



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 22: RULES OF DEBATE

The right of members to speak, the rules which must be observed when speaking and the power of the Chair to enforce these rules are governed by standing orders 83 to 101.

Under standing order 85, any member who wants to have a right to speak. To exercise this right the member must rise in their place and address the President with the words 'Mr/Madam President.' A member unable to stand because of sickness or infirmity may speak when seated.

Members' speeches within the chamber are protected by absolute privilege under article 9 of the *Bill of Rights 1689* (Imp), which applies in NSW by section 6 and schedule 2 of the *Imperial Acts Application Act 1969*. Article 9 states that:

the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

Absolute privilege also applies to the publication of the debates and proceedings of a parliamentary body¹ by or under the authority of the body.²

Standing order 95 states that a member may not interrupt another member speaking except to:

- call attention to a point of order, that is, that proceedings are not being conducted according to the rules and orders of the House
- call attention to the lack of a quorum
- raise a matter of privilege.

The content of speeches is regulated by a number of standing orders. Standing order 91 states that a member may not:

- reflect on any resolution or vote of the House, unless moving for its rescission
- refer to the Queen or the Governor disrespectfully in debate, or for the purpose of influencing the House in its deliberations
- use offensive words against either House, or any member of either House,

¹ 'Parliamentary body' includes the Parliament or a House of the Parliament: *Defamation Act 2005*, s 4.

² *Defamation Act 2005*, s 27.

and that all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

Standing order 91 also provides that members may read reasonable lengths of extracts from books, newspapers and publications or documents.

Standing order 92 states that members may not digress from the subject matter of any question under discussion, often referred to as ‘relevancy’, and may not anticipate discussion on certain matters shown on the Notice Paper.

Members speaking on a motion must address their remarks through the Chair (SO 85(1)). This must be done not only at the commencement of a member’s remarks but throughout their speech. It is improper to direct remarks directly to other members in the chamber. Remarks concerning other members of the House should be expressed in the third person. Members are referred to as ‘The Honourable (name of member)’ or by the office they hold, ‘The Honourable the Minister for ...’; or ‘The Honourable the Leader of the Opposition’. In some instances, members have requested that they not be referred to as ‘the Honourable’ in the chamber, in which case they should be referred to by their title.

Generally, Presidents have ruled that members are not entitled to read their speeches. However, the use of copious notes by members when making speeches has been permitted. It is accepted that Ministers and the Leader of the Opposition read prepared speeches at the second reading stage and that maiden speeches may be read.

A member may only speak once on any question before the House or on an amendment (SO 87), however, a reply is allowed to a member who has moved a substantive motion or moved the first, second or third reading of a bill (SO 90). A substantive motion is a motion which is self-contained and which normally requires notice, such as a general business motion. A reply under standing order 90 closes the debate. In Committee of the Whole members may speak more than once on a question.

Standing order 99 allows a member who has the call to move, without notice, ‘That the question be now put’. Such a motion, known as a ‘closure motion’, can be moved during debate on a question, both in the House and in committee of the whole. A member, except a minister, who has spoken in the debate or who has previously moved that motion, may not move that the question be now put. The closure motion itself must be put without debate. However, if resolved in the affirmative the original question must be put, without debate, except for the mover of the original motion who has 30 minutes to speak in reply before the original question is put.

Standing order 98 provides that any member, except a member who has already spoken in the debate, may move without notice that a member who is speaking ‘be no longer heard’. The motion may not be debated or amended. As with the closure motion referred to above, standing order 98 requires that before putting the question the Chair is to advise the House to consider whether the member speaking has had ample opportunity to debate the question, whether the member is abusing the standing orders or conventions of the House, or is obstructing business, or whether the motion, if carried, would take away the rights of the minority.

The President and the Chair of Committees are responsible for ensuring that the business of the House is conducted in an orderly fashion in accordance with the standing orders, and principles of

parliamentary practice. The President and the Chair exercise discretion in intervening in debate. Normally, they will only intervene if a member's right to speak or be heard is being infringed, if a breach of order has been committed, or if called on to decide a point of order.

The disorderly conduct of members is dealt with under standing orders 190 to 194. Under standing order 190 if a member, after being warned by the President:

- (a) continues to obstruct the business of the House
- (b) continues to abuse the rules of the House
- (c) refuses to comply with an order of the Chair
- (d) refuses to comply with the standing orders
- (e) continues to disregard the authority of the Chair
- (f) otherwise obstructs the orderly conduct of business of the House

the President may name the member and report the member's offence to the House. If the offence is committed in Committee of the Whole, the Chair is to suspend proceedings and report the offence to the President. A member who has been reported as having committed an offence may make an explanation or apology to the House and then, if required by the Chair, withdraw from the Chamber. A motion may then be moved without notice that the member be suspended from the House. Under standing order 191 the member may be suspended until the House terminates the suspension or until the submission of an apology by the offending member. A member who is suspended from the service of the House is excluded from the Chamber and galleries, and may not serve on or attend any proceedings of a committee of the House during the period of suspension.

The power to suspend or expel has been exercised infrequently.

In one case, an apology was offered by the member, the resolution suspending him was rescinded by the House and the member was re-admitted.

There have been judicial decisions upholding the power of the House to suspend one of its members for contempt (*Egan v Willis* (1998) 195 CLR 424) or expel one of its members for conduct unworthy of a member of the House (*Armstrong v Budd* (1969) 71 SR (NSW) 386). Standing order 194 states that nothing in standing orders 190 – 194 affects the power of the House to proceed against any member for any conduct unworthy of a member of the House.

If the President or Chair of Committees calls a member to order three times in the course of any one sitting for any breach of the standing orders or if the member conducts themselves in a grossly disorderly manner, the member may, by order of the President or Chair of Committees be removed from the Chamber by the Usher of the Black Rod for a period of time as the President or Chair may decide but not beyond the termination of the sitting.