

Procedure Committee

**Report relating to private  
members' business, the  
sitting pattern, Question  
Time and petitions**

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## Terms of reference

1. That the following matters, identified in the report of the Joint Select Committee on Parliamentary Procedure in its October 2010 report as requiring further review by the Procedure Committee in this Parliament, be referred to the Committee for inquiry and report:
  - (a) the merits of the Legislative Council trialling a Selection or Business Committee,
  - (b) the merits of various options for reforming the current system of managing private members' business, including the option of a Selection or Business Committee,
  - (c) the merits of further reforms to the operation of Question Time, including to the relevance of answers,
  - (d) mechanisms to enable the provision of a right of reply to ministerial statements to be extended to a representative of the cross bench,
  - (e) procedures for the more regular referral of bills to the Legislative Council's standing committees, including the potential impact of any such change,
  - (f) the merits of the Legislative Council trialling new arrangements for debate on committee reports, including the option of trialling a Selection or Business Committee to allocate debate times,
  - (g) the merits of the Legislative Council passing a resolution concerning, the meaning of appropriations bills "for the ordinary annual services of the Government".
2. That the Committee inquire into and report on the sitting days and routine of business for the Legislative Council for the spring 2011 sitting period.
3. That the Committee report on paragraph 1 (b) and paragraph 2 by Friday 17 June 2011.

*LC Minutes*, 10 May 2011, p83

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## Committee Membership

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**The Hon Don Harwin MLC (LIB) (Chair)**  
President of the Legislative Council

**The Hon Jenny Gardiner MLC (NAT)**  
Deputy President

**The Revd the Hon Fred Nile MLC (CDP)**  
Assistant President

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Deputy Leader of the Opposition

**The Hon Dr Peter Phelps MLC (LIB)**  
Government Whip

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Opposition Whip

**The Hon Sarah Mitchell MLC (NAT)**

**The Hon Robert Borsak MLC (SFP)**

**The Hon John Kaye MLC (GRN)<sup>2</sup>**

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<sup>1</sup> From 14 June 2011 in place of the Hon Tony Kelly MLC, resigned

<sup>2</sup> From 21 June 2011 in place of the Hon Cate Faehrmann MLC

## Table of Contents

Chair's Foreword	viii
Summary of recommendations	ix
<b>Chapter 1 Private members' business</b>	<b>1</b>
Private members' business and consideration of a Business or Selection Committee	1
Impact of sessional orders varying the operation of private members' business	3
Conclusion	5
<b>Chapter 2 The sitting pattern</b>	<b>7</b>
<b>Chapter 3 Question time</b>	<b>8</b>
The operation of Question Time across jurisdictions	8
Oral questions	8
Allocation of the call	9
Time limits	10
Rules regarding the content of Questions	10
The rule of anticipation	11
Supplementary Questions	11
Discretion of the Chair	12
Answers to questions	12
Relevancy and the adequacy of answers	13
Applying the rules for questions to answers	14
Concluding observations	14
<b>Chapter 4 Petitions</b>	<b>16</b>
Introduction	16
Petitions presented in the Legislative Council	16
Petitions presented since 2006	16
Number of petitions presented	17
Number of signatures	17
Subject matter of petitions presented	18
Members presenting petitions	18
Irregular petitions	19
Number of irregular petitions presented	19
E-petitions	19

Types of e-petitions	21
E-petitions in the NSW Legislative Council	21
E-petitions in other Parliaments	22
Outcome of petitioning the Legislative Council	23
Procedures for considering petitions in other jurisdictions	23
Conclusion	26
<b>Appendix 1 : Alternative models for Question Time</b>	<b>27</b>
The New Zealand House of Representatives	27
The UK House of Commons	28

## Chair's Foreword

The terms of reference for this inquiry arose from recommendations made by the Joint Select Committee on Parliamentary Procedure in 2010, which identified certain matters for further inquiry and report by the Procedure Committee.

In accordance with the terms of reference, in June 2011 the Committee reported on two matters: the management of private members' business and the sitting days and routine of business for the Legislative Council. In that report the Committee proposed a number of sessional orders be adopted to address operational difficulties with the existing system of private members' business. This report provides a review of the sessional orders subsequently adopted by the House, which appear to have had a positive effect on the operation of private members' business. In regard to the sitting pattern, the Committee made three recommendations which sought to address issues raised by members concerning the sitting pattern under which the Council was then operating. In this report the Committee notes that the Government has since announced the sitting calendar for 2012 under which the Houses will sit a more traditional three day sitting week.

Paragraph 1(c) of the terms of reference requires the Committee to inquire into the merits of further reforms to the operation of Question Time. This report provides an overview of the provisions for Question Time in Australian parliaments, which are broadly consistent with the Council's. The report also briefly outlines the different models operating in New Zealand House of Representatives and the UK House of Commons.

At a meeting of the Procedure Committee held on 12 September 2011, it was resolved that a discussion paper be prepared on the provisions in the Legislative Council for the presentation and consideration of petitions, including e-petitions. This report incorporates the discussion paper as Chapter 4. The Committee hopes that the issues raised in Chapter 4 will generate discussion amongst members and others regarding the provisions in the Council for the presentation, consideration and form and content of petitions.

I thank all members of the Committee for their contribution to this inquiry, as well as Mr David Blunt, the recently appointed Clerk of the Parliaments, and the Committee Secretariat for their valuable support.

The Hon Don Harwin MLC  
**President**



## Summary of recommendations

### **Recommendation 1**

*page 5*

That the sessional order be varied to provide that requests must be handed to a Clerk-at-the-Table by 3.00 pm.

### **Recommendation 2**

*page 5*

That the option for establishing a Business or Selection Committee not be further considered at this time.



## Chapter 1 Private members' business

- 1.1 On 10 May 2011, the House resolved that certain matters identified by the Joint Select Committee on Parliamentary Procedure as requiring further review be referred to the Procedure Committee for inquiry and report.<sup>3</sup>
- 1.2 Two of these matters, being options for reforming private members' business, including the merits of a Selection or Business Committee, and the sitting days and routine of business for the Legislative Council spring 2011 sitting period, were to be reported on by 17 June 2011.
- 1.3 In its report tabled in the House on 17 June 2011 the Committee noted a number of operational difficulties with the existing system of private members' business and recommended the adoption of sessional orders to modify the system. On 21 June 2011, the House adopted sessional orders to put the recommendations of the Committee into effect.
- 1.4 The Committee concluded in its report that the merits of a Selection or Business Committee should be further considered following a process of trial and review of the amendments to private members business adopted by the House.
- 1.5 This chapter outlines the sessional orders adopted by the House and briefly examines whether there has been an improvement in the operation of private members' business.

### Private members' business and consideration of a Business or Selection Committee

- 1.6 In its report relating to private members' business and the sitting pattern, the Procedure Committee considered the operation of private members' business and noted a number of operational difficulties with the current system which had been identified by the Joint Select Committee on Parliamentary Procedure:
  1. There is a lack of flexibility in allowing members to bring forward current topical matters. Members generally have to wait significant periods of time in order to bring forward an item of private members' business under the draw.
  2. Because of the lack of flexibility in the current arrangements, members routinely suspend standing and sessional orders to bring on items outside the order of precedence, often interrupting government business or other items of business.
  3. The inflexibility of the current arrangements does not allow the House to be responsive and timely in debating matters that are topical and in the news. The corollary of being impeded from debating matters that are currently in the news is that the House is often required under the current system for managing private members' business to debate a notice of motion given many months or even years previously.

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<sup>3</sup> *LC Minutes*, 10/5/2011, p83 The Joint Select Committee on Parliamentary Procedure considered various reforms outlined in the *Agreement for a Better Parliament: Parliamentary Reform* developed following the 2010 Federal Election.

4. Members have been repeatedly adjourning items in the order of precedence when issues have arisen which delay the progress of the item to its conclusion.
5. There is no expiry date for notices of motions given by private members. Accordingly, the Notice Paper becomes increasingly long as a session progresses and matters of private members' business bank up.
6. Relatively few private members' motions are being disposed of; that is, being agreed to, negated or withdrawn.<sup>4</sup>

- 1.7** The Committee's report proposed the adoption of sessional orders which sought to address these difficulties. On 21 June 2011 sessional orders were adopted to provide for the following:
- To require members to request a matter be called on as formal business by 2.30 pm at the previous sitting
  - To limit debate on a motion for suspension of standing orders to bring on a motion for an order for papers
  - To limit the number of times an item of private members business in the order of precedence can be postponed
  - For notices of motions on the Notice Paper to expire after 20 sitting days
  - To reduce the overall time for debate on private members' motions and speech times
  - To allow members to substitute items in the order of precedence.
- 1.8** In that report, the Committee also considered the manner in which Selection or Business committees operate in other jurisdictions, the merits and common features of such committees and the suitability of a Selection or Business Committee in assisting the management of private members' business in the Legislative Council.
- 1.9** In particular the committee noted ongoing developments in the House of Commons and the system proposed by the Reform of the House of Commons Select Committee which focuses on the committee as a mechanism for empowering backbench members and providing them with a greater sense of ownership for the business that is debated in their own House, rather than simply facilitating the process of selection.
- 1.10** Ultimately, whilst this Committee recognises the benefits that such a process for the selection and regulation of business might provide, Committee members determined that provisions for such a committee should not be considered further until the modifications to business proposed in the report had been further trialled and reviewed.
- 1.11** The following section outlines the impact of the sessional orders adopted by the House in addressing the problems identified in the operation of private members' business.

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<sup>4</sup> Joint Standing Committee on Parliamentary Procedure Report, p45

## **Impact of sessional orders varying the operation of private members' business**

### ***Formal motions***

- 1.12** Under the sessional order varying the provisions for formal business, members must request a matter be called on as formal business by 2.30 pm at the previous sitting. Shortly after 2.30 pm each sitting day, the Clerk causes an email to be sent to all members advising of any items to be called over as formal business the following day. The details of items of formal business are also published on the Daily Program at the conclusion of the sitting day.
- 1.13** The cut off time is intended to provide members with sufficient time to consider whether to allow the matter to proceed as a formal motion, and whether to agree to the motion.
- 1.14** However, there is some evidence that the 2.30 pm cut off time, which conflicts with the commencement of sitting on Tuesdays and with Question Time each other sitting day, has caused some difficulty for members. Several members have commented that on the first sitting day there is not adequate time to provide notification to the Clerk. It is therefore proposed that this time be amended to 3.00 pm to allow members to more easily meet the cut off time.
- 1.15** There have been 145 items called over as formal business during the 30 sitting days since the adoption of the sessional order requiring members to request a matter for formal business by 2.30 pm at the previous sitting. Of the 145 items, objection was taken to 50 proceeding as formal motions and 95 were moved and agreed to.
- 1.16** By way of comparison, during the 30 sitting days leading up to November 2010, 131 items were called over as formal business, objection was taken to 39 of the motions proceeding as formal business, 91 were moved and agreed to and one moved and negatived.
- 1.17** While the sessional order does not appear to have had a significant impact on the number of items called over as formal business, it may have had an impact on the number of motions for the suspension of standing orders. During the 30 sitting days since the adoption of the sessional order, 26 motions for suspensions of standing orders to bring on items of private members' business were moved. In contrast, during the same period in 2010, 45 motions for suspension of standing orders were moved.

### ***Orders for Papers***

- 1.18** The sessional order reduces the debate on a motion for the suspension of standing orders to bring on an item of private members' business for an order for papers to a statement by the mover and a statement by a Minister not exceeding five minutes each.
- 1.19** The Joint Standing Committee noted that, due to the lack of flexibility in the rules for private members' business, members routinely moved for the suspension of standing orders, on contingent notice, to bring on items outside the order. This has the impact of interrupting scheduled business and impeded the flow of business in the House.
- 1.20** When proposing the modification to the standing order, the Procedure Committee also considered options for limiting debate on motions for the suspension of standing orders in

other circumstances but ultimately was of the view that the limitation to suspension motions relating to orders for papers should first be trialled.

- 1.21** Since 21 June 2011, there have been six motions for the suspension of standing orders to bring on a motion for an order for papers, all of which were agreed to.
- 1.22** The sessional order has had the desired effect and improved the flow of business before the House. There has been no negative impact on the ability of members to argue their position when seeking to suspend standing orders to bring on a motion for an order for papers. However, the committee will monitor the operation of the sessional order to ensure that members are not unduly impeded in business before the House.

### *Postponements*

- 1.23** The sessional order relating to the postponement of items of private members business in the order of precedence reduced the number of times a member could postpone a notice of a motion to once only and removed the provision for the item to remain in the order of precedence if determined by the House. The sessional order removed the limitation of postponements to notices of motions for the introduction of bills.
- 1.24** In relation to notices of motions, since the sessional order was adopted, only one notice of motion has been postponed twice, and remains in the order of precedence by leave of the House.
- 1.25** There are currently five bills in the order of precedence, all of which were in the order of precedence when the sessional order was adopted on 21 June 2011. All of these bills have been postponed at least once and one has been postponed three times.
- 1.26** Whilst not currently disrupting the progress of business on private members' days, there is a potential for a build-up of private members' bills in the order of precedence thereby preventing new items of business being initiated.
- 1.27** The operation of private members' business could also be further enhanced by giving precedence separately to private members' motions and bills.

### *Expiry date for private members' business outside the order of precedence*

- 1.28** Under the sessional order, notices of motions outside the order of precedence that have remained on the Notice Paper for 20 sitting days without being moved are removed from the Notice Paper. The expiry date was intended to reduce the number of items on the Notice Paper, remove outdated notices and introduce a measure of renewal to the paper.
- 1.29** In total, 90 notices of motions outside the order of precedence of private members' business have expired since the commencement of the sessional order on 21 June 2011. As only 16 of these notices of motions have again been given and are currently on the Notice Paper, it appears that the sessional order has had the desired affect.

### *Debate on private members' motions*

- 1.30** The sessional order relating to debate on private members' motions reduces the overall time limit for debate to 2 hours and reduces the time for each member speaking accordingly.

- 1.31 Thirty private members' motions have been debated and concluded since 21 June 2011.<sup>5</sup> On one occasion, leave was granted for time to be extended beyond the time for debate. On all other occasions, the matter was considered within the reduced time limit.

### *Substitutions*

- 1.32 Under the sessional order for substitutions, members who have a notice of motion in the order of precedence may substitute for that item a notice of motion outside the order of precedence in the name of that member. To do so, members must notify a Clerk-at-the-Table of their intention to substitute an item no later than the last sitting day in the week preceding the next sitting day on which general business has precedence under the sessional orders.
- 1.33 Since the adoption of the sessional order on 21 June 2011, only two substitutions have been made. One of these items was subsequently disposed of, the other remains in the order of precedence.
- 1.34 The provision allowing members to substitute items in the order of precedence was intended to provide a means for members to prioritise their items and to enable them to bring forward for debate matters of topical or immediate concern. To date, this provision has been under used and there is a capacity for it to have a much greater effect on debate of private members' business.

## **Conclusion**

- 1.35 The sessional orders adopted by the House seem to have had a positive affect on the operation of private members' business. Consequently, the adoption of a Business Committee is not warranted at this time.
- 1.36 To assist members with the process of submitting requests for formal business, it is proposed that a minor amendment be made to the sessional order varying standing order 44.

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### **Recommendation 1**

That the sessional order be varied to provide that requests must be handed to a Clerk-at-the-Table by 3.00 pm.

### **Recommendation 2**

That the option for establishing a Business or Selection Committee not be further considered at this time.

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- 1.37 The committee will continue to monitor the sessional orders with a view to considering whether further modification to the rules of the House is required. In particular, further consideration in 2012 should be given to whether the operation of private members' business

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<sup>5</sup> In total, 139 private members' motions have been disposed of since 21 June 2011, included items considered as formal business.

would be further enhanced by giving precedence separately to private members' motions and bills.



## Chapter 2 The sitting pattern

- 2.1** In its report of June 2011, the Committee considered the impact of the sitting pattern adopted by the Government at the commencement of the 55<sup>th</sup> Parliament. At the time of reporting, the sitting days of the Legislative Council were set by a calendar circulated by the Government for the Legislative Assembly under which the Council sat four days per week in two week blocks, the first week Tuesday to Friday and the second week Monday to Thursday.
- 2.2** Sessional orders had been adopted to provide for the times of meeting and adjourning and the precedence of business according to the place in which the day falls in the week, that is, first, second, third, fourth or fifth.
- 2.3** While acknowledging the convention that the Government sets the sitting pattern, the Committee noted the impact of the current sitting pattern on members and the conduct of business. In particular, the committee noted the impact on the ability of members, particularly country members, to undertake the full range of parliamentary duties for which they are responsible such as constituency and committee activities.
- 2.4** In conclusion the Committee recommended:
- that consideration be given to a sitting pattern that reflects the same sitting days each sitting week
  - that, to further address the difficulties of the four day sitting pattern for country and regional members, the adjournment of the House on the last day of the sitting week at an earlier time would assist members with their travel and other commitments
  - a further review, prior to the completion of the spring sittings, of the impact of the sitting pattern on members and the conduct of business of the House.
- 2.5** On 2 August 2011, on the House resuming after the winter break, the Deputy Leader of the Government and Leader of the House announced that, following the recommendation of the Procedure Committee the Premier had accepted the request from the House and that Legislative Council would, from that time forward sit Tuesday to Friday of each sitting week until the end of the session. The Legislative Assembly would continue to sit in the two week blocks as originally scheduled.
- 2.6** On 3 August 2011, on the recommendation of the Committee the House resolved that, on the last sitting day each week, Question Time would commence at 2.00 pm, and business be interrupted at 3.00 pm to allow the Minister to move the adjournment if desired.
- 2.7** It is noted that on 9 November 2011, the Government announced the sitting calendar for 2012 under which the Houses will sit Tuesday, Wednesday and Thursday each sitting week. Although the Houses will sit three day a week, rather than four, additional sitting weeks have been scheduled to ensure there is no reduction in the number of scheduled sitting days.

## Chapter 3 Question time

- 3.1 Under the terms of reference from the House, the Committee is to consider the merits of further reforms to the operation of Question Time, including the relevancy of answers.
- 3.2 In the report of the Joint Select Committee on Parliamentary Procedure, the Legislative Council members on the committee considered reforms for Question Time. The committee found that the Legislative Council had already adopted certain "reforms" in the Agreement, in particular time limits for questions and answers in Question Time and the entitlement of members to ask supplementary questions. However, it also found that further consideration should be given by the Procedure Committee to provisions for the relevance of answers.
- 3.3 This chapter considers the provisions for Question Time in all Australian parliaments, the New Zealand House of Representatives and the UK House of Commons. All Australian jurisdictions have broadly the same provisions for Question Time with some notable variations.
- 3.4 The models for Question Time operating in the New Zealand House of Representatives and the UK House of Commons depart significantly from aspects of the Australian models, particularly in the requirement to place questions for oral answer on notice. These differing models are briefly described and attached at Appendix 1.

### The operation of Question Time across jurisdictions

- 3.5 The provisions for Question time are outlined under the following categories:
- time allocated for questions and time limits applying to questions and answers
  - the rules for content of questions
  - the ability to take questions on notice
  - the provision and rules for supplementary questions
  - rules for answers, in particular the requirement for answers to be relevant to the question.

#### Oral questions

- 3.6 All Australian jurisdictions have a Question Time in which members and parties can put oral questions to ministers and others without notice. Only the UK House of Commons and New Zealand House of Representatives provide ministers with previous notice of questions. These parliaments also limit the number of questions that can be asked by individual members or parties during Question Time – these systems are described in further detail below.
- 3.7 While all jurisdictions allow oral questions to be asked of ministers, some also allow questions to be directed to Committee Chairs<sup>6</sup>, the Chair<sup>7</sup> and private members<sup>8</sup>, consistent with the

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<sup>6</sup> New Zealand House of Representatives, Australian House of Representatives, NSW Legislative Assembly, Western Australian Legislative Assembly, ACT Legislative Assembly and the Northern Territory Legislative Assembly.

provisions of the New South Wales Legislative Council. The Senate specifically removed the capacity to ask questions of committee chairs and private members in 2009.

- 3.8** All jurisdictions make some provision either under the standing orders, or informally, for ministers to take questions on notice or provide further information, with answers most commonly provided at the conclusion of Question Time. The NSW Legislative Council is the only House that makes explicit provision in the standing orders for a minister to refer a question to a minister they represent in the other House. Under the provision the Legislative Council minister is responsible for providing the House with an answer within a set timeframe.<sup>9</sup>

### **Allocation of the call**

- 3.9** All parliaments have adopted practices which aim to allocate the call for oral questions proportionately between government and non-government members. In many parliaments the call is further allocated according to the party composition of the House. This approach was not supported by the Joint Select Committee on Parliamentary Procedure as it would likely reduce the number of questions available to cross bench members.
- 3.10** In the Legislative Council, by convention, the President first recognises the Leader of the Opposition, who asks the first question. The call is then given to other members on a rotational basis in order to ensure that the government, crossbench and opposition have an equal number of questions. There is no restriction on the number of times an individual member can seek the call and ask a question. In contrast, members of the Queensland Legislative Assembly may ask only one question without notice each day, except the Leader of the Opposition who may ask two questions.
- 3.11** In most parliaments the proportionate allocation of the call is achieved informally – the call is allocated at the discretion of the Chair, who either works from a list prepared following consultation between the parties or exercises his or her discretion. However several parliaments have formalised this process in their standing orders:
- In the UK House of Commons, the allocation of questions is determined by a random computerised ballot called the 'shuffle'.
  - In the New Zealand House of Representatives, only 12 questions can be asked each day. These are allocated proportionate to the party composition of the House by a Business Committee over a cycle of several weeks.
  - In the Tasmanian Legislative Assembly, recent governments have held office with the support of either independent members or the Greens. Consequently, the standing orders were amended to require that, notwithstanding the requirement for questions to be interrupted after one hour, the Speaker must ensure that the minimum number of questions without notice asked is seven by the Opposition, three by the Tasmanian Greens and three by Government private members.

<sup>7</sup> Australian House of Representatives, Australian Senate, ACT Legislative Assembly and Northern Territory Legislative Assembly. In the New Zealand Parliament and the Western Australian Legislative Assembly, only written questions may be put to the Speaker.

<sup>8</sup> All jurisdictions except the UK House of Commons, Australian Senate and Queensland.

<sup>9</sup> Answers must be provided within 35 days.

### Time limits

- 3.12** In the Legislative Council, a time limit of one minute applies to questions and four minutes to answers. These time limits are broadly consistent with other jurisdictions in which time limits apply, which vary between 45 seconds<sup>10</sup> and one minute<sup>11</sup> for questions and from two to five minutes for answers.<sup>12</sup>
- 3.13** Of those parliaments that permit supplementary questions to be asked (see below), time limits range from 30 seconds<sup>13</sup> to one minute<sup>14</sup> for the supplementary question, and from one minute<sup>15</sup> to two minutes<sup>16</sup> for the answer. This is consistent with the NSW Legislative Council's limit of one minute for supplementary questions and two minutes for the answer.
- 3.14** Conversely, many parliaments have determined that the time taken for asking and answering a question should be judged at the discretion of the Chair, particularly for supplementaries.<sup>17</sup>
- 3.15** While approximately one hour is allocated for questions in most parliaments<sup>18</sup>, several parliaments have a Question Time of between 30<sup>19</sup> and 45<sup>20</sup> minutes. Only the House of Representatives allows a lengthier time for questions, approximately 90 minutes.

### Rules regarding the content of Questions

- 3.16** The rules governing questions are set out in NSW Legislative Council standing order 65. The rules cover what questions must not contain (for example argument or imputations), what questions must not ask for (for example an announcement of government policy) and what questions must not refer to (for example debates in the current session).
- 3.17** The Council's rules are broadly consistent with those of other jurisdictions, although the provisions in some parliaments differ on particular points. For example, a number of parliaments prohibit questions from being asked if they have previously been answered, disallowed or refused within a recent period of time, usually that session of parliament.<sup>21</sup> The

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<sup>10</sup> Australian House of Representatives.

<sup>11</sup> Australian Senate, Victorian Legislative Council.

<sup>12</sup> 2 minutes in the Australian Senate; 3 minutes in the Queensland Legislative Assembly and Northern Territory Legislative Assembly; 4 minutes in the Australian House of Representatives, ACT Legislative Assembly, Victorian Legislative Assembly and Council; and 5 minutes in the NSW Legislative Assembly.

<sup>13</sup> Australian Senate and Northern Territory Legislative Assembly.

<sup>14</sup> Victorian Legislative Council.

<sup>15</sup> Australian Senate, Victorian Legislative Council, Northern Territory Legislative Assembly.

<sup>16</sup> NSW Legislative Assembly and ACT Legislative Assembly.

<sup>17</sup> UK House of Commons, New Zealand House of Representatives, South Australian Legislative Assembly and Legislative Council, Tasmanian Legislative Assembly and Legislative Council. In the Australian House of Representatives, Victorian Legislative Assembly, Western Australian Legislative Assembly and NSW Legislative Assembly the Chair's discretion is limited to supplementary questions and/or answers.

<sup>18</sup> NSW Legislative Council, UK House of Commons, Australian Senate, South Australian Legislative Assembly and Legislative Council, Queensland Legislative Assembly, Northern Territory Legislative Assembly, Tasmanian Legislative Assembly. Note that in the NSW Legislative Council, Senate and Northern Territory Legislative Assembly this is an informal arrangement.

<sup>19</sup> Western Australian Legislative Council and Tasmanian Legislative Council. Victorian Legislative Assembly 30 minutes or 10 questions, whichever is longer.

<sup>20</sup> Approximately only in the Western Australian Legislative Assembly and New Zealand. In NSW Legislative Assembly 45 minutes or 10 questions.

<sup>21</sup> New Zealand House of Representatives, Australian House of Representatives, Victorian Legislative Council, Western Australian Legislative Council, ACT Legislative Assembly, Northern Territory Legislative Assembly, Tasmanian Legislative Council. Anecdotal evidences suggests that this rule is difficult to apply.

Senate and the Western Australian Legislative Assembly prohibit the use of quotations in questions, particularly quotations from newspapers and parliamentary debates.

### **The rule of anticipation**

- 3.18** In March 2005, following recommendations of its Procedure Committee, the House of Representatives suspended the anticipation rule as it applied to questions and modified the rule as it applied to debate.<sup>22</sup> The invitation to the Committee to consider the matter was made by the Speaker during a statement regarding the use of the rule as a tactic to prohibit questions and answers on matters of political sensitivity, the difficulty in applying the rule and the perception that the rule had been interpreted selectively.<sup>23</sup> There were no concerns expressed by members when the standing order was suspended<sup>24</sup>, nor when it was rescinded the following year.<sup>25</sup>

### **Supplementary Questions**

- 3.19** Most jurisdictions make provision under standing orders for supplementary questions to be asked. Of the parliaments that do not make formal provision for supplementaries, the practice has nevertheless developed for supplementary questions to be asked at the discretion of the Chair. Only the Queensland Legislative Assembly, Victorian Legislative Assembly and Western Australian Legislative Council prohibit supplementary questions.<sup>26</sup>

#### ***Restrictions on the number of supplementaries asked***

- 3.20** Standing orders and rulings of the Chair vary when it comes to how many questions may be asked and by whom. For example, NSW Legislative Council standing order 64 provides that, at the discretion of the President, only one supplementary question may be put immediately by the member who asked the original question, however there is no overall limit to the number of supplementary questions which may be asked during Question Time. This is also the case in the ACT Legislative Assembly, however in addition to one supplementary question from the questioner, the Speaker may also allow two further supplementary questions from other non-executive members.
- 3.21** The NSW Legislative Assembly allows one supplementary question only per Question Time from the member asking the original question. In addition, under a provision adopted in November 2010, at the conclusion of the Minister's answer to a question, the member who asked the question may, at the discretion of the Speaker, seek additional information from the Minister. The Minister's response on the additional information must not exceed two minutes.
- 3.22** The House of Representatives applies a more stringent rule of only one supplementary question per Question Time by either the Leader of the Opposition or a delegate. Although provision for supplementary questions had always been made under the standing order, the

<sup>22</sup> House of Representatives Votes & Proceedings, 17/11/2005, p 278.

<sup>23</sup> House of Representatives Standing Committee on Procedure, *The anticipation rule: aspects of the application of the rule*, March 2005, pp 19, 21-22.

<sup>24</sup> House of Representatives Standing Committee on Procedure, *Maintenance of the standing and sessional orders, 2<sup>nd</sup> report: Review of sessional orders adopted on 17 March 2005 and 9 February 2006; and other matters*, October 2006, p. 11.

<sup>25</sup> *Ibid*, 29/11/2006, p 1599.

<sup>26</sup> However the Western Australian Legislative Council does provide for supplementary questions to be placed on notice.

practice had fallen into disuse until 2010, when this arrangement was made under an agreement between the major parties and non-aligned members following the federal election.

- 3.23** In contrast, the Senate allows two supplementary questions to be asked to each principal question, and the President may give the call to any member present, not just the original questioner. The Senate's Procedure Committee had at one time proposed that as many as six supplementary questions be allowed by senators other than the primary questioner. However, following further consultation and debate, it was determined that this proposal may reduce the number of questions available to the minor parties and a compromise of two supplementary questions subject to a time limit of one minute for answers was instead agreed to.
- 3.24** In other jurisdictions where supplementaries may be asked by any member, anecdotal evidence suggests that the member who asked the original question is given priority over others as a matter of practice. However these jurisdictions generally have few rules regarding supplementaries. For example, there is no limit, the number asked on a given day may vary widely and the process is left entirely to the discretion of the Chair.

### **Discretion of the Chair**

- 3.25** Supplementary questions rely heavily on the exercise of the Chair's discretion in almost all parliaments. In some jurisdictions, this extends to the length of time members may spend asking and answering supplementary questions.<sup>27</sup> In others, this extends only to judging the validity of the supplementary question. For example, all jurisdictions require that supplementary questions conform to the rules of content and form that apply to questions generally, and that supplementaries be directly related to the principal question or answer. Presidents of the NSW Legislative Council have ruled that supplementary questions that repeat the original question, either in full or in part, or introduce new material, are out of order.
- 3.26** Only the New Zealand House of Representatives departs from this model. In response to the multi-party composition of the House, a practice has evolved for the Speaker to allocate each party a set 'quota' of supplementary questions according to their numbers in the House. Those questions can then be utilised by members of each party as they see fit, in negotiation with their leaders. As notice has been given of the questions to come before the House, parties usually advise the Speaker in advance which primary questions they intend to ask supplementary questions to. The Speaker endeavours to give all parties a chance to ask their first supplementary question before a party is allowed to ask a second.

### **Answers to questions**

- 3.27** The standing orders of all parliaments provide that answers must be relevant to the question and that ministers must not debate the question. However, the principle that a minister may answer in a manner that he or she deems fit is also common across jurisdictions. Rulings of Presidents in the NSW Legislative Council have consistently observed that while answers must be relevant, ministers cannot be directed to provide an answer to a question and are free to express opinions, make assumptions or even debate the issue to which the question refers, as

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<sup>27</sup> UK House of Commons, New Zealand, Australian House of Representatives, Victorian Legislative Assembly, South Australian Legislative Council, Tasmanian Legislative Assembly and Legislative Council.

long as they do not debate the question itself. Only the South Australian Legislative Council and the Tasmanian Legislative Assembly go beyond this, making express provision under standing order for a minister to decline to answer a question.

- 3.28** Question Time is an intrinsically political process, providing members with the opportunity to put questions to ministers that are often designed for a purpose other than strictly eliciting information, and compelling ministers to respond publicly to them. The conduct of Question Time is for this reason extremely difficult to adjudicate with the majority of points of order taken during Question Time generally relating to relevance. The Federal Parliament and ACT Legislative Assembly have trialled new measures to address this, the effectiveness of which is discussed below.

### Relevancy and the adequacy of answers

- 3.29** The Australian House of Representatives<sup>28</sup>, the Senate<sup>29</sup>, the Northern Territory Legislative Assembly<sup>30</sup> and the ACT Legislative Assembly<sup>31</sup> have in recent years adopted a provision requiring a minister to be "directly relevant to the question" when answering, with the onus for enforcement of the rule resting with the Chair. As noted by the Joint Standing Committee on Parliamentary Procedure, comment from the Federal Parliament suggests that the implementation of this rule has presented significant difficulties.
- 3.30** In the Senate, members had taken to making repeated points of order regarding the application of the rule of relevance. Following several years of discord over the issue, in 2010 the President made a statement that regardless of the new requirements, he could not direct a minister how to answer a question. He observed:

Provided that an answer is directly addressing the subject matter of a question, it is not within the power of the Chair to require a minister to provide a particular answer.<sup>32</sup>

- 3.31** In response, a senator moved that the House take note of the President's statement later that day. The senator criticised the President's interpretation, stating that:

...the President can – indeed, not only can but under the standing orders must – require the answer to be directly relevant... The coalition does not require a particular answer; indeed, it is not up to us. The issue is that standing and sessional orders require – indeed, mandate – answers to be 'directly relevant to each question'. No ifs, no buts and no addressing the subject matter, as the statement asserts, but direct relevance to each question and nothing less.<sup>33</sup>

<sup>28</sup> The provision for direct relevance arose as a result of an agreement made between the major parties and non-aligned members of the House of Representatives following the 2010 general election. Other provisions adopted for the purposes of enhancing Question Time included imposition of time limits, limiting the duration of Question Time and allowing for only one point of order on relevance for each question.

<sup>29</sup> The provision for direct relevance was first discussed in the Senate following the Procedure Committee's *First Report of 2008* which considered a proposal initiated by President Ferguson to restructure Question Time. The final trial proposal was adopted following subsequent reports on 13 November 2008, and the procedure has been readopted since then.

<sup>30</sup> A provision that answers be "succinct, concise and directly relevant to the question" was inserted into the standing orders following a report of the Standing Orders Committee in 2009.

<sup>31</sup> The ACT Legislative Assembly amended their standing orders in 2007 to require that answers be directly relevant to the question asked under an agreement made between Labor and the Greens that enabled Labor to form a minority government.

<sup>32</sup> Senate Debates, 17/11/2010, p 1409.

<sup>33</sup> Ibid, p. 1488.

- 3.32** Other senators also made statements to this effect. The matter has not since been resolved and anecdotal reports suggest that the general view is that the provision has not enhanced the quality of Question Time.
- 3.33** Similarly, the Speaker of the House of Representatives has encountered obstacles in the enforcement of the direct relevance rule. Members have frequently criticised what they see as a broad interpretation of relevance, arguing that responses from Ministers remain insufficient.<sup>34</sup> Significantly, the Speaker is of the view that this is partly the fault of the tone and terms in which questions are couched, which he notes "opens the door very wide on direct relevance", and partly the fault of the level of debate in answers.<sup>35</sup> The Speaker has repeatedly expressed his regret that, rather than adopt the "direct relevance rule", the House did not simply apply the rules for questions to answers as, in his view, this would have reduced the capacity for debate in answers.

### Applying the rules for questions to answers

- 3.34** The merits of applying the rules for questions to answers are not clear. Such a reform may provide more stringent rules prohibiting, for example, the use of inferences and imputations or the expression of opinion, expressly making the rules for answers consistent with the general rules of debate. However if such rules were adopted, the Chair would be in the position of judging the quality and content of the answers of a minister who can, nevertheless, respond as he or she sees fit. It could also be argued that answers by nature need to contain some debate, as the minister may have reason to disagree with the premise of a question.
- 3.35** New Zealand is the only jurisdiction which has explicitly adopted this approach, applying most of the same rules for questions to those for answers under the standing orders. For this reason, it is significant that *Parliamentary Practice in New Zealand* argues that the adequacy of answers may be a matter that is best left to the judgement of the House:

While ministers are required to "address" the question, whether the reply provided actually "answers" the question asked is a subjective judgement. The test of adequacy is whether the answer addresses the question by being relevant to it. It is not the Speaker's role to make such a judgement. The test of adequacy is whether the answer addresses the question by being relevant to it. Essentially, the House itself and public opinion (assisted by the news media and reports of parliamentary proceedings) are the judges of the adequacy of a reply by making a political judgement on the matter.<sup>36</sup>

### Concluding observations

- 3.36** While there is broad consistency in the provisions for Question Time in Australian jurisdictions, it is fair to say that all jurisdictions share the difficulty in determining the relevancy of answers. Ministers reserve the right to answer as they see fit, members reserve the right to scrutinise executive action and decision, and Chairs are required to maintain order throughout the process, often under significant pressure from members of all sides.

<sup>34</sup> House of Representatives Standing Committee on Procedure, *Interim Report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, April 2011, p. 34.

<sup>35</sup> *Ibid*, pp 33-34.

<sup>36</sup> *Ibid*, p. 565.



- 3.37** Rather than simply an opportunity for members to put questions to ministers and seek information, Question Time is often used as an opportunity to debate matters and for political gain. Any proposal for reform needs to take into consideration the fundamentally political nature of Question Time. It is significant to note that the Speaker of the House of Representatives has observed that for reforms to be effective in reducing the combative nature of Question Time, a cultural change would need to take place in the House. A number of members of the House have since supported this view during debate.<sup>37</sup>
- 3.38** Real change to the operation of Question Time would require cultural change. However, notwithstanding the political nature of Question Time, all members of the House should be encouraged to use Question Time for the purpose for which it is intended — an opportunity to seek and provide information about government decisions and actions.

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<sup>37</sup> Ibid, p. 38.

## Chapter 4      Petitions

### Introduction

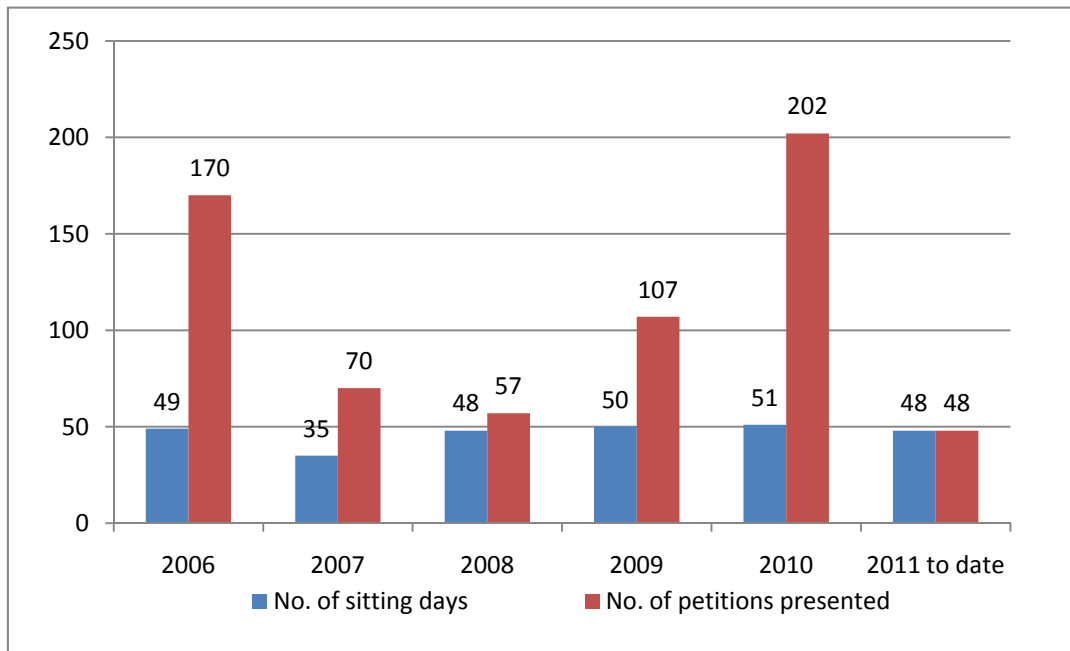
- 4.1      At a meeting of the Procedure Committee held on 12 September 2011, it was resolved that a discussion paper be prepared on the provisions in the Legislative Council for the presentation and consideration of petitions, including e-petitions. At a meeting of 10 November 2011 the committee resolved to incorporate the discussion paper in a report to the House in order that all members are informed of the issues raised in relation to petitions.
- 4.2      This Chapter first provides data on the volume and subject matter of petitions presented to the Legislative Council in recent years.
- 4.3      The second part of the Chapter examines the merits of e-petitions and the systems for presenting e-petitions to Parliament. E-petitions are often cited as providing better access to Parliament, particularly for people in remote locations, the disabled, and people who use on-line media for communicating. While the Council's standing orders have been interpreted as allowing only paper petitions containing original signatures to be presented to the House, other jurisdictions allow the presentation of hard copies of e-petitions, or host e-petitions on their website.
- 4.4      As petitions continue to be presented to the House in relatively large numbers, and e-petitions are being suggested as an alternative or more accessible means for initiating or joining petitions, the Committee believes that it is timely to consider whether the Council's provisions for presentation and consideration of petitions are adequate. The final part of this Chapter briefly outlines provisions for considering petitions in the Council and in other jurisdictions.

### Petitions presented in the Legislative Council

#### Petitions presented since 2006

- 4.5      There has been a steady increase in the number of petitions presented over the years. In 1950 there were no petitions presented, in 1960 and 1970 two petitions were presented, in 1980 there were 36; in 1990 there were 98; and in 2010 there were 202. Over the last five years there has been an average of 2.5 petitions presented every sitting day.

### Number of petitions presented



- 4.6** Approximately 40 percent of petitions received by the House are presented only once, while others are presented on multiple occasions. In 2010, a petition supporting scripture classes was presented 30 times. Those petitions presented more than once are, on average, presented five times.

### Number of signatures

- 4.7** The number of signatures attached to a petition varies considerably as shown in the table below. The median number of signatures to petitions presented between 2006 and 2010 was 158.<sup>38</sup>

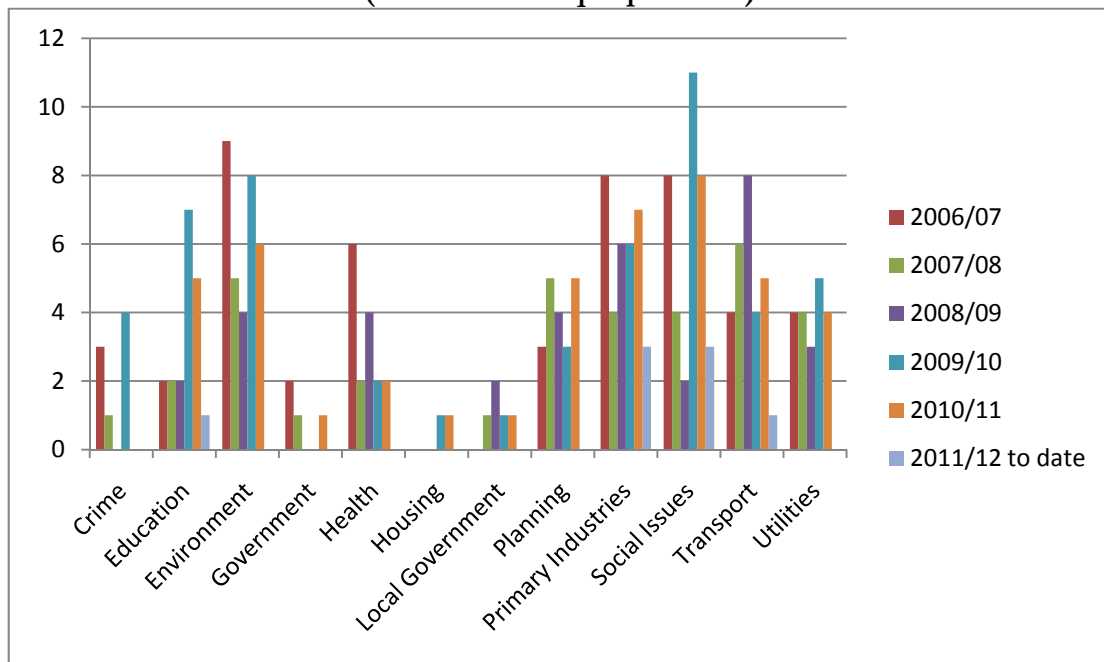
	2006	2007	2008	2009	2010	2011 to date
<b>Total no. of signatories</b>	24,279	58,041	32,860	45,312	73,218	22,959
<b>Average no. of signatures</b>	402.31	638.17	620.32	461.09	309.83	316.54
<b>Lowest no. in an individual petition</b>	13	12	9	2	4	7
<b>Median no. in an individual petition</b>	74	264	140	175	137	168
<b>Highest no. in an individual petition</b>	7,067	11,223	15,440	4,791	7,725	4,046

<sup>38</sup> On 14 May 2004, a petition concerning the deregulation of pharmacies was presented from 500,000 citizens.

**Subject matter of petitions presented**

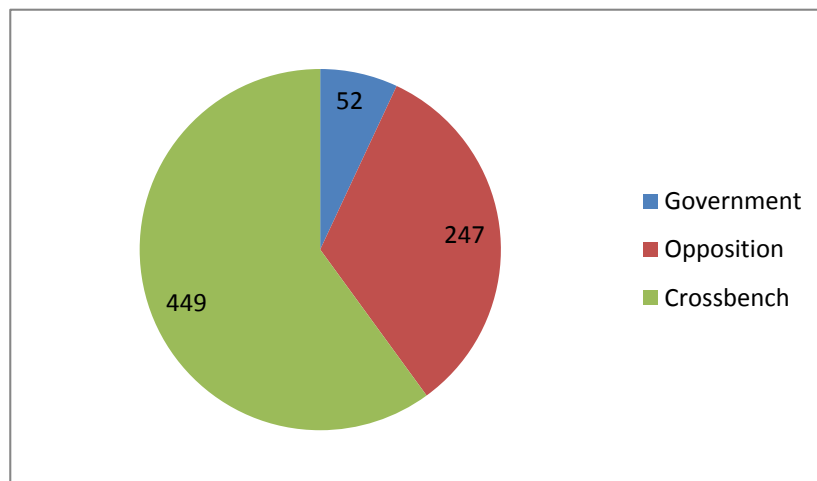
4.8 According to standing order, petitions must relate to matters over which the House has jurisdiction. Petitions have been presented relating a range of areas upon which the Government has administrative responsibility, with petitions concerning health, social issues and the environment consistently presented in high numbers. Petitions concerning matters upon which the House can make representations to the Commonwealth Government, including defence and taxation, have also been received by the House.

**Petitions by portfolio area  
(number of unique petitions)**



**Members presenting petitions**

4.9 Cross bench members have presented approximately 60 percent of all petitions since 2006. While it is not usual for a Ministers or the President to present petitions, the Honourable Tony Kelly, while a Minister, presented a petition on 2 occasions, and on 4 August 2011 the President presented a petition.



### Irregular petitions

- 4.10** Standing order 69 regarding the form of petitions and standing order 70 regarding the content of petitions, are intended to ensure that petitions presented to the House are respectful, authentic, do not reflect on debates or votes of the House and relate to matters on which the House can act.
- 4.11** In recent years, there has been an increase in the number of occasions on which members have sought to suspend standing orders to allow the presentation of a petition which breaches the rules. Between 1998 and 2005 irregular petitions were only presented on five occasions. In both 2009 and 2010, irregular petitions were presented on 12 occasions.
- 4.12** In total, there have been 30 different irregular petitions presented since 2006. Most of these petitions breached the rules only in a technical sense, such as being incorrectly addressed to the Legislative Assembly. The remainder breached the standing orders in a more fundamental sense such as not containing a clear request upon which the House can act.
- 4.13** There have also been a small number of petitions which have been contrary to the rules for form and content<sup>39</sup>, or specific rules<sup>40</sup>, and have been ruled inadmissible. On occasion, the House has granted leave to members to table such petitions to allow the particular concern or grievance to be put before the House.

### Number of irregular petitions presented

	2006	2007	2008	2009	2010	2011 to date
<b>Number of presentations of irregular petitions</b>	2	11	11	12	12	7
<b>Number tabled as documents</b>	0	0	0	3	1	1

### E-petitions

- 4.14** Electronic petitions are an on-line form of the traditional paper based process. Dedicated websites for e-petitions have been established in the Scottish Parliament and in various United Kingdom boroughs and councils, in the Queensland parliament and both Houses of the Tasmanian Parliament. The UK Government has a website which has attracted thousands of petitions to which millions of signatures have been added. While the Senate has not established an e-petition system, it has interpreted its standing orders to allow the presentation of printed copies of e-petitions that have been hosted on public e-petition websites.

<sup>39</sup> These include a number of coupons cut from a newspaper and petitions that are more akin to slogans have been ruled inadmissible.

<sup>40</sup> In 2006 a petition calling on the Government to make an ex gratia payment to a citizen whose conviction of murder was quashed after 10 years in prison, was ruled out of order as it breached standing order 70(4) under which a petition must not request, either directly or indirectly, a grant of public money.

- 4.15** The most commonly cited advantage of e-petitions is that they provide for better community access to Parliament through a format that embodies modern information communication technologies. For example:
- e-petitions are more accessible to groups in society such as the young, those with a physical disability, or people living in remote communities who might not have access to a paper petitions,
  - e-petitions are interactive in that signatories can monitor progress of the petition, and
  - e-petitions can be accessed by citizens at their own instigation, and on matters outside of their geographic area, field of work or immediate personal interest.
- 4.16** It is also possible that an e-petition system would supersede the paper based system thereby saving paper and the time and effort of citizens collecting signatures, and of those administering the system.
- 4.17** E-petitions may also have the indirect advantage of connecting people who are interested in a particular issue with the Minister responsible for the matter. A 2003 online survey of the Queensland Parliament's e-petitioning system found that 72% of respondents returned to the e-petitions website to view the ministerial response<sup>41</sup>. The Queensland Parliament also reports that the number of ministerial responses to petitions increased significantly since the introduction of e-petitioning, even though such responses are not required under the standing orders<sup>42</sup>.
- 4.18** The main issues of concern regarding the security and authenticity of e-petitions are:
- authentication of petitioners' details – how can names and other details be verified?
  - security – how can hacking be prevented or persons otherwise hijacking the petition by joining multiple times?
  - retention of personal details – how can signatories be assured that any personal details submitted will not be misused?
- 4.19** While these matters are of real concern they are inherent in both paper-based and electronic petitioning systems. The validity of personal details and signatures in paper based petitions have always been taken at face value, unless clearly bogus (ie. signed by Mickey Mouse). There is nothing to prevent persons from signing a petition multiple times, although when discovered, these additional signatures are not counted. In addition, petitions are public documents and the names and addresses of signatories can be viewed by interested parties.
- 4.20** Other arguments against e-petitions raised by the House of Commons Procedure Committee in its report of April 2008 included the potential for:
- a significant volume of e-petitions being received and therefore an increased workload for members and the administration
  - trivial, mischievous, or joke petitions being posted (as had been the case on the 10 Downing Street e-petition website)
- 4.21** The implementation of e-petitions as an alternative or more accessible means for initiating or joining petitions may raise the profile of petitioning Parliament and therefore an expectation that the matter the subject of the petition will be addressed by the House, or the government.

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<sup>41</sup> House of Representatives Standing Committee on Procedure, *ibid*, p. 35.

<sup>42</sup> Griffith, G. *E-Brief: Petitions Parliament*, NSW Parliamentary Library Research Service, September 2010, pp. 8-9.

Consequently the adequacy of provisions for debating and responding to petitions would also need to be given consideration. (Means for consideration petitions are discussed further below).

### **Types of e-petitions**

- 4.22** There are two ways in which e-petitions are currently being presented to parliaments. The first is by presentation, in the normal manner, of a printout of a petition hosted by a public website. Such websites include those established by governments<sup>43</sup> or government departments, newspapers or community groups such as GetUp!, or specifically for the purpose such as epetitions.net.
- 4.23** The other way in which e-petitions are provided for is by dedicated website hosted by a House of Parliament. In general terms, where parliaments have adopted an e-petition process on their own website, the petitioning process has involved four key stages:
1. Opening a petition: A person wishing to initiate an e-petition completes an e-petition request form available on the parliament's website. The member sponsoring the e-petition must provide the Clerk with the details of the petition in the correct form, the period that the e-petition should be posted and a signed acknowledgement that they are prepared to sponsor the e-petition. The petition is checked for conformity with the standing orders and is posted on the website for the agreed period such as a week, or even up to six months.
  2. Joining an e-petition: Persons wishing to join a petition do so by accepting the terms and conditions, and completing the form on the website, submitting their name, address and email address.
  3. Closing an e-petition: Once the posted period for an e-petition has elapsed, the petition is closed, printed and presented to the House by the sponsoring member.
  4. Disposing of data: The Clerk disposes of all electronic data within a certain time, such as six months, of the e-petition being printed and presented to the House.

### **E-petitions in the NSW Legislative Council**

- 4.24** Currently, the Legislative Council does not receive electronic petitions. The standing orders have been interpreted as requiring that only hard copies of petitions may be received. In June 2008, the Clerk wrote to the Government and Opposition whips and to cross bench members proposing that the Council accept paper printouts of petitions hosted on-line, so long as no member objected. Two members subsequently responded to the Clerk objecting to the procedure.

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<sup>43</sup> The UK Government hosts an e-petitions site linked to the Government's centralised website "DirectGov". The UK Government has made a commitment to debate any e-petition that receives over 100,000 signatures. <http://epetitions.direct.gov.uk>

## E-petitions in other Parliaments

- 4.25** In the jurisdictions where e-petitions are in use, paper petitions continue to comprise the largest proportion of all petitions presented and to attract the largest number of signatories.
- 4.26** Most Australian parliaments have considered the introduction of electronic petitioning:
- The Queensland Legislative Assembly and both Houses of the Tasmanian Parliament are the only Australian parliaments that host e-petitions on their websites and both also enable users to register to receive an email notification of a ministerial response has been posted.
  - The Senate has interpreted its standing orders (which are almost identical to the Legislative Council's) to allow the receipt of online e-petitions, provided that a Senator certifies that the electronic petition has been duly posted with the text available to the signatories. The Northern Territory Legislative Assembly has also adopted this approach.
  - The House of Representatives' Standing Committee on Procedure<sup>44</sup> and the Victorian Legislative Assembly's Standing Orders Committee<sup>45</sup> have both recommended the introduction of electronic petitioning however in neither House has a system yet been introduced.
  - The Western Australian Legislative Assembly's Procedure and Privileges Committee considered the introduction of e-petitions, but recommended against it at that time.<sup>46</sup>
- 4.27** The Scottish parliament hosts e-petitions on its website. Each petition has its own online discussion forum, can be signed by people other than those residing in Scotland and is sent to the Public Petitions Committee for consideration rather than being presented by individual members.
- 4.28** In April 2008, the UK House of Commons Procedure Committee recommended that the House of Commons accept e-petitions and recommended a specific system be adopted.<sup>47</sup> The Government initially supported the recommendations of the Committee but later expressed concern about the significant costs of the system proposed by the Committee<sup>48</sup> and indicated that there had been a "significant shift in Government opinion" with less support than originally envisaged.<sup>49</sup> Despite subsequent reports of the Committee calling on the Government to reconsider its view, an e-petition system has not been established in the House of Commons. However, perhaps as a concession, a provision has adopted whereby e-petitions on the UK Government's "Directgov" website could be debated in the House of Commons. Under this provision, e-petitions which have collected more than 100,000 signatures are sent to the Office of the Leader of the House of Commons. Those e-petitions that comply with terms and conditions set out on the website, are communicated to the House of Commons Backbench Business Committee which then decides, after hearing from a sponsoring member, whether to schedule the petition for debate. An e-petition calling for

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<sup>44</sup> House of Representatives Standing Committee on Procedure, *Making a difference: Petitioning the House of Representatives*, August 2007.

<sup>45</sup> Legislative Assembly of Victoria Standing Orders Committee, *E-petitions*, May 2009 and *Report on the Inquiry into Petitions, the Opening of Parliament, and the Passage of Legislation*, December 2009.

<sup>46</sup> Western Australian Legislative Assembly Procedure and Privileges Committee, *Review of e-petitions*, Report No. 1, 2008.

<sup>47</sup> House of Commons Procedure Committee, *e-Petitions*, dated 6 April 2008

<sup>48</sup> Set up costs of £500,000 and annual running costs around £750,000. (In contrast, the e-petition website established by the Queensland Parliament in 2002 was developed in-house at a cost of approximately \$80,000)

<sup>49</sup> House of Commons Procedure Committee, *e-Petitions: Call for Government action*, dated 8 May 2009



convicted London rioters to lose all benefits (which at the time of writing has collected 248,552 signatures) was debated in the House of Commons on 13 October 2011.

### **Outcome of petitioning the Legislative Council**

- 4.29** Under the Legislative Council standing orders, the Clerk is required to forward a copy of every petition received by the House to the Minister responsible for the administration of the matter the subject of the petition. There is no requirement under the standing orders for the Minister to respond to a referred petition. Unlike other jurisdictions, the Council standing orders do not specifically provide for debate on petitions, or automatic referral to a committee for consideration and report.
- 4.30** Under the resolution establishing the standing committees on Law and Justice, State Development and Social Issues, the committees may inquire into and report on any petition tabled in the House relevant to the functions of the committee. While there is no express provision for general purpose standing committees to inquire into petitions, under their self-referencing power the committees could initiate an inquiry into the matters raised in a petition. However, to date, there have been no inquiries initiated specifically in response to a petition, although there are examples of a committee inquiring into a matter that has been the subject of petitions being tabled in the House. For example, in 2006 the proposed sale of Snowy Hydro Limited was the subject of petitions tabled in the House and a committee inquiry.

### **Procedures for considering petitions in other jurisdictions**

- 4.31** In recent years, various jurisdictions have adopted rules to enhance the means for consideration of petitions or to require the government to respond to the matter the subject of the petition. The following section provides a brief outline of provisions in other jurisdictions.

#### ***Government's response to petitions***

- 4.32** In July 2009 the Legislative Assembly amended its standing orders to require every petition lodged with the Clerk and received by the House be referred to the Minister responsible for the administration of the matter the subject of the petition. The Minister must lodge a response within 35 calendar days of a petition being received by the House if that petition has been signed by 500 or more persons.
- 4.33** In Queensland, petitions presented to and received by the House are referred to the Minister responsible for the administration of the matter. Under the standing orders, ministerial responses are tabled and posted on the website. A major outcome of the e-petitions process in Queensland has been an increased responsiveness to petitions generally, with a growth in the percentage of petitions being responded to by Ministers, notwithstanding there is no requirement in the standing orders for the Minister to respond.
- 4.34** Under the standing orders in both Houses of the Tasmania Parliament the text of each petition received by the House is communicated to the Premier and a Government response required to be laid before the House within 15 sitting days.

### *Debate on petitions*

- 4.35** On 4 May 2011, the New South Wales Legislative Assembly adopted a sessional order which provides that the subject matter of every petition received by the Assembly which has been signed by 10,000 or more persons will automatically be set down as an order of the day for discussion on the third sitting day of the next sitting week. Twelve petitions have been set down for consideration under the sessional order. A limited number of members can speak to the matter and time limits apply.<sup>50</sup> At the conclusion of the discussion no question is put.

### *Consideration by a committee*

- 4.36** There are few examples of a committee being established with the sole function of inquiring into and reporting on petitions. Formerly the House of Commons referred petitions to a Select Committee on Public Petitions however this ceased some decades ago and the Clerk of the House now transmits all petitions to a Minister of the Crown. The New Zealand House of Representatives also formerly referred all petitions to a specialist committee, but now refers each petition to a select committee, although the extent to which the committee inquires into the petition is a matter for the committee.
- 4.37** In its Third Report of 1995 the Senate Procedure Committee recommended against the reference of petitions to committees being formalised.<sup>51</sup> The Committee considered that the existing procedures provided ample scope for petitions to be examined by committees, either on their own initiative or by a reference from the Senate, without requiring every petition to be formally referred to the committees.<sup>52</sup>
- 4.38** Until the House of Representatives adopted procedures for a petitions committee (based on the Scottish Parliament's committee, see below), the only House in Australia that referred all petitions to a committee was the Western Australian Legislative Council. All petitions presented to that House stand referred to the Standing Committee on Environment and Public Affairs, which also has the function of inquiring into environmental matters and bills.<sup>53</sup>

### *House of Representatives Petitions Committee*

- 4.39** The genesis of the House of Representatives Petitions Committee was a 2006 House of Representatives Procedure Committee study tour to the Scottish Parliament and its Public Petitions Committee. In a 2007 report the Procedure Committee recommended the appointment of a petitions committee based on the Scottish model.<sup>54</sup>
- 4.40** On 12 February 2008, the House of Representatives appointed a Standing Committee on Petitions and amended certain standing orders, essentially implementing the recommendations of the Procedure Committee.
- 4.41** Under the amended standing orders, petitioners no longer have to find a member willing to present their petition to the House. Instead, petitions are sent to the committee before

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<sup>50</sup> First speaker - 7 minutes, Member next speaking - 7 minutes, Two other Members - 5 minutes each, Total - 24 minutes

<sup>51</sup> Evans.H (ed), *Odgers' Australian Senate Practice*, 11th edn, Department of the Senate, Canberra, 2004, p 388

<sup>52</sup> The Senate Procedure Committee, Third Report of 1995, November 1995, p 1.

<sup>53</sup> Standing Committee on Environment and Public Affairs report "Overview of Petitions", September 2007.

<sup>54</sup> Reports of the House of Representatives Standing Committee on Procedure: Learning from other parliaments, tabled 4 September 2006; Inquiry into the petitioning process, tabled 17 September 2007

presentation, either directly or via a member. The committee ensures each petition complies with the standing orders before arranging for its presentation to the House. Petitions may be presented in two ways – either by the Clerk on behalf of the Speaker, or by a member. Members now have more opportunities for presenting petitions to the House – during the time for members’ statements, during the adjournment debate and during the grievance debate.

- 4.42 Every petition must contain the signature and full name and address of a principal petitioner so that the committee can deal directly with the principal petitioner.
- 4.43 The new standing orders also provide for a government response to a petition. A Minister is expected to respond to a referred petition within 90 days of presentation by lodging a written response with the committee.
- 4.44 It is noted that between 300 and 500 petitions are presented to the House of Representatives each year.

***Scottish Parliament’s Public Petitions Committee***

- 4.45 The Public Petitions Committee was established at the outset of the Scottish Parliament’s first session in 1999 with the following function:

To consider public petitions addressed to the Parliament in accordance with these Rules and, in particular, to—

- (a) decide in a case of dispute whether a petition is admissible;
- (b) decide what action should be taken upon an admissible public petition; and
- (c) keep under review the operation of the petitions system.

- 4.46 The committee meets regularly to consider petitions, usually fortnightly when the Parliament is sitting. All meetings are held in public. The committee considered approximately 125 petitions per year. The majority of petitions are finalised by the committee after an initial review or after some clarification from the Government. However, some petitions become the subject of a full inquiry either by the committee itself or by the relevant subject committee.

- 4.47 Broadly, the petitions process in the Scottish Parliament is as follows:
- petitioners lodge petitions directly with the Public Petitions Committee,
  - the committee determines if the petition is admissible,
  - the committee writes to the principal petitioner inviting them to submit further information on the matters and issues raised in the petition,
  - the committee may also make preliminary investigations to obtain background information on the issues from government agencies, private organisations and individuals,
  - the committee considers the petition and additional information and either finalises the petition, or, if further consideration is required, invites the principle petitioner, the relevant department, and in some cases the Minister to give evidence before the committee,

- if a more detailed investigation is considered necessary, the committee will usually refer the petition to the relevant subject committee,
- the committee reports to parliament on action taken and, where appropriate makes recommendations to the House,
- the committee can bid for parliamentary time for a petition to be debated by the whole House.

**4.48** Petitioners can also lodge their petition online. Each e-petition has its own discussion forum where visitors and signatories can discuss the petition and surrounding issues online. There is also space for supporting information, so that the principal petitioner can add any background necessary.

### **Conclusion**

**4.49** Petitions remain an important means by which citizens can put their concerns or grievances directly before Parliament, and the traditional paper based petitions continue to be presented to the Legislative Council in large number.

**4.50** Some petitions received by the House do not comply with the standing orders. The Committee considers that rules for form and content of petitions should have a greater prominence on the Parliament's website and believes this may reduce the number of irregular petitions received by members for presentation in the House.

**4.51** A number of issues are raised in this Chapter which merit further consideration, in particular:

- the merits of adopting procedures for the presentation of e-petitions, either by hosting a dedicated website, or by allowing printed copies of e-petitions to be presented,
- whether the House should consider provisions for the consideration of petitions by a committee, the requirement for a government response, or for debate in the House.

**4.52** The Committee hopes that this report will generate discussion amongst members and others regarding the provisions in the Council for the presentation, consideration and form and content of petitions. Members are encouraged to provide to the Committee their views and thoughts on these matters in order that they can be taken into consideration during future deliberations.

## Appendix 1: **Alternative models for Question Time**

**4.53** As noted earlier, the New Zealand House of Representatives and UK House of Commons models for Question Time depart significantly from those operating in Australia. A brief overview of these differences is provided.

### **The New Zealand House of Representatives**

**4.54** The key differences in the New Zealand model are the requirement for questions to be placed on notice (except urgent questions), and the primacy given to parties rather than individuals.

**4.55** The New Zealand House of Representatives provides for two types of questions for oral answers in Question Time:

#### *Ordinary oral questions*

**4.56** Signed notice of oral questions is given to the Clerk between 10 am and 10.30 am on the day the question is to be asked. Up to 12 questions for oral answers (in total – not by each member) can be lodged on morning of day they are to be answered.

**4.57** Ministers are advised of all oral questions received and the text is published on the parliament's website by 11.30am, although questions are subject to further amendment. A list of each day's questions is then circulated with the final order paper for that day.

#### *Urgent questions*

**4.58** Urgent questions are called on immediately after oral questions have concluded and can be put to Ministers only. They can be lodged at any time up to the end of Question Time, but must meet a stringent urgency test at the discretion of the Speaker. An urgent question must be lodged with both the Clerk and the Minister to whom it is addressed and notices of urgent questions are not published prior to being asked.

**4.59** *Supplementary questions* may also be asked at the discretion of the Speaker, although as noted earlier, in practice each party is allowed a 'quota' of supplementary questions which can be utilised by members of each party as they see fit.

**4.60** Although a set length is no longer prescribed for Question Time, the House deals with all 12 oral questions set down for each day, urgent questions and questions asked of other members. The time taken varies from between 45 minutes to over one hour. Each sitting day commences at 2.00 pm and questions are taken as the second order of business.

**4.61** Questions are allocated proportionately to party membership of the House over a cycle of several weeks by the Business Committee. For this purpose, members who hold executive office (Ministers, Associate Ministers and Parliamentary Under-Secretaries) are excluded from the calculation of the number of questions available to Government parties. Parties are at liberty to exchange or surrender 'slots' to other parties.

- 4.62 To facilitate the allocation process, political parties appoint staff to coordinate the lodgement of questions for all members of the party to ensure that questions of significance receive priority.

### **The UK House of Commons**

- 4.63 The key features of the UK system are that Question Time is divided into two parts – answers to questions on notice and answers to topical questions without notice; questions are limited to a set number determined by a random ballot; and questions are further subject to a rota system under which each portfolio except that of the Prime Minister answers questions only once within a five week period.

- 4.64 Question time in the House of Commons takes place for one hour each day. The time for each question and answer is determined by the Speaker. The Minister of each portfolio, together with other members who answer questions, are organised into a five-week rotation by the Government. In effect, each portfolio answers questions on only one day within the five week period, except the Prime Minister who answers questions once a week on a Wednesday. Each portfolio is further subject to a quota system which limits the number of questions able to be asked proportionately to the time allocated to a particular portfolio on a given day.

- 4.65 Question Time operates in two segments as follows:

#### ***Answers to questions placed on notice in advance***

- 4.66 Questions are tabled at least three days in advance of Question Time. Each member may table only one question for each department, subject to a maximum of two on a single day.

- 4.67 The order in which the questions are asked is determined by random computer ballot, a process known as 'the shuffle'. The shuffle is a lottery and blind to considerations of party, seniority, method of tabling, time of submission or the results of previous shuffles. Once the questions have been shuffled they are numbered consecutively up to the quota and added to the Order of Business Paper (the program for the day). Any oral question selected in the 'shuffle' that has not been answered at the conclusion of Question Time is answered in writing in a subsequent issue of Hansard.

#### ***Answers to topical questions, similar to questions without notice<sup>55</sup>***

- 4.68 The last 10 to 15 minutes of Question Time is reserved for 'topical questions', where members can ask questions without notice on any subject relating to the portfolio's responsibilities. Members enter an additional ballot for topical questions.

- 4.69 Members in the UK House of Commons may also ask *supplementary questions*, which operate similarly to the Australian jurisdictions in that they may only be asked at the discretion of the Speaker. Members may also ask *urgent questions* if they have applied to the Speaker before a nominated time each day and the Speaker has determined that the question meets the strict test of urgency. If so, the relevant government department is informed at once. Urgent

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<sup>55</sup> Arose from the 2007 House of Commons Modernisation Committee report.

questions are either taken immediately after Question Time on Monday to Thursday, or on Friday (when all other questions are not permitted).

## Appendix 2 Minutes of Proceedings

### Minutes No. 3

Monday 12 September 2011

President's Dining Room, Parliament House, 3.30 pm

#### 1. Members present

Mr Harwin (Chair)

Ms Fazio

Mr Foley

Mr Gallacher

Miss Gardiner

Mr Gay

Dr Kaye

Mrs Mitchell

Mr Searle

In attendance: Lynn Lovelock, Julie Langsworth, Susan Want, Jenelle Moore.

#### 2. Apologies

Mr Borsak, Revd Mr Nile, Dr Phelps.

#### 3. Confirmation of previous Minutes no. 2

Resolved, on motion of Ms Fazio, that Minutes no. 2 be confirmed.

#### 4. Question Time

The Chair tabled a discussion paper entitled "Question Time".

The Committee deliberated.

It was agreed that the committee would further consider the operation of Question Time at its next meeting.

#### 5. Other matters

The Chair invited members to raise any issues or concerns regarding the sessional orders relating to the operation of private members' business.

The Committee deliberated.

The Chair advised that the committee secretariat would continue to monitor the operation of the sessional orders.

The Chair noted that he had received queries from members regarding the presentation of e-petitions.

Resolved, on motion of Dr Kaye: That the Committee secretariat prepare a discussion paper on provisions for the presentation and consideration of petitions, including e-petitions.

#### 6. Next meeting

The Chair informed the Committee that he would advise members of the next meeting, which would likely be held in late October.

#### 7. Adjournment

The Committee adjourned at 4.13 pm.

Lynn Lovelock

**Clerk to the Committee**



**Minutes No. 4 - Draft**

Thursday 10 November 2011

President's Dining Room, Parliament House, 1.00 pm

**1. Members present**

Mr Harwin (Chair)  
 Mr Borsak  
 Ms Fazio  
 Mr Foley  
 Mr Gallacher  
 Miss Gardiner  
 Mr Gay  
 Dr Kaye  
 Mr Mason-Cox (for Dr Phelps)  
 Mrs Mitchell  
 Revd Mr Nile  
 Mr Searle

In attendance: David Blunt, Julie Langsworth, Susan Want, Jenelle Moore.

**2. Substitutions**

The Chair advised that he had received written advice from the Government Whip, Dr Phelps, that Mr Mason-Cox would be substituting in his place for the purposes of the meeting.

**3. Confirmation of previous Minutes no. 3**

Resolved, on motion of Ms Fazio: That Minutes no. 3 be confirmed.

**4. Petitions**

The Chair tabled a discussion paper entitled "Petitions in the Legislative Council", as previously circulated.

The Committee deliberated.

Resolved, on motion of Ms Fazio: That information regarding petitions on the Parliament's website be given greater prominence.

The Committee agreed to consider the paper further during consideration of the Chair's draft report on private members' business, the sitting pattern and Question Time.

**5. Chair's draft report entitled "Report on private members' business, the sitting pattern and Question Time"**

The Committee considered the Chair's draft report, as previously circulated.

The report was read.

The Committee deliberated.

Chapter 1 read.

Resolved, on motion of Ms Fazio: That Recommendation No. 1 be adopted.

Resolved, on motion of Revd Mr Nile: That Recommendation No. 2 be adopted.

Resolved, on motion of Dr Kaye: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on motion of Mr Mason-Cox: That Chapter 2 be adopted.

Chapter 3 read.

Resolved, on motion of Mr Gay: That Chapter 3 be adopted.

Chapter 4 read.

Resolved, on motion of Ms Fazio: That the secretariat, in consultation with the Chair, format the Chair's discussion paper entitled "Petitions in the Legislative Council" for incorporation as Chapter 4 of the report.

Resolved, on motion of Dr Kaye: That Chapter 4 be adopted.

Appendix 1 read.

Resolved, on motion of Mr Borsak: That Appendix 1 be adopted.

Resolved, on motion of Ms Fazio: That the draft report, as amended, be the report of the Committee and presented to the House according to standing order 226(1).

6. ...

7. **Next meeting**

The Chair informed the Committee that he would advise members of the next meeting, which would likely be in early 2012.

8. **Adjournment**

The Committee adjourned at 1.42 pm.

David Blunt

**Clerk to the Committee**