹

The rules of parliament specify minimum amounts of time for different purposes: 12 half days per session for committee business, 16 half days for opposition time, 45 minutes in each parliamentary sitting for members' business, and an unspecified amount of time for committee announcements.⁸²

The Parliamentary Bureau is responsible for setting out and approving the agenda for the chamber. The Bureau was expressly designed to avoid excessive government control of the parliament.⁸³ It is composed of:⁸⁴

- the Presiding Officer,
- a representative of each political party with five or more seats in Parliament, nominated by the party's parliamentary leader; and
- a representative of any group of five or more members formed by smaller parties (having fewer than five seats in Parliament) and/or independent Members of Parliament.

In practice, the composition of the committee consists of party whips, and an Executive with a healthy majority in Parliament remains influential due to a weighted voting system.⁸⁵ The Bureau may invite other members to their meetings, but these members do not take part in the Bureau's decisions.⁸⁶

80 Ibid (n 79) Rules 2.2.1-2.1.2 and 2.3.

81 Ibid (n 79) Rule 5.1.

82 Ibid (n 79) Rule 5.6.

83 Russell and Paun (n 1).

84 *Standing Orders of the Scottish Parliament* (n 79) Rule 5.2.

85 Russell and Paun (n 1).

86 *Standing Orders of the Scottish Parliament* (n 79) Rule 5.3.7.

Decisions of the Bureau are resolved through a vote in which each member's vote is weighted in proportion to their party's number of seats.⁸⁷ The Presiding Officer has a casting vote if needed.⁸⁸

In practice, the proposed programme is prepared by the Executive (the Minister for Parliamentary Business) and submitted to the Bureau for discussion and approval. Informal meetings are held between the party representatives to reach an agreement on the agenda (which is an opportunity for whips to engage in informal trading) before it goes to the Bureau for formal approval.⁸⁹

Once the Bureau agrees on a business programme, it is presented to Parliament by the Minister for Parliamentary Business through a business motion, and Parliament will debate and vote on whether to adopt it. Debate is limited to 30 minutes. Each week's motion covers the business of the following two weeks. Any member can object to the programme by proposing amendments to the motion, but the amendment motion must be supported by at least 10 members before it can be debated and put to a vote.⁹⁰

Evaluation and recommendations

An effective and stable parliamentary system should facilitate the conduct of both government business and non-government business, not in equal measures, but in parity or proportionately, so that "a truly burning political question which was unable to reach the parliamentary agenda via the default mechanism (in this case, government control) could do so via some alternative mechanism".⁹¹

The logic for sharing parliamentary time and control of the parliamentary agenda rests in the government's dual role within a Westminster parliamentary system. The government frontbench is part of the parliamentary majority, but as representatives of the machinery of government, they are also the target of Parliament's oversight, representative and legislative functions. If the government frontbench has the power to act as gatekeepers or veto players⁹² in the parliament in terms of controlling who has access to floor time, or how and by whom

87 Ibid Rule 5.3.5.

88 Ibid Rules 5.3.1-5.3.6.

89 Russell and Paun (n 1) 39.

90 *Standing Orders of the Scottish Parliament* (n 79) Rules 5.4, 5.5, 8.11.

91 Russell and Gover (n 23) 11.

92 G. Tsebelis, *Veto Players* (Princeton, Princeton University Press, 2002).

parliamentary procedures can be used, the parliament will continue to operate under the risk that its legislative, oversight and representative functions will be subject to the *de facto* control of the government frontbench.

The solution is to ensure that the standing orders provide key parliament actors (whether government backbenchers or majority and minority opposition blocs) a fair opportunity not just to bring their matters of business before parliament, but also to share decision-making power over how parliamentary time is spent.

In terms of the models that would work best for Malaysia, an evolutionary approach, rather than a revolutionary one, is recommended to achieve a paradigm shift in degrees instead of a complete overhaul. Rather than building a predictive or fixed model that binds future parliaments, it is more judicious to make strategic adjustments in response to changing material and new political forces.⁹³

On that basis, it is recommended to reset the balance of control over parliamentary time and agenda in the Dewan Rakyat by focusing on five objectives, which can be sufficiently delivered through amendments to the Standing Orders of the Dewan Rakyat.

Objective 1: Balancing control over the parliamentary calendar

Standing Order 11(2) of the Standing Orders of the Dewan Rakyat gives the Prime Minister, as Leader of the House, the power to decide the dates and length of every parliamentary session and meeting, as well as to vary those dates. The will of the majority in Parliament, whether bloc-based or cross-party is not given a voice. As **Figure 1** demonstrates, there is little consistency in the annual number of sitting days, and the annual number of days is well short of what is required to complete the business of the House, as witnessed by the amount of private members' business that sits at the bottom of the parliamentary agenda and is never brought to the floor of the House because of the effluxion of time.

To address these concerns, it is recommended that twofold amendments be made to Standing Order 11. First, a minimum number of meetings per session and sitting days per calendar year should be codified in the standing order. It is recommended that the codified minimum should be three meetings per session and 100 sitting days per calendar year. Based on the average number of sitting days of 67.7 days over the past

93 Russell and Gover (n 23).

25 years (see **Figure 1**), this proposal will increase the number of annual sitting days by at least 30%, and by extension, the volume of business transacted in the House including, among others, the percentage of parliamentary questions that will be answered orally on the floor of the House.

Second, the House as a whole, not the Executive solely, should have the express authority to vary the dates of meetings. This can be achieved by requiring that meeting dates may be varied, and may only be varied, through a motion brought by either the Leader of the House, the Deputy Leader of the House, or the Leader of the Opposition, and supported by a majority of members of the House.

Objective 2: Ring-fencing Private Members Time

It is recommended that a specific weekly slot for private members business be created on Wednesday afternoons. The recommended length of each private members' business period is four hours, which amounts to approximately one-sixth of the total weekly sitting hours (24 hours, excluding extended sittings). This recommendation should be viewed as an initial proposal that is open to variation upwards or downwards depending on the volume of private members' business that comes before the House.

Objective 3: Sharing management of Private Members' Time

To further ensure that both the time and agenda during Private Members' Time are outside the control of the government frontbench, it is proposed that a new permanent (standing) committee called the Private Members' Business Committee be established to manage and programme Private Members Time.

The government frontbench should not have the ability to vary the timing for Private Members Time or to defer, suspend, or shorten it by an early adjournment or termination of a sitting. In that regard, the current powers of Ministers and/or the Speaker to adjourn, suspend, vary time, or reorder the order of business for example, under Standing Orders 12 and 14, should be qualified. To cater for emergencies, it is recommended that the Leader of the Opposition or any other duly authorised member of the Private Members' Business Committee be empowered to move a motion to vary Private Members' Time, and that any private member may move a motion to seek the House's decision to suspend the Standing Orders.

The Private Members' Business Committee should have the authority to determine the order of business for Private Members' Time and processing requirements for PMBs. It is proposed that the Committee should be chaired by a Deputy Speaker. The Leader of the Opposition should be an *ex officio* member of the Committee. The remaining members of the committee should comprise representatives from every party holding a minimum of 5% of the seats in the House, with the restriction that Ministers and Deputy Ministers should not be members of the Committee. The vote of each representative will be weighted according to their party's seat share in the House, similar to the Scottish Parliament.

Objective 4: Sharing control of the agenda during Private Members' Time

It is recommended that any Private Members' motion or bill should qualify to be brought forward, debated, and to be voted on in the plenary. However, the allocation of slots on the parliamentary agenda should be based on a combination of: (i) the first-come-first-served listing of private members' motions and bills in the Order Book for each meeting; (ii) party seat strength and balance in the House, excluding the government frontbench; and (iii) the interests of minor parties and independent MPs. Based on this matrix of guiding principles, it is recommended that some minimum and maximum thresholds should be set on the number of motions and bills that may be moved or debated during each period of Private Members' Time. Specifically:

- Given the overarching principle under Standing Order 15(3) that private members' motions take precedence over PMBs, it is recommended that no more than five private members' motions should be scheduled for disposal in each period of Private Members' Time. These limits would ensure that the agenda for the session is not flooded with motions to the exclusion of PMBs.
- Following similar reasoning, it is recommended that of the maximum five motions in each session, between one to three motions should be motions to introduce a PMB, unless no such motions are on the parliamentary docket.
- Consequently, it is recommended that at least one and at most two PMBs should be scheduled for debate during each Private Members Time, unless no such bills are on the parliamentary docket.

Objective 5: Reducing the restrictions on private members motions

As discussed earlier, the current rules for the submission of private members' motions are prohibitive. Such restrictions ought to be eased if Private Members' Time is to meet its intended purpose. Therefore, it is also recommended that Standing Order 27(3) be amended to reduce the notice period for motions, and to put the Leader of the Opposition on an equal footing with a minister when it comes to accessing special dispensations relating to notice periods for motions.

Conclusion

Ownership and control of when parliament can convene and what it can do when it convenes, determines the ability of legislatures and legislators to successfully execute their roles, functions, and privileges. One of the purposes of this paper is to demonstrate a range of possible models for sharing control of parliamentary time, and to ideate solutions that can be implemented in the short term without extensive overhauls to current systems and operations. Ideal solutions should introduce the necessary building blocks to catalyse procedural, operational, and behavioural change in terms of:

- how parliamentary time is controlled and distributed;
- demarcating and preserving the division and balance of power between: (i) the government in parliament, (ii) the parliamentary majority; and (iii) the parliamentary minorities; and
- better actualising the Dewan Rakyat's oversight, law-making and representative functions.

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